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Public Protection: Arrestees

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Introduction

The U.S. Supreme Court in *DeShaney v. Winnebago County Dep't of Social Services*, #87-154, 489 U.S. 189 (1989), ruled that there is no general duty under federal civil rights law to protect individuals against private violence or provide police protection against injury in general. Exceptions have been made in some instances where a special relationship--such as having a person in custody, or very specific promises of protection that are reasonably relied on--or the existence of a "state-created danger" is found.

Courts have held that officers who take a person into custody have a duty to provide them with protection, with the rationale that they are often effectively prevented from being able to fully protect themselves, particularly when handcuffed or otherwise restrained.

This article takes a brief look at some situations where courts have examined the parameters of that duty in the context of lawsuits seeking to impose civil liability for failure to effectively provide such protection. It focuses on arrestees, and does not discuss duties that correctional personnel have towards detainees and convicted prisoners once they are in jails or prisons. At the conclusion of the article, a number of relevant resources and references are listed.

Self-Inflicted Harm

One of the contexts in which arrestees, or their families or estates, have sued officers for injuries suffered while in custody involves self-inflicted harm. Courts have generally not imposed liability in such circumstances.

In a lawsuit over the suicide of an arrestee who shot himself in the backseat after obtaining a deputy sheriff's gun left on the front passenger seat of the deputy's vehicle, the court ruled that there was no liability since there was no evidence that the deputy was deliberately indifferent to a known risk of harm, in the absence of some indication that the arrestee was suicidal. *Gish v. Thomas*, #07-12368, 2008 U.S. App. Lexis 2494 (11th Cir.).

Similarly, in *Miller v. Smith*, 921 S.W.2d 39 (Mo App. 1996), the court ruled that an arresting officer was not liable for a motorist's suicide when he was told he was under arrest for driving while intoxicated. The officer was entitled to official immunity, under Missouri state law, for failure to prevent the motorist from using a gun in his truck to shoot himself in the head. The officer did not exhibit "deliberate indifference" for purposes of a federal civil rights claim, when he had no reason to suspect that the motorist was suicidal. See also, *McDay v. City of Atlanta*, 420 S.E.2d 75 (Ga. App. 1992), holding that a city, police chief, and arresting officers were not liable for the unforeseeable suicide of a murder arrestee.

Other cases involving self-inflicted harm suffered by arrestees include:

- *Weimer v. Schraeder*, 952 F.2d 336 (10th Cir. 1991), ruling that officers were not liable for the death of an arrestee who died from ingesting cocaine taken from his suitcase, which officers placed beside him in the back seat of their squad car.

- *Collins v. Price*, 813 S.W.2d 46 (Mo App. 1991), holding that officers were not liable for failure to prevent a juvenile detainee from climbing out of a sixth floor police headquarters building and getting injured.

- *Carson v. City of Philadelphia*, 574 A.2d 1184 (Pa. Cmwlth. 1990), finding that officers were not liable for a suspect's injuries after he reacted to their threat to break down his apartment door by jumping out the window. In this case, it should be noted, the arrestee was not then yet actually in the officers' custody and control.

Transporting Arrestees

Another frequent context for lawsuits on behalf of injured arrestees concerns injuries suffered while being transported.

In *Proffitt v. Ridgway*, #00-3229, 279 F.3d 503 (7th Cir. 2002), a man was arrested after hitting his wife, was observed to be very drunk, and, when told that he was being taken to jail, said that he "wasn't going," remarking that either he or the officer taking him would be dead first.

The officer handcuffed his hands behind his back and placed him in the back seat of the police car, but, despite the threat, neglected to shackle his legs, fasten his seatbelt, or close the Plexiglas partition between the driver's seat and the back seat.

During the drive to the jail, the arrestee managed to bring his cuffed hands to the front of his body by putting his feet through his arms, and having done so, he grabbed the steering wheel of the car and veered the car into a ditch. The officer received some assistance from a private citizen passing by, but the officer also accidentally sprayed himself with pepper spray while trying to spray the arrestee, temporarily blinding himself.

The officer and the other man wrestled the arrestee to the ground. A struggle ensued during which the arrestee died while the other man was pressing on his neck. The death was "from the effect" of the pressure on his neck, "possibly combined with fatigue and inebriation, but that is unclear," a court later commented.

A civil rights lawsuit against the officer claimed that he was deliberately indifferent to the arrestee's safety by failing to secure him adequately after the death threat. The trial court granted summary judgment for the defendant officer, finding that the failure to protect the arrestee from the events that occurred might have been negligent but did not rise to the level of deliberate indifference and a constitutional violation.

