AELE Monthly Law Journal

Cite as: 2009 (8) AELE Mo. L. J. 101
ISSN 1935-0007
Civil Liability Law Section – August 2009

Public Protection: Injured Crime and Accident Victims

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Introduction

In the course of performing their duties, police officers frequently encounter injured crime and accident victims, and are called upon to render assistance, including, at times, emergency first aid and arranging for needed medical assistance. Anyone who has been in need of such help or who has a family member or friend who has knows only too well that the role of officers in rendering such aid can be just as vital as preventing and solving crimes or preventing accidents.

The subject of public protection as it relates to law enforcement is a vast one, and, indeed, this publication has, in the past, published articles concerning public protection in the context of protection of witnesses, informants, and of members of the public from criminal acts of prisoners and former prisoners. Other areas of possible future articles in this area include rescue situations, disturbed/suicidal persons, hostages, ill persons, intoxicated persons, minors, and arrestees, as well as issues surrounding the operation of 911 phone systems. Examination could also be made of the overall topic of possible liability for the failure to prevent foreseeable crimes or accidents.

The focus of the current article, however, is not protection of members of the public from crime or accidents and resulting potential liability for alleged inadequacies in attempting to do so. Rather, its focus is that of the police officer's legal obligations when

encountering a member of the public who has already been the victim of a crime or accident, suffering injuries. At the conclusion of the article, there is a short listing of other articles on the subject of public protection and resources related to the topic of this article.

Public Protection: Injured Crime and Accident Victims

Police officers, who of course, cannot be everywhere, are frequently confronted with the necessity of exercising discretion as to what tasks to undertake, and are not "insurers" of the health and safety of members of the public. Courts have therefore been extremely loathe, ordinarily, to impose liability on officers for harm that comes to crime or accident victims when the officers had absolutely nothing to do with causing the crime or accident. But they have taken a different approach in circumstances where the injured person can be said to be in custody or its equivalent, or when actions by officers enhance the existing injuries or even cause further ones. A recent case clearly illustrates both concepts.

In Howard v. Kansas City Police Department, #08-2448, 2009 U.S. App. Lexis 14415 (8th Cir.), a shooting victim sought help from police. The officers allegedly pushed him onto an asphalt street and administered first aid there. At the time, he was shirtless and the temperature was in excess of 100 degrees.

He allegedly told the officers that the asphalt was subjecting his exposed skin to burning. Despite this, the officers allegedly continued to restrain him against the asphalt for a number of minutes before another officer was told to get a blanket to place under him. Second-degree burns allegedly resulted.

A federal appeals court upheld the denial of qualified immunity for the officers in a lawsuit brought by the injured man, finding that their actions constituted a Fourth Amendment seizure, in that they resisted the plaintiff's efforts to get up, and their alleged actions were objectively unreasonable. It is clearly established, the court stated, that it violates the Fourth Amendment to ignore, in an unreasonable way, complaints of pain from a seized person.

Another theory on which injured crime or accident victims have attempted to impose liability on police is that of delay in the summoning of needed medical assistance. Cases involving that claim include Zipoli v. Caraballo, #3:06CV00388, 2009 U.S. Dist. Lexis 26033 (D. Conn.), in which the court ruled that no evidence was produced from which it could be established that police officers acted with deliberate indifference and unreasonably delayed the transporting of a shooting victim to the hospital, resulting in his death. The undisputed facts showed that officers arriving on the scene summoned an

ambulance, and that the victim arrived at the hospital fourteen minutes after the scene of the shooting was secured. There was no evidence from which any delay could be attributed to the police

Additionally, police must respond, at times with the equipment, vehicles, etc. that they have on hand, and their primary function is not providing medical transport for injured persons. In Sanders v. City of Philadelphia, #06-CV-359, 2007 U.S. Dist. Lexis 73846 (E.D. Pa.), police officers and a city were found not liable for the death of a child transported to the hospital in non-medically equipped emergency patrol wagon, rather than an ambulance, after he was shot in a drive-by shooting. The city and officers had not created the danger to the child, and did not have a special relationship with the child creating a special duty to protect him from private acts of violence or to provide adequate first aid when such violence took place. The officers' conduct also did not shock the conscience.

