



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 318
April 12, 2007

USE OF EXCESSIVE FORCE DURING ORDINARY TRAFFIC STOP

Reference: Ralph Kermit Winterrowd
v.
Brad L. Nelson
John Cyr
Jorge Santiago

U. S. Court of Appeals
for the Ninth Circuit
Opinion No. 04-35855
March 30, 2007

FACTS:

The facts alleged by the plaintiff, Winterrowd, have to be assumed as true at this stage of the proceeding. There may be additional facts presented by the defendant police officers at trial that are not included in this written opinion.

Winterrowd alleged that three police officers conducted a traffic stop because they suspected his license plates were invalid. There is no allegation that he had committed any other traffic violation. He was unable to produce a valid registration. Winterrowd takes the position (legally unjustified) that the State of Alaska lacks the authority to require him to register his vehicle. The officers ordered Winterrowd out of his vehicle. Because they intended to speak with him inside a patrol car, they attempted to perform a routine pat-down for officer safety. One of the officers ordered Winterrowd to put his hands behind his back. The officers saw no signs of a weapon and he offered no physical threat. Winterrowd told officers that he could not put his hands behind his back because he had a shoulder injury. According to Winterrowd, the officers responded by forcing him onto the hood of the car; one of the officers grabbed his right arm and forced it up.

When he screamed in pain, an officer applied greater pressure pumping his arm up and down.

The officers were not dealing with an unknown individual. At least one of the officers indicated he was familiar with Winterrowd when they pulled him over. There is no evidence that Winterrowd failed to produce his driver's license. The officer did not declare that he had been physically abusive during prior encounters.

At most on this event, Winterrowd was shown to be verbally abusive. After being forced onto the hood of the car, he called the officers "jackbooted thugs," "armed mercenaries," and "cowards."

ISSUE:

Based on the facts presented by Winterrowd, is he entitled to bring a civil suit (42. U.S.C. § 1983) alleging excessive force was used during the pat-down?

HELD: Yes--the officers are not entitled to qualified immunity and this will be a question for the jury.

REASONING:

- 1.** A statement that a suspect is physically unable to comply with a request does not, by itself, justify the use of force.
- 2.** No reasonable officer could conclude that an individual suspected of a license-plate violation posed a threat that would justify slamming him against the hood of a car.
- 3.** The fact that ordinary objects (20-30 pens) in the possession of a suspect could be used as weapons cannot, standing alone, justify the use of force. There would have to be some indication that the individual intended to use these utensils to threaten or harm officers. Any other rule would authorize police to use force against virtually all motorists simply because they carry writing utensils, keys or other ordinary objects that could potentially be used as weapons. At most, it might suggest that officers could reasonably exercise greater caution during encounters.

4. The officers were unaware that he had a gun in his car until after they forced him onto the hood of the car. He was well away from his vehicle and unable to access the weapon.

5. No officer likes being called a "coward," but Winterrowd is well within his rights in making such statements. While police, no less than anyone else, may resent have obscene words and gestures directed at them, they may not exercise the awesome power at their disposal to punish individuals for conduct that is not merely lawful, but protected by the First Amendment.

NOTES:

As stated above, the officers involved in this case will be able to present their version of this event at the civil trial.

Review of the following cases is recommended:

Samaniego v. Kodiak, Legal Bulletin No. 242 (excessive force during arrest)

Crawford v. Kemp, Legal Bulletin No. 314 (false arrest may not entitle police to immunity from civil suits)

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