The court also noted that the officer did not himself attempt to use deadly force against the arrestee and could not have anticipated that the bystander who assisted him would do so.

Further, when it became apparent that the private citizen was apparently using a chokehold, the officer made a reasonable effort to stop him by telling him to ease up. The officer was not aware, at the time, that the small, unarmed bystander was a "martial arts expert."

The appeals court also found that the private citizen who aided the officer was not acting under color of state law, so that he was not exposed to possible liability under 42 U.S.C. Sec. 1983 for violation of civil rights simply because he provided "brief, ad hoc assistance" to the officer in restraining the arrestee.

In *City of Sugarland v. Ballard*, #01-04-00418-CV, 174 S.W.3d 259 (Tex. App. 1st Dist. 2005), the court ruled that a city was entitled to sovereign immunity under Texas state law in a lawsuit for wrongful death brought by the estate of a juvenile arrestee who died when he exited from a police car traveling on a freeway and another car hit him. An officer's alleged negligent failure to properly secure the arrestee in the back seat of the patrol car did not come within a waiver of sovereign immunity for use of motor vehicles.

The alleged failure to properly equip police vehicles is sometimes an issue. In *Spencer v. Knapheide Truck Equipment Co.*, #98-3717, 183 F.3d 902 (8th Cir. 1999), the court concluded that a police department's action of purchasing patrol wagons without safety nets and using them to transport detainees did not constitute deliberate indifference to a substantial risk of serious harm. There was therefore no federal civil rights liability for injuries a detainee suffered when thrown about by vehicle motions after being placed in the wagon with his hands cuffed behind his back.

In *Warren v. Swanson*, 69 F. Supp. 2d 1047 (N.D. Ill. 1999), the court held that officers did not owe an arrestee a duty to conduct a more thorough search, which would have found a cigarette lighter in her coat, so that they could not be liable, on that basis, for her injuries when the lighter set her coat on fire. Factual issues, however, precluded summary judgment on her claim that they ignored her screams for help once the fire began.

Escaped Arrestees

What about injuries that arrestees may suffer in the course of attempting to escape or after actually doing so?

In *Hermann v. Cook*, 240 F. Supp. 2d 626 (W.D. Ky. 2003), police officers arrested an intoxicated man during a free concert in the park for his intoxicated state and for "causing problems," including refusal to leave when asked to do so. He was handcuffed and remained standing while one of the officers filled out some paperwork. He suddenly

"bolted" for a nearby river while the officers chased him, and jumped into the water, immediately disappearing into it and not resurfacing.

The water was approximately ten feet deep and muddy and dark, with debris present. There were also ropes, life preservers and boats nearby which allegedly could have been used in a rescue attempt. One of the officers radioed the police dispatcher to send EMS and Fire & Rescue's diving team.

Two of the officers present did not consider themselves good swimmers, and a third officer, who initially took off his jacket to prepare to jump into the water, reconsidered and decided that doing so would have been "foolish and dangerous." Another concert attendee allegedly volunteered to make a rescue attempt, telling the officers he had water rescue experience, but one of the officers allegedly prevented him from making the attempt. He later claimed that one of the officers said to another, "Don't bother, it's just another felon out of the way."

When the EMS and Fire & Rescue diving team arrived 15 to 20 minutes after the incident, they retrieved the arrestee's body from the river and he was pronounced dead. The arrestee's estate sued, claiming that the officers unconstitutionally interfered with private rescue activities in violation of his due process rights, and that the officers themselves should have attempted to rescue him.

Granting summary judgment in favor of the defendant officers, the trial court found that there is no clearly established constitutional due process right for an escaping arrestee to be rescued under these circumstances, although "this is one of those cases in which one could legitimately debate how the officers should have best responded to these emergency circumstances."

The court reasoned that the manner in which the officers had restrained the arrestee had not exposed him to any particular harm, so that could not be the basis for the finding of a "special relationship" imposing a duty of protection, nor did they do anything to place him in greater danger. It was the arrestee's own "unexpected attempted escape and dash into the Ohio River" that created the "circumstances of his death."

> "Most important, no existing legal authority would lead a reasonable officer to believe that by failing to attempt a rescue under these or similar circumstances, the officer violated a prisoner's substantive due process rights. Certainly no such right

> is clearly established. Indeed, more than likely, it does not exist at all under these circumstances. As previously discussed, the general rule is that police officers are not affirmatively required to rescue one who is in danger, particularly where the rescue might be dangerous."

