
AELE Seminars:
Jail & Prisoner Legal Issues

January 25-28, 2021

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MONTHLY CASE DIGEST

- Some of the case digests do not have a link to the full opinion.
- Most Federal District Court opinions can be accessed via [PACER](#). Registration required. Opinions are usually free; other documents are 10¢ per page.
- Access to cases linked to www.findlaw.com may require registration, which is free.

Assault and Battery: Physical

After a police officer reported a shooting and said that the suspects fled in a vehicle, other officers pursued the vehicle until it crashed, then chased the driver and a passenger on foot. A spent .38 caliber shell casing was found in the vehicle. The pursued suspects were ordered to get on the ground. One complied, while the second kept running until she was caught. She claimed that the officers were very rough with her, disregarding her complaints. According to three officers, she “was kicking, flailing around, being disorderly, and yelling.” She then tripped on an unidentified officer’s foot. She was taken to City Hall where she continued to refuse to cooperate. She alleged that an unidentified officer “approached her, twisted her arm, threw her against the wall, and threatened if she did not give him her arm, he would break it.”

She was charged with disorderly conduct, found not guilty, and sued the officers and city for excessive force and false arrest. A federal appeals court ruled that the officers were entitled to qualified immunity, as the plaintiff failed to establish the personal involvement of each named defendant. Officers were not on notice of her alleged pain from handcuffs, as she said nothing about it. Reviewing the actions that could be attributed to identified

officers, the court concluded that the officers did not violate clearly established law. They had probable cause to arrest her, as she did not obey orders to get on the ground, instead running. [*Williams v. City of York*](#), #18-3682, 967 F.3d 252 (3rd Cir. 2020).

Electronic Control Weapons: Dart Mode

An officer was not entitled to qualified immunity for using his Taser once in the dart mode, without a warning, against a misdemeanor who he had tackled and who had stopped resisting him at the time. A jury could have found tasing him after he was no longer actively resisting constituted excessive force. The appeals court rejected a false arrest claim, however, which was really based solely on the officer's failure to verbally identify himself as police before issuing orders to the plaintiff. The officer was in uniform, had arrived in a marked police vehicle, and had already visibly taken one suspect into custody when the plaintiff ran away rather than obeying his orders. While it is preferable for an officer to verbally identify himself, under the circumstances, it was objectively reason to believe that the plaintiff knew he was a police officer. [*Emmett v. Armstrong*](#), #18-8078, 2020 U.S. App. Lexis 27806 (10th Cir.).

Electronic Control Weapons: Dart and Stun Modes

******Editor's Case Alert******

A federal appeals court upheld the grant of summary judgment to deputies in an excessive force lawsuit arising from two uses of a Taser. The plaintiff, suspected of making a drug delivery, had led them on a high speed chase, and the Taser logs reflected that Taser was applied once in the dart mode in order to subdue him before he was handcuffed. This use was reasonable, as he appeared to be resisting arrest at the time. The Taser was used a second time in the stun mode after he was handcuffed, but this was also ruled reasonable as there was then a "tumultuous" struggle between the plaintiff and the deputies. The court stated that it made no difference if one of the officers allegedly knew that the plaintiff had a preexisting shoulder condition that made it difficult for him to comply with their commands. If one deputy did not violate the plaintiff's constitutional rights, neither did the second deputy by failing to intervene. The appeals court also held that one of the deputies did not violate a clearly established right where the plaintiff alleged that the officer used his knee as a weapon. The officers argued that no one's knee touched the plaintiff's head, and a dash-cam video of the incident was "equivocal at best." [*McManemy v. Tierney*](#), #18-3519, 2020 U.S. App. Lexis 25968 (8th Cir.).

False Arrest: No Warrant

A black male motorist was flagged down by a woman who requested a ride home because she was afraid of her boyfriend, a white male. When they arrived at the woman's home, the boyfriend was there, made threats, used racial slurs, and tried to get the motorist out of his vehicle. The motorist called 911, and attempted to leave, but the boyfriend jumped on the hood of the moving vehicle and made death threats. The motorist believed that the boyfriend had a knife and a gun.

At a roadblock, a trooper did not respond to the motorist's explanation, refused to make efforts to locate the boyfriend's knife or gun, and made the motorist take a breathalyzer. After six tries, the test was completed, and the motorist had a blood alcohol content below the legal limit. But the trooper still thought he was intoxicated because he was "sweaty," speaking rapidly, and not directly answering questions. He handcuffed the motorist and arrested him. The trooper was aware that the boyfriend had a criminal record, but accepted his explanation that the motorist had hit him with his car. The boyfriend was not charged, despite the woman backing up the motorist's statements as to what had happened. Despite the fact that additional testing showed no intoxication, the motorist was charged with DUI, recklessly endangering another person, reckless driving, simple assault, aggravated assault, and disorderly conduct, and the paperwork refereed to the boyfriend as the "victim," as well as containing references to the motorist's criminal record, although there was no indication that he had one.

