



DPS Legal Review

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USE OF FORCE

A Florida Deputy Sheriff stopped the Plaintiff for speeding. It was after dark on a two-lane highway without street lights. The Plaintiff, who was financially destitute and homeless, became upset about getting a ticket and started to sob. The Deputy repeatedly asked the Plaintiff to sign his traffic citation. **Under Florida law**, refusal to sign a citation establishes probable cause to arrest. The Deputy warned him that his refusal would result in arrest. After the second warning, the Plaintiff asked to be arrested. He was handcuffed without resistance while sitting in his vehicle.

As the Deputy started to walk him to the patrol car, the Plaintiff dropped to the ground, crossed his legs, and sobbed. The Deputy cautioned the Plaintiff about the danger of getting hit by passing traffic. The Plaintiff responded, "My life would be better if I was dead." Then, without success, the Deputy attempted to lift him to his feet. After he continued to refuse to stand up, the Deputy warned him that a taser device would be used. In response, the Plaintiff shouted, "I don't care anymore – tase me." Thereafter, the Deputy discharged his taser in two separate five-second bursts in "stun gun mode." After each application, he asked the Plaintiff to stand up. He continued to refuse.

After radioing for backup, the Deputy made a second unsuccessful attempt to lift the Plaintiff to his feet. The Deputy used his taser a third time. The Plaintiff continued to resist moving to the patrol car. Eventually another officer arrived and the Plaintiff relented and was escorted to the patrol car without incident. The Plaintiff suffered sixteen small burn marks on his back from the taser with some scarring and keloid growth around some of the burns. He also alleged emotional injury. He brought a civil rights action alleging that the Deputy used

excessive force in violation of the Fourth Amendment. The Deputy sought dismissal based upon qualified immunity.

HOLDING: The Court held that the Deputy was entitled to qualified immunity. To determine reasonableness of the arrest, the Court looked to the totality of the circumstances. In reaching its decision, the Court noted three important factors. First, the incident occurred at night on the side of an active highway. Second, the Deputy could not complete the arrest because the Plaintiff resisted. Third, the Deputy resorted to using the taser only after repeatedly trying to persuade the Plaintiff to cease resisting.

Despite the fact that the underlying offense of refusing to sign a traffic citation was relatively minor, the Court held that the government has a "significant interest in enforcing the law on its own terms, rather than on terms set by the arrestee. The government has an interest in arrests being completed efficiently and without waste of limited resources: police time and energy that may be needed elsewhere at any moment." The Court balanced these important governmental interests against the Plaintiff's Fourth Amendment interests. The Court held that the Plaintiff's injuries, while not insignificant, were not "severe." The Plaintiff did not show that the Deputy's use of the taser caused any "second-order physical injuries" such as a broken bone or any other physical injury due to contact with the ground caused by the taser shock. The Plaintiff also failed to show that the burns he sustained required medical attention.

In short, the Court viewed the Deputy's use of the taser in this case as moderate, non-lethal force. The Court held that a single officer "confronting a non-compliant arrestee like Plaintiff need not – as a matter of federal constitutional law – wait idly for backup to arrive to complete an otherwise lawful arrest(.)"

Likewise, the Constitution does not require that two officers make routine arrests, even if deploying more officers might result in less force. "The federal courts must not dictate through their interpretation of the Constitution how the police should allocate their limited resources." Buckley v. Haddock, Slip Copy, 2008 WL 4140297 (C.A. 11(Fla.)).

DUI/ IMPLIED CONSENT

An off-duty Deputy, while in the parking lot of a bar in Peachtree City, saw the Defendant drive his car in reverse, go over a six inch concrete curb, strike a vehicle, and begin to drive away. The Deputy heard the crash and waved for the Defendant to stop so that he could speak to him. While they were talking, the Deputy smelled alcohol coming from inside the car and saw that the Defendant's eyes were red and glassy. He told the Defendant to turn the car off because he had struck another car. The Defendant denied this, and, as the Deputy went to retrieve his tag number, he left. A Peachtree City Police Officer responded to the scene to take over the investigation. He issued a BOLO based on the tag number but did not tell the dispatcher that the matter involved a possible DUI.

Later, officers from the Coweta County Sheriff's Department found the Defendant and his car at a Waffle House in Newnan. The Coweta officer did not perform any kind of investigation for possible DUI. The Defendant was detained pending the arrival of Peachtree City officers. When they arrived, they found the Defendant handcuffed in the back of a patrol car. The Coweta officer turned him over to the Peachtree City officers who then proceeded to investigate the Defendant for DUI. They observed that his eyes were bloodshot, that he had an unsteady gate, and that his breath and person smelled like alcohol.

The Defendant admitted having a couple of beers. Scratches were noted on his right bumper matching the area on the car which struck the vehicle in the parking lot. He was read his implied consent rights, but he never responded to whether he would take a breath test. He moved to suppress the evidence.

HOLDING: The motion to suppress was denied. The Defendant's assertion that the Coweta County officers should have read him his implied consent rights while awaiting the other officers' arrival was without merit. First, the

BOLO alert did not include information that he was suspected of DUI. Second, the Coweta officers never saw the Defendant drive. Third, they did not notice him acting in an impaired manner. They merely detained the Defendant for approximately 10 to 15 minutes until the other officers arrived. Even if the Defendant was considered to be under arrest while in the patrol car, the Court held that he was read his implied consent rights at a time in as close proximity to the arrest as warranted under the circumstances. Lynch v. State, __ S.E.2d __, 2008 WL 4211151 (Ga. App.).

INQUIRING MINDS

QUERY: In **Georgia**, does a traffic violator's refusal to sign a traffic citation establish probable cause for an arrest?

ANSWER: No! O.C.G.A. § 17-6-11 allows a traffic violator to display their license to an officer in lieu of bail. Once a valid license is displayed, O.C.G.A. § 40-13-2.1(a) requires a violator to sign the citation as an acknowledgement of their receipt and of their obligation to appear for trial. The language in O.C.G.A. § 40-13-2.1(a) mandates that an officer inform a violator that: 1) signing is not an admission of guilt and 2) failing to sign constitutes reasonable cause to bring them before a judicial officer to post bond.

ALS REMINDER

⊗ Witnesses are **never** subpoenaed by the Court for an ALS hearing. The Court provides notice to the arresting officer. If additional witnesses are needed for the ALS Hearing, the **officer must subpoena those witnesses**. The witness subpoena can be found on the Court's website at www.osah.ga.gov. Go to forms, and click subpoena. Fill in all of the requested information, and serve it on the necessary witness(es). If you need assistance completing a subpoena please contact Dee or Beverly in Legal Services at (404) 624-7023.

QUOTABLE WISDOM WORKS

"The road to success is always under construction."

Lily Tomlin

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