Similarly, in Hansberry v. City of Philadelphia, 232 F. Supp. 2d 404 (E.D. Pa. 2002), the court found that police officers were not individually liable and were entitled to qualified immunity for allegedly increasing a shooting victim's risk of death by transporting him to a hospital in a police vehicle rather than waiting for an ambulance. Officers did not create the danger to the shooting victim or act with deliberate indifference for his safety. The city was also not responsible, in the absence of a showing that it had failed to properly train the officers or had a policy that deprived the shooting victim of his rights.

In this case, Philadelphia police officers responded to 911 calls reporting a person with a gun at a particular street corner, and then a possible shooting. When they arrived there, they found a man who had lost consciousness after being shot. Because a fire rescue vehicle allegedly summoned by a dispatcher had not yet arrived, the officers called for an emergency police wagon, which arrived and transported the shooting victim to the hospital.

Shortly after arrival at the hospital, the shooting victim was pronounced dead. The decedent's estate sued the city and its officers, claiming that the victim's due process rights had been violated because the officers transported him to the hospital in a police vehicle instead of waiting for an ambulance.

A federal trial court granted motions by both the officers and the city for summary judgment.

The court ruled that the officers did not create the dangerous condition that led to the shooting victim's death or increase the danger to him. Further, death was not a foreseeable

result of the officers' actions, as there was not any evidence that an ambulance crew might have actually done a better job of saving the life of the unresponsive victim than the staff at the hospital. The officers reached the hospital approximately two minutes after leaving the scene of the accident, so it was difficult to see what difference waiting for the ambulance to arrive would have made.

As for the city, there was nothing to show that the decedent's death was caused by official policy or that the city had failed to properly train the officers.

A circumstance where officers might face liability, however, is when their actions allegedly interfere with the efforts of others to assist the injured person. See Mitchell v. County of San Diego, #05-56657, 2007 U.S. App. Lexis 16155 (Unpub. 9th Cir.), finding that paralegals and police officers were not entitled to immunity under California law in lawsuit contending that they took actions which increased the risk that a man would die from his bullet wounds when they allegedly prevented other persons from assisting him or taking him to the hospital. The plaintiff decedent's estate alleged that the defendants acted in bad faith or with gross negligence.

Similarly, in Torres v. City of Chicago, #1-03-0357, 2004 Ill. App. Lexis 1115 (1st Dist.), police officers who allegedly failed to summon ambulance for an hour and a half after responding to 911 call reporting man suffering from gunshot wounds were not entitled to summary judgment in a wrongful death lawsuit. The decedent's estate claimed that the officers had also told a neighbor who wanted to assist the injured man to go away. While officers may not have had a duty to respond to the call, once they voluntarily undertook to take charge of the scene, they had a duty not to harm the injured man.

In this case, police officers that responded to a 911 call reporting a shooting at 2 a.m. found a man lying on a bathroom floor, bleeding from multiple gunshot wounds. They initially allegedly did not see the gunshot wounds, however, although they did see a trail of blood leading into the bathroom, and left the man on the bathroom floor, believing that he was drunk. It was allegedly an hour and a half later that they called for an ambulance after a witness took an officer into the bathroom again and lifted the man's shirt to show the officer a gunshot wound. The man died several hours later. The decedent's estate sued the city for wrongful death, and an Illinois trial court granted summary judgment for the defendants, ruling that the city and its officers had no duty to the injured man, but only to the general public.

An intermediate Illinois appeals court, assuming for purposes of argument that the city had no duty to respond to the 911 call, held that the city "voluntarily undertook the response," and at that point assumed a duty not to harm the injured man. The plaintiff estate, the court said, presented evidence that the city breached that duty when officers on

the scene allegedly told at least one person who wanted to help the injured man to leave the area.

Additionally, the court found that a section of the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/4-104, which provides immunity under state law for failure to provide police protection or services did not apply because the injured man needed for the officers responding to the call to provide or summon medical care, not provide police protection.

