



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 314

August 4, 2006

FALSE ARREST MAY NOT ENTITLE POLICE TO IMMUNITY FROM CIVIL SUITS

Reference:

Keane-Alexander Crawford
v.
Kevin E. Kemp and
State of Alaska

Alaska Supreme Court
Opinion No. 6022
_____ P.3d _____
July 14, 2006

FACTS:

Trooper Kemp responded to the Fairbanks Court Clerk's office in search of a man named Rodney who had just violated a domestic violence restraining order by calling his wife. The call originated from the Court Clerk's office. When Kemp arrived, he approached Crawford who was sitting down drafting a motion for his divorce case. Kemp asked Crawford for his name. Crawford said he did not want to give Kemp his name and asked Kemp if he was trying to arrest him. Crawford also asked Kemp if he was recording their conversation. Kemp explained that if he would just tell him his name, he could verify if Crawford was the person he was looking for; Crawford refused.

Kemp asked the Clerk if she knew Crawford's name. Kemp then returned to where Crawford was sitting and looked over his shoulder to see if he could read Crawford's name on the form he was filling out. As Kemp walked away, Crawford raised his voice slightly and said to Kemp that "he should feel proud for being able to read over someone's shoulder." Crawford later testified that he wasn't shouting, but did say it loudly because he wanted others in the immediate area to know what Kemp had done. Kemp then turned, leaned down close to Crawford's face and told him he would be arrested if he continued to speak in a disorderly manner. Crawford asked Kemp for his name and the name of his supervisor. Kemp gave Crawford his name. Crawford left

the Clerk's office and went to the Judicial Services office where he obtained the name of Kemp's supervisor.

Crawford returned to the Clerk's office and told Kemp that he had the name of his supervisor and that he also knew how to write reports. Kemp responded by saying he had a tape recorder and was recording their conversation. Crawford asked Kemp "to make sure no harm came to the tape." Kemp then told Crawford that he had been repeatedly warned that his speech was disorderly and that if he spoke again he would be arrested. As Kemp was warning Crawford not to speak, a small amount of spittle from Kemp's mouth landed on Crawford's face. Crawford responded by asking Kemp to stop spitting on his face. Kemp again warned Crawford to stop speaking or he would be arrested for disorderly conduct. Despite this warning, Crawford repeated his earlier request that Kemp stop spitting on his face. Kemp arrested Crawford for disorderly conduct and searched him. Crawford was taken to a cell in the courthouse and later transported to the Fairbanks Correctional Center where he was again searched and fingerprinted. Crawford was released on bail about 1:00 a.m. the following day.

Several Court Clerks who witnessed the event said that Crawford was "loud and disruptive." Another person who was also in the Clerk's office said the entire incident between Crawford and Kemp lasted about ten minutes and that both Crawford and Kemp spoke in a normal tone of voice. This person also said that no one in the Clerk's office indicated that the incident bothered them or asked Crawford to lower his voice. Kemp said Crawford was at his loudest when Crawford asked him to stop spitting in his face.

Prosecutors dismissed the criminal charges against Crawford. Crawford filed suit against the State of Alaska and Kemp alleging State Law Tort Claims and 42 U.S.C. §1983 constitutional claims including false arrest, false imprisonment, unreasonable search and seizure, malicious prosecution, and violation of free speech. The Superior Court granted summary judgment in favor of the State and Kemp. Crawford did not argue that the State is immune and limits the appeal to claims against Kemp.

ISSUE:

Was Crawford unlawfully arrested for disorderly conduct and did the arrest and search incident to arrest violate his constitutional rights?

HELD: Yes--noise does not include speech that is constitutionally protected.

REASONING:

1. As a matter of law, it cannot be concluded that Kemp acted reasonably or that a jury would inevitably find that Kemp was reasonable in believing that Crawford's actions justified an arrest for disorderly conduct.

2. Alaska Statute 11.61.110(b), Disorderly Conduct, defines noise as unreasonably loud "if, considering the nature and purpose of the defendant's conduct and circumstances known to the defendant, including the nature of the location and time of day or night, the conduct involves a gross deviation from the standards of conduct that a reasonable person would follow in the same situation."

3. Although the policy in favor of deciding immunity issues prior to trial in order to insulate officers from claims based on reasonable mistakes, the objective reasonableness of Kemp's decision to arrest in this case presents a question of fact that requires resolution by a jury.

4. It is undisputed that the confrontation between Crawford and Kemp began when Kemp asked Crawford to identify himself and Crawford refused. It is well established, and Kemp acknowledged in his deposition testimony, that Crawford was not under a legal obligation to tell Kemp his name and was not required by law to produce identification for Kemp. (emphasis added)

5. It is well settled that "usually, arguing with a police officer, even when using profane and insulting words will not be enough to constitute disorderly conduct unless the words are coupled with threatening behavior." Police officers, even when faced with verbal communications that

could be described as "fighting words" (words that provoke in the average listener an immediate violent response), should exercise more restraint than a private citizen.

6. The officer being personally offended does not render the defendant's conduct a crime.

NOTES:

Two noteworthy cases cited by the Court are:

Samaniego v. Kodiak, Legal Bulletin No 242, regarding civil responsibility for excessive force during arrest.

Earley v. State, Legal Bulletin No. 140, regarding disorderly conduct arrest where defendant was "loud and belligerent" outside his residence.

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