



DPS Legal Review

January 2010 Legal Services (404) 624-7423 Volume 9 No. 1

NATIONAL ORIGIN DISCRIMINATION/ QUALIFIED IMMUNITY DENIED

A City of Clermont Police officer alleged that during a six (6) month period his former supervisor treated him differently from other officers in the squad due to his Puerto Rican heritage. Specifically, he alleged that the supervisor would: 1) tell him to hurry because he was taking too long to complete his reports, 2) raise his voice when he talked to him, 3) ask the Plaintiff to repeat what he was saying to ridicule his accent, 4) refuse to allow the Plaintiff to return to headquarters to complete reports, 5) tell the Plaintiff and another officer to "speak English, this is America," 6) require the Plaintiff to prepare written reports for the entire squad, 7) complain about the Latin music the Plaintiff listened to in his police car, and 8) make comments like "let me go ahead and grab the red pen to correct your "Spanglish," when the Plaintiff turned in his reports.

In his annual evaluation, the supervisor told him that he needed to work on the quality of his report writing. He was given an evaluation score which would have qualified him for a pay increase, but the Police Chief ordered the supervisor to reduce the score based upon several citizen complaints about the Plaintiff and his poor report writing. This reduction made the Plaintiff ineligible for a pay increase. After six months, the Plaintiff secured a transfer and immediately filed an internal affairs complaint, claiming a hostile work environment and discrimination. The internal affairs investigation concluded that the evidence failed to support the Plaintiff's complaint. He filed suit against the City and the former supervisor alleging two areas of discriminatory conduct: 1) the loss in a pay raise for a year, and 2) harassment and discriminatory behavior.

HOLDING: The Court held that the Plaintiff's former supervisor was not responsible for his loss in pay. The Police Chief ordered the supervisor to

lower his evaluation, after he initially scored him high enough to qualify for a raise.

However, the Court did not dismiss the hostile work environment claims. The Court held that a reasonable person might view the alleged actions and comments to be abusive, hostile, and based upon national origin. The Court also held that the Defendant supervisor was not entitled to qualified immunity. The unlawfulness of creating a hostile work environment based on the Plaintiff's national origin was apparent based on preexisting law. *Rodriguez v. City of Clermont*, 2009 WL 5218014 (M.D. Fla.).

UNREASONABLE DETENTION

A Kennesaw police officer, stationed in a marked car in an area known for drug activity, observed a Toyota Avalon decreasing in speed as it approached the police car. When the car passed him, the officer saw the occupants slump down to avoid eye contact. The officer saw that a black tag obscured the portion of the vehicle's license plate identifying the county of issuance. This obstruction formed the basis for the traffic stop. After receiving the driver's license and insurance information, the officer confirmed that there were no outstanding warrants for either the driver or passenger. He then asked the driver for consent to search the vehicle. The driver refused consent.

Although the officer had already fulfilled everything connected with the initial stop (other than handing the driver his citation, driver's license and insurance information), he requested a K-9 unit. He then directed the driver and passenger to exit the car, and detained them for an additional 20 minutes. During that time, the officer looked inside the car to make sure there were no weapons or other contraband in plain sight. While he talked to the driver and passenger, he noticed the smell of burnt marijuana coming from the passenger side of the car. The passenger admitted having a marijuana pipe. The passenger showed the officer the pipe. The officer recovered a prescription bottle

containing marijuana. The officer searched the car and found more marijuana and cash. The driver and passenger were charged with possession of marijuana with the intent to distribute, and they moved to suppress the evidence.

HOLDING: The motion to suppress was granted. The Court held that the officer unreasonably prolonged the detention of the Defendants. The Court held that a reasonable time to issue a citation or written warning includes the time necessary to verify the driver's license, insurance, and registration, to complete any paperwork connected with the citation or a written warning, and to run a computer check to determine whether there are any outstanding arrest warrants for the driver or the passengers. State v. Long, __ S.E.2d __, 2010 WL 22687 (Ga. App.).

DRIVER PRIVACY PROTECTION ACT

The Plaintiff alleged that officials and employees of the Florida Department of Highway Safety and Motor Vehicles (hereafter "Defendants") disclosed personal information of Florida drivers, in bulk, to a private corporation, Shadowsoft. The Plaintiff also alleged that Shadowsoft, in turn, made the information available on the internet without the drivers' consent. The Defendants did not deny that the Plaintiff's personal information was made available on the internet. The Defendants did not deny that an internet user can access the information for any reason. The Defendants also did not deny that making the information available in this manner violated the Driver's Privacy Protection Act.

The Driver's Privacy Protection Act prohibits the disclosure of "personal information" obtained by a state department of motor vehicles. Personal information is defined as "information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status." The Defendants asserted that they made the information available for a lawful purpose. The Defendants moved to dismiss the case.

HOLDING: The Court denied the motion to dismiss and allowed the case to go forward. The Driver's Privacy Protection Act itself clearly establishes the illegality of the prohibited

disclosures. Welch v. Theodorides-Bustle, __ F.Supp.2d __, 2010 WL 22365 (N. D. Fla.).

INQUIRING MINDS

QUERY: What is the "notice" requirement for "failure to appear?"

ANSWER: Effective January 1, 2010, O.C.G.A. §40-5-56 provides that failure to appear and respond to a citation shall result in the suspension of the violator's driver's license or nonresident driving privilege. Additionally, "The language reflected on a uniform traffic citation issued in this state shall be sufficient notice(.)" A summary of Johnson v. State, __ S.E.2d __, 2009 WL 839923 (Ga. App.), which discussed this change in detail can be found in the April 2009 "DPS Legal Review."

ALS REMINDER

⊗ If a Petitioner fails to enter a guilty plea pursuant to an ALS plea agreement, please contact Dee or Beverly in Legal Services before signing the Affidavit stating that Petitioner failed to enter the plea.

⊗ When entering into an ALS Plea Agreement, please **do not** delete the language stating that, if the Petitioner fails to enter a plea, he or she waives their right to an ALS hearing. The ALS Plea Agreement also states that the arresting officer is authorized to sign an affidavit notifying the court of Petitioner's failure to plea, and the Court will reinstate the administrative suspension without a hearing. When this language is deleted from the form and the Petitioner fails to plead guilty, a motion must be filed with the court and you are required to attend an ALS Hearing again (on the same case.) Because some Petitioners fail to enter a plea of guilty in the criminal proceeding, the **language** discussed above **should not be removed** from the ALS Plea Agreement.

QUOTABLE WISDOM WORKS

"Everything that is done in the world is done by hope."

~Martin Luther

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.