Medical testimony in the case included a statement from a doctor that expressed the opinion that if the decedent had received treatment within an hour of the shooting, his chances of survival would have increased by "at least 50%."

The appeals court found that the evidence, taken in the light most favorable to the plaintiff, showed that if the police had not arrived and deterred the neighbor from assisting the injured man, he may have gotten the medical treatment required much sooner, and that the officers' delay in summoning the ambulance may have "substantially decreased" the injured man's chance of survival. Based on this evidence of willful and wanton misconduct in the police response to the 911 call, the court stated, the grant of summary judgment for the defendants was inappropriate.

Along the same lines is Beck v. Haik, #01-2723 2004 U.S. App. Lexis 15590 (6th Cir.), in which a federal appeals court overturned a jury verdict in favor of law enforcement defendants who allegedly interfered with the efforts of private persons to rescue a man who jumped into a river, and failed to offer a reasonable alternative rescue service.

Officers may sometimes heroically come to the aid of crime or accident victims, but the courts will not impose on them a requirement to place themselves in circumstances where their own serious injury is certain, or the attempt to render assistance is futile. In Opoku v. City of Philadelphia, 152 F. Supp. 2d 809 (E.D. Pa. 2001), the court ruled that an officer was not liable for failure to extract a trapped motorist from a burning vehicle after an accident. The officer did what he could to attempt rescue and did nothing to place the motorist in added danger.

The case involved a motorist who lost control of his car and collided with a tree. The car caught on fire, and a police officer on the scene was unable to extricate the motorist from the vehicle, as the doors would not open.

The officer's jeep did not have a fire extinguisher, so he called for help. The officer managed to shatter a window by firing through it, and attempted to reach the motorist in that manner, but was forced to retreat before doing so because the fire became too intense.

The motorist died from thermal injuries from the fire and from a laceration of his liver.

The motorist's surviving family sued the officer and the city, claiming that the officer failed to take proper and adequate measures to rescue him, claiming a violation of constitutional due process.

The plaintiffs claimed that the officer deliberately placed the motorist at risk of injury by discharging his weapon into the car and by failing to take appropriate measures to extinguish the fire.

A federal trial court rejected the plaintiffs' federal civil rights claim. The situation facing the officer required "quick thinking and an immediate response." While it may have been "negligent" to fire his weapon into the car, there was nothing to suggest that he acted with "intent to injure" the motorist. Nothing that the officer did could be properly characterized as "arbitrary, or conscience shocking, in a constitutional sense."

To the contrary, the court reasoned, the officer "acted with obvious concern for the welfare" of the motorist. Faced with a dangerous situation requiring immediate action, he made multiple rescue attempts "at great risk to his own safety," and only used his gun when "every second was critical." Given the damage to the car, the inability of the motorist, who was not conscious, to aid in his own escape, and the speed at which the fire advanced, the officer "simply was unable to prevent the tragedy that ultimately occurred."

Indeed, the court noted, there was no evidence that the motorist even survived the initial collision with the tree, and the plaintiffs did not show that the officer did anything that independently caused or aggravated his injuries. Their argument that the liver laceration may have been caused by the officer's bullet "is only speculation unsubstantiated by police or medical examiner reports."

Other cases of interest in this area are:

- Jackson v. Schultz, # 04-2289, 429 F. 3d 586 (6th Cir. 2005), concluding that paramedics who allegedly failed to give medical care to a barroom shooting victim after placing him in an ambulance were entitled to qualified immunity from liability. The shooting victim was not "in custody" for purposes of imposing a constitutional due process right to receive medical care, and the paramedics did not "create" the danger to the victim. Additionally they did not "cut off" any private attempts to render assistance to him, since there was no evidence that any private rescue was available.
- Fender v. Town of Cicero, 807 N.E.2d 606 (Ill. App. 1st Dist. 2004), ruling that even if police officers acted willfully and wantonly in failing to rescue victims of a residential fire, they were protected against liability under Illinois law based on governmental immunity for discretionary actions under 745 ILCS 10/2-201. The

officers, the court finds, had a policy decision to make in balancing their possible chance of success in rescuing the fire victims against the risk to their own safety.

