



DPS Legal Review

March 2009 Legal Services (404) 624-7423 Volume 8 No. 3

OFFICERS WHO "HOGTIED" SUSPECT HELD IMMUNE FROM SUIT

An officer in West Palm Beach Florida attempted to stop a suspect who was disoriented, stumbling into the road, and trying to flag down passing vehicles. The suspect appeared to be under the influence of some type of narcotic. After the officer instructed the suspect to sit down on the side of the road, he complied, but, seconds later, stood and ran into traffic. The officer struggled to maneuver him to the ground.

Several other officers arrived at the scene and sought to help handcuff the suspect. His hands were cuffed behind his back. Two officers bound his legs using a leg restraint. Although the suspect was groaning and breathing heavily, he refused to respond to requests to calm down. Three officers carried him to the side of the road to place him in a seated position. He refused to sit up. After additional officers arrived, one suggested that the suspect be further restrained by attaching the ankle restraint to the handcuffs with a hobble cord. The hobble was tightened so that the suspect's hands and feet were close together behind his back in a "hogtied" position. After the suspect's hands and feet were bound together, one of the officers realized that he was unconscious. The officers removed the restraints and started CPR. Paramedics arrived within minutes to try to resuscitate the suspect, but he was pronounced dead.

The suspect's mother brought a civil rights action against the City of West Palm Beach and the individual officers. The exact cause of death was unclear. The defendants' medical expert concluded that the cause of death was "sudden respiratory arrest following physical struggling restraint due to cocaine-induced excited delirium." The mother's expert concluded that the cause of death was asphyxia caused by neck compression.

HOLDING: The Court held that the officers were entitled to qualified immunity and that the

City was not liable for failure to train. Qualified immunity protects municipal officers from liability in civil rights actions where their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Qualified immunity is established by: 1) case law with indistinguishable facts clearly establishing the constitutional rights, 2) a broad statement of principle within the Constitution, statute, or case law that clearly establishes a constitutional right, or 3) conduct so egregious that a constitutional right was clearly violated, even in the total absence of case law.

In this case, the Court held that the application of the hobble may not have been entirely necessary, but the officers' attempts to restrain the suspect were not so violent and harsh to be considered an egregious violation of constitutional rights. Despite the unfortunate result, qualified immunity insulated the officers. The Court held that hobbles do not have the same potential flagrant risk of constitutional violations as the use of deadly firearms. Thus, the City could not be held liable for a civil rights violation: 1) because it did not maintain a deliberate indifference to a potentially obvious constitutional violation, and 2) because it provided some training on the use of hobbles. Lewis v. City of West Palm Beach, Florida, 2009 WL 606546 (C.A. 11 (Fla.)).

LIABILITY FOR AVOIDABLE COLLISION

A Georgia State Trooper was traveling behind a pickup truck driven by a rural mail carrier. He started to run radar on approaching vehicles in the other lane (while using the mail carrier's truck as a cover). The mail carrier stopped her truck, which had a flashing strobe on top, signaled a left turn, and waited for traffic to clear. The Trooper realized that the mail truck had stopped, and he attempted to brake, but he was unable to avoid a collision. The mail carrier and her spouse sued the Department of Public Safety.

HOLDING: The State is not immune from liability where its employee implements a non-defective policy in a negligent manner. In this case, the State Patrol Crash Review Board “found that the accident was preventable and that the Trooper did not operate his car ‘in a manner consistent with policy and training.’” He followed too closely and did not pay attention, which was “simple, preventable negligence.” Thus, the State is subject to liability for injuries resulting from his negligence. Georgia DPS v. Davis, 2009 WL 792515 (Ga.).

DEADLY FORCE WAS NOT EXCESSIVE

A Pinellas County Florida sheriff's deputy received a report about individuals dealing narcotics at a local inn. He pulled his unmarked police cruiser into the inn's parking lot and observed what he believed to be a drug transaction between two suspects. He pursued and stopped one suspect. Then he returned to the parking lot where he saw a man that he believed to be the other suspect. When he approached the suspect, he got into his white pickup truck and drove off. The officer observed that the tint on the truck's windows was too dark so he radioed the vehicle's tag number as well as his suspicion of drug activity to two other deputies and told them they had probable cause to conduct a traffic stop for excessive window tint. Those officers followed the suspect. After he accelerated through a green light, they activated their emergency lights and sirens and followed him. Instead of pulling over, the suspect continued to accelerate. The officers followed the truck into a shopping center parking lot where it fishtailed, spun around, and stopped within a few feet of one of the police cruisers.

One officer exited his vehicle, drew his firearm, walked to the front of his cruiser, pointed his firearm at the truck's driver, and directed the driver to show his hands. The driver did not show his hands or respond to the command. Another deputy drove into the parking lot, skidded passed the stopped police cruiser, and struck the truck. The force of that collision jammed the driver's side door of the deputy's cruiser and trapped the cruiser and the truck inches apart. The officers heard the suspect revving his engine. The officer in the trapped cruiser drew his firearm and fired one shot through his closed driver's side window at the truck's windshield.

The other officer fired three shots towards the truck's windshield. The truck went into reverse, spun its tires, backed away from the trapped cruiser, and moved towards the other officer standing outside of his cruiser. That officer fired another round at the truck's windshield and jumped on the hood of his cruiser to avoid being struck by the moving truck. The suspect drove towards the officer, struck the cruiser, slowly moved out of the boxed-in situation, and crossed the parking lot towards the exit. As the truck rolled away, the officers followed on foot (firing more rounds at the passenger side of the vehicle). The truck rolled to a stop when it entered a shallow ditch. Paramedics pronounced the suspect dead at the scene. The suspect's grandmother initiated a civil rights action.

HOLDING: The Court held that the force used against the suspect was not excessive under the Fourth Amendment and that the officers were entitled to qualified immunity. The Court has “consistently upheld an officer's use of force and granted qualified immunity in cases where the decedent used or threatened to use his car as a weapon to endanger officers or civilians immediately preceding the officer's use of deadly force.” McCullough v. Antolini, 2009 WL 469327 (C.A. 11 (Fla.)).

INQUIRING MINDS

QUERY: What is considered video evidence?

ANSWER: EVERYTHING RECORDED in connection with an incident or crash is considered evidence. Factors such as 1) the length of the recording, 2) the imperfection or poor quality of the recording, 3) the subject matter recorded, or 4) damage¹ to the tape do not alter the conclusion that **EVERYTHING RECORDED** is evidence.

OPEN RECORDS REMINDER

⚠ Please remember to note whether video footage is VHS or DVD on both the incident report and the crash report.

QUOTABLE WISDOM WORKS

Great minds discuss ideas; average minds discuss events; small minds discuss people.

Eleanor Roosevelt

Published with the approval of Colonel Bill Hitchens. Legal Services: Melissa Rodgers, Director, Lee O'Brien and Jacqueline Bunn, Deputy Directors, and Dee Brophy, ALS Attorney. Send questions/comments to jbunn@gsp.net.

¹ Please contact Lanie Weathers or Gordy Wright if your tape has been damaged.