The court also found no violation of the arrestee's rights by the officers' alleged interference with private rescue attempts. "It is easy to think of sound public safety reasons for the officers to prevent even more tragedy by preventing rescues until trained personnel arrived. Moreover, the court finds some authority that police have a right to stop unqualified persons from attempting dangerous rescues," citing *Franklin v. City of Boise*, 806 F. Supp. 879 (D. Idaho 1992) and *Andrews v. Wilkins*, 934 F.22d 1267 (D.C. Cir. 1991).

Similarly, in *Purvis v. City of Orlando*, 273 F. Supp. 2d 1321 (M.D. Fla. 2003), the court found that a police officer was not liable for an arrestee's drowning in a nearby retention pond after he escaped from custody, since failing to handcuff or search the arrestee prior to escorting him to the car was no violation of his rights, and the officer had no intention of causing harm in allowing the arrestee to escape custody. The officer's alleged failure to rescue him from the pond was also no basis for liability, since there is no Fourth Amendment "right to be seized."

Medical Attention

It is clear that if an officer knows that an arrestee in custody has an obvious serious medical need that he or she cannot simply act with deliberate indifference and ignore it. At the same time, most officers are not trained medical personnel, so their duty in response is normally satisfied by seeing to it that such personnel are consulted or made available as soon as possible in response to a medical problem.

In *Spears v. Ruth*, #09-5408, 2009 U.S. App. Lexis 26851 (6th Cir.), for instance, after an officer received a report of a man running up and down a street hallucinating, he encountered the individual, who stated that he had smoked crack cocaine.

EMTs summoned to the scene decided not to transport the man to a hospital, and he was instead placed under arrest. At the jail, he was examined by a nurse, restrained, tased, and subsequently released. He became unconscious, went into a coma from multi-organ failure

due to the drug use, began to cough up blood and shake, and subsequently died eleven months later.

The arresting officer was entitled to qualified immunity in a lawsuit for failing to provide the arrestee with needed medical attention, as he properly relied on the EMTs and jail nurse for their medical expertise.

On the other hand, in Nerren v. Livingston Police Department, 86 F.3d 469 (5th Cir. 1996), the court ruled that the officers' alleged failure to provide medical attention to 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. The officers were not entitled to qualified immunity as such a right was clearly established law.

In *Carnell v. Grimm*, 74 F.3d 977 (9th Cir. 1996), a federal appeals court upheld a determination that an arrested rape victim had a clearly established right against officers acting with deliberate indifference to her serious medical needs. The officers' appeal of a denial of qualified immunity was dismissed based on an outstanding factual issue of whether the arrestee had told them that she had been raped

In *Hill v. City of Saginaw*, 399, N.W.2d 398 (Mich. App. 1986), the court found that a failure to summon medical care for an arrestee following a car accident did not amount to "deliberate indifference" absent a noticeable injury.

Resources

The following are some useful resources related to the subject of this article. .

- Public Protection: Arrestees. Summaries of cases reported in AELE publications.
- Public Protection: Crime & Accident Victims. Summaries of cases reported in AELE publications.
- Public Protection: Disturbed/Suicidal Persons. Summaries of cases reported in AELE publications.
- Public Protection: Informants. Summaries of cases reported in AELE publications.
- Public Protection: Intoxicated persons. Summaries of cases reported in AELE publications.
- Public Protection: Motoring Public & Pedestrians. Summaries of cases reported in AELE publications.
- Public Protection: Witnesses. Summaries of cases reported in AELE publications.

Prior Relevant Monthly Law Journal Articles

- Public Protection: Witnesses, 2009 (4) AELE Mo. L. J. 101.
- Public Protection: Informants, 2009 (5) AELE Mo. L. J. 101.
- Public Protection: Injured Crime and Accident Victims, 2009 (8) AELE Mo. L. J. 101.
- Public Protection: Liability for Actions of Prisoners and Former Prisoners, 2009 (2) AELE Mo. L. J. 301.

References:

- "No Duty to Protect: Two Exceptions" by L. Cary Unkelbach, Assistant County Attorney representing the Arapahoe County Sheriff's Office, Centennial, Colorado. Police Chief magazine, Vol. 71, #7 (July 2004).

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- The purpose of this publication is to provide short articles to acquaint the reader with selected case law on a topic. Articles are typically six to ten pages long. Because of the brevity, the discussion cannot cover every aspect of a subject.

- The law sometimes differs between federal circuits, between states, and sometimes between appellate districts in the same state. AELE Law Journal articles should not be considered as "legal advice." Lawyers often disagree as to the meaning of a case or its application to a set of facts.