- Best v. Town of Clarkstown, #02-7664, 61 Fed. Appx. 760 (Unpub. 2nd Cir. 2003), stating that the evidence was insufficient to support a jury's award in favor of a motorist claiming that an officer was deliberately indifferent to his serious medical needs following a vehicle accident, as it did not support the conclusion that the motorist suffered from a cerebral edema. Trial court properly set aside jury's award of $50,000 in compensatory damages and $250,000 in punitive damages to the plaintiff.
- Denham v. City of New Carlisle, #98-CA-19, 741 N.E.2d 587 (Ohio App. 2000), deciding that paramedics responding to a 911 call did not engage in willful and wanton misconduct by failing to take an injured bar patron to the hospital when he refused treatment after they rendered him conscious and did not have reason to know that he was suffering from blunt impact injuries to his head from a fight rather than from intoxication alone.
- Penilla v. City of Huntington Park, 115 F.3d 707 (9th Cir. 1997), holding that police officers could potentially be liable for moving a seriously ill man from his front porch to inside his house, canceling a call for paramedic assistance, and leaving him alone in a locked house. The federal appeals court ruled that officers were not entitled to qualified immunity as their actions may have enhanced the risk to the man, who later died inside the home.
- Mueller v. County of Westchester, 943 F.Supp. 357 (S.D.N.Y. 1996), finding that a pedestrian injured in a hit-and-run accident had no constitutional right to first aid from off-duty officers who came to the scene.
- Nerren v. Livingston Police Department, 86 F.3d 469 (5th Cir. 1996), in which the court said that the officers' alleged failure to provide medical attention to an arrestee because he had earlier fled the scene of a vehicle accident in which others were injured could, if true, support a claim for deliberate indifference to his constitutional right to medical attention; officers were not entitled to qualified immunity as such a right was clearly established law.
- Land v. City of New York, 575 N.Y.S.2d 690 (A.D. 1991), in which a city was not liable to a man for his quadriplegia suffered after he intentionally jumped out of a window. The jury could reasonably conclude that any negligence by police officers in transporting him or failing to obtain medical assistance did not cause his injuries.

- Doerner by Price v. City of Asheville, 367 S.E.2d 356 (N.C. App. 1988), reasoning that officers were not liable for the failure to provide first aid to an assault victim. The victim was not bleeding and asked to be returned to a motel room
- Russell v. City of Columbia, 390 S.E.2d 463 (SC App. 1989), ruling that officers had no duty to assist a restaurant patron they found bleeding and intoxicated after a fight, and the plaintiff failed to show that a police manual imposed a duty to do so.

Resources

The following are some useful resources related to the topic of this article:

- Office for Victims of Crime, (OVC) U.S. Department of Justice, Office of Justice Programs.
- A multimedia program to improve criminal justice system participation and reduce distress among physically injured crime victims, OVC Bulletin (April 2006).
- Recovering From Crime: Steps for the Physically Injured Victim (OVC July 2006)
- Victims with Disabilities: Collaborative, Multidisciplinary First Response (March 2009) This training DVD and trainer's guide (NCJ 223940) were developed under the guidance of a national advisory board to demonstrate effective techniques for first responders who have been called to the scene of a crime in which the victim has a disability. This educational multimedia package not only provides guidelines for interacting with adult and adolescent victims of crime who have communication and/or intellectual disabilities, but also helps law enforcement personnel gain a deeper understanding of the lives, personal attributes, and abilities of individuals with disabilities. There is also a trainer's guide (PDF, 870 kb)
- The Police Response to Medical Crime Scenes, by Richard T. Boswell, 72 FBI Law Enforcement Bulletin #9, pgs 17-19 (Sept. 2002).
- Public Protection: Witnesses, 2009 (4) AELE Mo. L. J. 101.
- Public Protection: Informants, 2009 (5) AELE Mo. L. J. 101.
- Public Protection: Liability for Actions of Prisoners and Former Prisoners, 2009 (2) AELE Mo. L. J. 301.

AELE Monthly Law Journal
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