After he was exonerated, the motorist sued the officer for false arrest, false imprisonment, malicious prosecution, and violation of equal protection. Summary judgment for the officer was reversed on appeal. A reasonable juror could conclude that the officer lacked probable cause to arrest and that racial animus motivated the arrest, as he called him "boy" and accused him of smoking crack cocaine although there was no indication of drug use. [*Harvard v. Cesnalis*](#), #20-1012, 2020 U.S. App. Lexis 27773 (3rd Cir.).

Federal Tort Claims Act

Under the Federal Tort Claims Act (FTCA) sovereign immunity is waived in suits for "injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission" of a federal employee acting within the scope of his employment, 28 U.S.C. 1346(b)(1)). The FTCA generally exempts intentional torts, which remain barred by sovereign immunity. But a "law-enforcement proviso" allows plaintiffs to file claims arising "out of assault, battery, false imprisonment, false arrest, abuse of process, [and]

malicious prosecution” that are the result of “acts or omissions of investigative or law enforcement officers of the United States Government” and defines investigative or law enforcement officer as “any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.” The plaintiff went through security at an airport, walking with the aid of crutches. Transportation Security Officers (TSOs) performed a pat-down search. The plaintiff was allowed to place his hands on his crutches, but had to stand on his own power. He claimed that a TSO pulled him forward and then abruptly let go, causing him to fall and be injured. The Transportation Security Administration (TSA) denied an administrative claim. He sued, asserting battery and negligence. A federal appeals court overturned the dismissal of the case, finding that TSOs satisfy the FTCA’s definition of an investigative or law enforcement officer. [*Iverson v. United States*](#), #18-3137, 2020 U.S. App. Lexis 27634 (8th Cir.).

Editor’s Note: For more on this, see [Civil Liability of U.S. Government Under the Federal Tort Claims Act For Actions of Federal Law Enforcement Officers](#)—Part 1 of 2, 2020 (3) AELE Mo. L.J. 101, and [Civil Liability of U.S. Government Under the Federal Tort Claims Act For Actions of Federal Law Enforcement Officers](#)—Part 2 of 2, 2020 (4) AELE Mo. L.J. 101.

Firearms Related: Intentional Use

A man was shot and killed by a police officer while attempting to return a stray dog to an animal shelter. The executor of his estate filed suit under 42 U.S.C. 1983 alleging excessive force in violation of the Fourth Amendment and also asserting a state law claim for assault and battery. A federal appeals court overturned a grant of summary judgment to the officer, ruling that, taking the facts in the light most favorable to the plaintiff, a reasonable jury could find that the officer violated the decedent’s clearly established constitutional rights by shooting him. At the time of the shooting, the man was not committing a dangerous felony, or even a non-dangerous one. Rather, he was just trying to drop off at an animal shelter a stray dog he had found in a parking lot earlier that day. The underlying crime for which he was being arrested was, at worst, driving without a license, the maximum punishment for which is a \$100 fine. Further, the only flight he engaged in was running around his car on two occasions when he managed to break loose from the officers who were trying to handcuff him. While he did resist being handcuffed and arrested, he did not do so violently.

While being held by an officer who outweighed him by 75 pounds, another officer tased

him at least twice in the dart mode in the abdomen. When he grabbed at the Taser in an attempt to avoid being tased again, he and two of the three officers struggled over it, but he never gained control of it, and, at that point, the officer who had been tasing him let go of the Taser, drew her firearm, and fatally shot him without warning, all in the space of three seconds. Therefore, the officer that shot him was not entitled to summary judgment based on qualified immunity or based on state agent immunity. A reasonable jury could find that the officer violated the decedent's clearly established constitutional rights by shooting him without warning during an attempted arrest for a non-serious offense in which there was no immediate threat of serious bodily injury or death to the officer, and that the officer acted beyond her authority. [*Cantu v. City of Dothan*](#), #18-15071, 2020 U.S. App. Lexis 28074 (11th Cir.).

An officer shot a 16-year-old boy, who suffered serious injuries paralyzing him below the waist. His parents sued the officer for excessive use of force. A federal appeals court overturned the denial of qualified immunity to the officer. The court found that the officer was justified in discharging his firearm where the son was carrying a gun that moved while he ran. The officers were investigating a report of a stolen firearm, and the son was fleeing from police who had arrived at the apartment building. Given the convergence of events and the "split-second decision" for the officer, the court stated that it was not unreasonable for the officer to use force as he did. [*Liggins v. Cohen*](#), #19-2045, 2020 U.S. App. Lexis 26638 (8th Cir.).

Firearms Related: Second Amendment Issues

A federal appeals court has ruled that California Government Code 32310, which bans possession of large capacity magazines (LCMs) that hold more than ten rounds of ammunition, violates the Second Amendment to the U.S. Constitution. The court applied a two-prong test to determine whether firearm regulations violate the Second Amendment. First, it ruled held that section 32310 burdens protected conduct because firearm magazines are protected arms under the Second Amendment. It found that LCMs are not "unusual" arms, that LCM prohibitions are not "longstanding regulations" and therefore do not enjoy a presumption of lawfulness. Additionally, there was no persuasive historical evidence in the record showing that LCM possession falls outside the scope of Second Amendment protection. Secondly, the court found that strict scrutiny is the appropriate standard to apply where section 32310 strikes at the core right of law-abiding citizens to self-defend by banning LCM possession within the home and that section 32310 substantially burdens core Second Amendment rights. Although the state has compelling interests in preventing

and mitigating gun violence, the court ruled that section 32310 was not “narrowly tailored to achieve such interests.” Finally, even if intermediate scrutiny applied rather than strict scrutiny, section 32310 would still fail under the more lenient standard. [*Duncan v. Becerra*, #19-55376, 2020 U.S. App. Lexis 25836 \(9th Cir.\)](#).

