



DPS Legal Review

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EXCESSIVE FORCE/ DELIBERATE INDIFFERENCE

Palm Beach County Sheriff's Deputies were called to a public street in front of a swap shop because of illegally parked vehicles. After they ticketed some of the vehicles, they saw the Plaintiff in a heated argument with a tow truck driver. One of the Deputies asked the Plaintiff to move off the road. The Plaintiff refused to comply, and he initiated a verbal confrontation.

Thereafter, the Deputy grabbed the Plaintiff's left arm near the shoulder to arrest him. The Plaintiff continued to resist arrest. He eventually dropped to his knees when three Officers attempted to handcuff him. The Plaintiff told the Officers that his right arm was "sick." As he was handcuffed, the Plaintiff alleged that he blacked out for a few moments because of the pain.

He was taken to the police station about an hour after his arrest. At the scene, the Deputies offered to call the paramedics, but the Plaintiff declined. The Plaintiff alleged that he asked for medical help for his arm, but the Deputies did nothing. He saw a nurse at the police station before he was released, but he declined medical treatment. After being released, the Plaintiff went to a hospital emergency room, had surgery on his right arm, and spent a week recovering in the hospital. The Plaintiff brought a civil rights action alleging excessive force and deliberate indifference to his medical needs.

HOLDING: The Court held that the Deputies were protected by qualified immunity because their actions during the arrest complied with the Constitution. The Plaintiff was standing on a public roadway engaging in a verbal confrontation with Officers, and, when those Officers attempted to handcuff him, he actively and continuously resisted arrest. While resisting arrest, the Plaintiff did not tell the Officers that his right arm was previously injured until after they had begun placing the handcuffs on him. He told the Officers that his right arm was "sick," but he never explained the extent of his pre-existing injuries.

Since the Plaintiff was wearing a long-sleeved shirt that covered his arm, the injury was not visible. The Court held that a "police officer need not credit everything a suspect tells him. . . (and) (t)his idea is especially true where the officer is in the process of handcuffing a suspect."

There was no evidence that the Deputies used more force than they would usually use to handcuff a suspect. The Court held that the Officers had no reason to know they should not follow their standard procedure, particularly since he was actively resisting the arrest. The use of such a small amount of force, without more, cannot support an excessive force claim. The Court held that the right to make an arrest necessarily carries with it the right to use some degree of physical coercion or the threat of it.

The Court also dismissed the Plaintiff's deliberate indifference claim. The Court held that the Plaintiff did not demonstrate that the Deputies had any subjective knowledge of a serious risk of serious harm. There was no indication that either Deputy had subjective knowledge that the Plaintiff's arm had been fractured or was otherwise injured. When the Deputies offered medical assistance, the Plaintiff declined. Sutherland v. Allison, __ S.E. 2d __, 2011 WL 412632 (C.A. 11 (Fla.)).

EXCESSIVE FORCE

The Plaintiff, who was wearing a bullet proof vest and a tactical vest with a large "POLICE" insignia, went to a law office in Hillsborough County, Florida. The Plaintiff's girlfriend worked at the office, and he went there to find his firearm. The Plaintiff was agitated and frustrated about an incident that occurred with his divorce proceeding. The Plaintiff said that he wore the vest so that law enforcement would not kill him. He wanted to kill himself. He ransacked the law office and found his girlfriend's firearm, but he continued to aggressively search for his gun. The Plaintiff and his girlfriend began to argue. A male attorney attempted to intervene. This resulted in a physical altercation. The other

women in the office, who were frightened, locked themselves in a conference room and called the police.

A Deputy, who was close to the location, went inside the law office. He saw the Plaintiff and ordered him to get on the ground. The Plaintiff refused to comply. A physical fight ensued between the Deputy and the Plaintiff and the Deputy was forced to use his taser, which agitated the Plaintiff. The Plaintiff, in turn, attempted to grab the Deputy's gun and taser. Other Deputies arrived and helped to handcuff the Plaintiff and shackle his legs. The Plaintiff remained uncooperative and hostile.

After the Plaintiff was placed in the back seat of the patrol car, he started kicking the door and window. When the Plaintiff refused to stop, two officers removed him from the car, placed him face down on the pavement, and applied hobble restraints to prevent his escape and to prevent him from breaking out the vehicle's windows. The Plaintiff remained defiant, belligerent, and threatened to harm the Deputies. He refused medical treatment at the scene. There were no visible injuries at the scene. After arriving at the Sheriff's Office, the Plaintiff was taken to the hospital. He was treated for second degree thermal burns to his face and chest. No witnesses heard the Plaintiff say that the pavement was burning him or the sound of his skin sizzling. The Plaintiff initiated a civil rights action alleging excessive force.

HOLDING: The Court held that the Deputy's actions did not constitute a constitutional violation. The Deputy's decision to hobble-tie the Plaintiff was in response to the Plaintiff's behavior of repeatedly kicking the patrol car's door and window. The Deputy did not use any other force such as punches, kicks, chemical agents, or electronic control devices/tasers. The Court held that "it would defy logic to require officers, who are dealing with stressful and dangerous situations that require quick-thinking, to have to test the pavement's temperature and find a blanket or grassy area before they engage in hobble-tying an out-of-control arrestee." The Court also held that the Plaintiff's constitutional right against the type of force used in this situation is not clearly established. Rubio v. Lopez, Slip Copy, 2011 WL 398021 (M.D. Fla.).

INQUIRING MINDS

QUERY: Has the law changed regarding the time frame for new car owners to register their vehicles?

ANSWER: Yes, effective January 1, 2011, owners have seven (7) business days to register new vehicles. In instances where they do not have all of the documentation, they can secure a temporary operating permit. Click below to view the amended Code Sections:



40-2-20.pdf



40-2-29.pdf



40-2-8.pdf

ALS REMINDER

HORIZONTAL GAZE NYSTAGMUS (HGN) – HGN is the involuntary jerking of the eyes as they move toward the side. There are six possible clues to look for when evaluating the HGN (three in each eye.) If a suspect is wearing eyeglasses, you should ask for the eyeglasses to be removed prior to starting the test. Prior to checking for the clues, you should look for: equal pupil size, resting nystagmus, and equal tracking to medically qualify the suspect to perform the test. The time period for equal tracking is one second out and one second back. Remember to hold the stimulus 12-15 inches from the suspect's nose, slightly above eye level. You should check the left eye first, and then check each eye twice for the clues listed below.

The Six Clues (3 clues for each eye):

- (1.) Lack of smooth pursuit – the time period is 2 seconds out and 2 seconds back.
- (2.) Distinct and sustained nystagmus at maximum deviation – you should hold the stimulus for a minimum of 4 seconds at maximum deviation.
- (3.) Onset of nystagmus prior to 45 degrees – it should take approximately 4 seconds to reach 45 degrees. Remember that clue number 2 will not be present unless clue number 1 is present, and that clue number 3 will not be present unless clues number 1 and 2 are present. Four of six clues are needed on HGN to indicate a suspect's blood alcohol concentration ("BAC") is above 0.08.

QUOTABLE WISDOM WORKS

"A pessimist sees the difficulty in every opportunity; an optimist sees the opportunity in every difficulty."

~Winston Churchill

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