First Amendment

An Oklahoma city ordinance prohibited standing, sitting, or remaining for most purposes on certain medians. City residents, a minority political party in Oklahoma, and an independent news organization sued the city and its police chief, challenging the ordinance as a violation of their First Amendment rights. They asserted that they used medians to panhandle, engage in protests or other expressive activity, mount political campaigns, cover the news, or have personal conversations. A federal appeals court overturned judgment for the city on these claims. The court ruled that the ordinance was not a constitutionally permitted time, place, and manner restriction since the medians were traditional public forums and the restrictions were not narrowly tailored to serve a significant governmental interest. The city failed to show that any alleged harms from this use of the medians were real, and the city closed a substantial portion of a traditional public forum to all speakers without seriously addressing the problem through alternatives that would leave the forum open for its time-honored purposes. [*McCraw v. City of Oklahoma City*, #19-6008, 2020 U.S. App. Lexis 27710 \(10th Cir.\)](#).

Medical Care

A man died of a methamphetamine overdose at a hospital after he was arrested by California Highway Patrol officers during a traffic stop. The officers observed him putting something in his mouth and swallow it. He insisted that it was gum rather than drugs. He declined repeated offers of medical attention and no symptoms of drug intoxication were observed until after he was transferred to the custody of deputies at a jail. A jury ruled in favor of his parents in a lawsuit for wrongful death based on the negligence of the officers who took him to jail rather than to the hospital, under a California state civil rights act. The jury returned a special verdict against the defendants in the amount of \$827,544.00, allocating comparative fault 35 percent to the first officer, 13 percent to the second officer, 30 percent to the third officer, and 22 percent to the arrestee.

An intermediate state appeals court upheld this result, rejecting arguments that the officers had no duty to obtain a medical examination for the arrestee under the circumstances or that they fulfilled the scope of any duty they may have had by taking him to jail with on-site medical staff. They further argued that their failure to take him to the hospital was not a proximate cause of his death, and that the trial court erred in ruling the jury could not consider the arrestee's intentional act of swallowing the methamphetamine in allocating comparative fault and in denying the defendants' motion to exclude evidence that the officers attempted to coerce an admission to possession of a controlled substance by conditioning medical treatment on the arrestee admitting that he swallowed a controlled substance. The court concluded that the arrestee's negligence in swallowing methamphetamine was not relevant to the officers' response, while his post ingestion negligence was relevant. The trial court properly excluded evidence of the former and permitted the jury to consider evidence of the latter. It was relevant for the jury to understand that the arrestee had an incentive to lie about what he ingested and decline medical care in order to avoid admitting the crime of possession of a controlled substance, and to assess whether and how a reasonable officer would have taken this into account in responding to the situation. [*Frausto v. Department of the California Highway Patrol*, #A156552, 2020 Cal. App. Lexis 798.](#)

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Resources

Deadly Force: [Officer-Involved Shootings in Texas: 2016-2019](#) (Texas Justice Initiative, 2020).

Domestic Violence: [Sheltering in Place and Domestic Violence Evidence from Calls for Service during COVID-19](#), by Emily Leslie and Riley Wilson (National Commission on COVID-19 and Criminal Justice August 2020).

Interrogation: [Confessions in Intimate Partner Homicide](#) by Sarah Feliciano, Cari J. Robins, Spyridon Fletouris, Miriam Felps, Louis B. Schlesinger, and Sarah W. Craun, FBI Law Enforcement Bulletin (Sept. 10, 2020).

Statistics: [Local Police Departments: Policies and Procedures, 2016](#), by Connor Brooks, Bureau of Justice Statistics (August 20, 2020 NCJ 254826).

Statistics: [Sheriffs' Offices: Policies and Procedures, 2016](#), by Elizabeth Davis, Bureau of Justice Statistics (August 20, 2020 NCJ 254830).

Reference:

- [Abbreviations](#) of Law Reports, laws and agencies used in our publications
- AELE's [list of recently-noted civil liability law resources](#).

Cross References

Assault and Battery: Handcuffs – See also, Assault and Battery: Physical
Assault and Battery: Physical – See also, Electronic Control Weapons: Dart and Stun

Modes

Electronic Control Weapons: Dart Mode – See also, Firearms Related: Intentional Use (1st case)

False Arrest/Imprisonment: No Warrant – See also, Assault and Battery: Physical

False Arrest/Imprisonment: No Warrant – See also, Electronic Control Weapons: Dart Mode

Public Protection: Arrestees – See also, Medical Care

Race Discrimination – False Arrest/Imprisonment: No Warrant

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