



# DPS Legal Review

December 2009 Legal Services (404) 624-7423 Volume 8 No. 12

## EMERGENCY AID EXCEPTION

Police officers in Brownstown, Michigan, responded to a complaint of a disturbance at the home of the defendant. A couple showed the officers the residence where they said that a man was “going crazy.” Upon their arrival, the officers found a household in considerable chaos with a pickup truck in the driveway with its front smashed, damaged fence posts along the side of the property, and three broken house windows. The officers also noticed blood on the hood of the pickup, on clothes inside of the truck, and on one of the doors of the house.

Through the windows, the officers saw the defendant screaming and throwing things. The back door was locked, and a couch had been placed to block the front door. The officers knocked, but the defendant refused to answer. The officers could see that the defendant had a cut on his hand, and they asked him if he needed medical attention. He ignored the questions, cursed them, and told them to get a search warrant.

One officer pushed the front door slightly open to go inside, but he withdrew when he saw the defendant pointing a long gun at him. The defendant was charged under Michigan law with assault with a dangerous weapon and possession of a firearm during the commission of a felony. The defendant moved to suppress the evidence based upon the officer’s alleged violation of the Fourth Amendment.

**HOLDING:** The United States Supreme Court held that law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury. Officers do not need ironclad proof of a serious life-threatening injury to invoke the emergency aid exception. The role of a peace officer includes preventing violence and restoring order, not just rendering first aid to casualties. Michigan v. Fisher, 558 U.S. \_\_\_ (2009).

## QUALIFIED IMMUNITY DENIED

The plaintiff was arrested by two City of Hialeah, Florida, police officers for driving with a suspended license, a minor and non-violent offense. The plaintiff was handcuffed-with his hands behind his back and placed into the police car. After he broke the police car window, the officers opened the car door, punched the plaintiff in the eye, and sprayed him with mace. The first officer forcibly removed the plaintiff from the car, struck him ten times with an expandable tactical baton (with five blows to his head.) The second officer did nothing to intervene and stop the first officer’s use of force. The plaintiff sustained at least two head lacerations that required 15 metal staples to close. The plaintiff also alleged that the beating caused heart abnormalities. The officers moved for summary judgment based upon qualified immunity.

**HOLDING:** The Eleventh Circuit held that the officers were **not** entitled to qualified immunity because a jury, taking the facts in the light most favorable to the plaintiff, could reasonably find that the officers violated the plaintiff’s clearly-established right to be free from excessive force. The Court analyzed the excessive force claim under the objective reasonableness standard. That analysis requires attention to the facts and circumstances of each particular case, including: the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.

The question the Court must consider is whether the officer’s conduct is objectively reasonable in light of the facts confronting the officer. The reasonableness of a particular use of force is judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The Court has consistently allowed excessive force claims to

proceed where an arrestee was handcuffed, posed no risk of danger to the officer, and was not resisting arrest. Under the plaintiff's version of the facts, the Court also held that an officer could be held liable for failure to intervene and stop another officer's use of excessive force. Sanchez v. Hialeah Police Department, 2009 WL 4829872 (C.A. 11 (Fla.)).

### IMPLIED CONSENT

A Forsyth County Sheriff's Officer responded to a two car crash on Highway 369. Upon his arrival, he noticed that a female driver in one of the vehicles was deceased. He briefly made contact with the defendant who was the only person seated in the other vehicle. The defendant requested medical attention. When the officer checked on her, he detected an odor of alcohol. He asked her if she had been drinking, and she said she had some wine at lunch. Thereafter, she said she wanted to go to the hospital "to be checked out." She was transported to the hospital.

The officer remained at the crash scene to complete his investigation before proceeding to the hospital. When he arrived at the hospital, he spoke to the briefly to the defendant (who was receiving medical attention from hospital staff.) He left to speak to other individuals involved in the crash. The officer learned that the defendant was attempting to leave the hospital, and he directed the hospital staff to prevent her departure because he was trying to find her. In a hospital trauma room, the officer questioned the defendant for 48 minutes about the crash. He read the implied consent warnings and asked her to submit to a State-administered blood test. She refused. She also refused a nurse's attempt to draw blood for medical diagnostic purposes saying, "I know what you want the blood for, I'm not giving you my blood." She was charged with two counts of homicide by vehicle, one count of homicide by vehicle in the second degree, two counts of serious injury by motor vehicle, one count of DUI-less safe, and one count of failure to maintain lane. She moved to suppress her statements and her refusal to take the blood test.

**HOLDING:** The Court suppressed her statements made to the arresting officer while she was in custody prior to being given her Miranda rights. The Court admitted the blood test refusal since the implied consent warnings were read as soon as practicable. Her voluntary statements made to hospital personnel were admissible since they were not in response to police questioning.

State v. Carder, \_\_\_ S.E.2d \_\_\_, 2009 WL 4725224 (Ga. App.).

### INQUIRING MINDS

**QUERY:** When an individual is charged with D.U.I. and a blood test is requested, should you seize the driver's license and put it with the citation?

**ANSWER:** Yes. Always take the driver's license when a person is charged with DUI. If a 1205 form is issued, send the license in with the 1205 form to the DDS. If a 1205 form is not issued (such as in a blood test case where you are waiting for the results), attach the license to the Court's copy of the UTC and forward it to the Court. O.C.G.A. § 40-5-67(a) "Whenever any resident or nonresident person is charged with violating O.C.G.A. § 40-6-391, the law enforcement officer shall take the driver's license of the person so charged." O.C.G.A. § 40-5-67 explains 30 day and 180 day temporary permits.

### LEGAL SERVICES REMINDER

⊗ When requesting legal representation, please send **all original documents** (including any envelope(s) in which the documentation arrived) **DIRECTLY to the Legal Services office!** Please do not forward the original lawsuit *via* your chain of command! (See Policy #8.03.3(B)(1): "The request for representation, along with the original documents, should be sent to Legal Services *no later than the next business day after receipt of the legal documents.*") Timeliness is of the essence. Remember to include a Request for Representation form (DPS-023) along with the original documents and to fax a copy of everything to Legal Services at (404) 624-7788 **before mailing** it.

### ALS REMINDERS

⊗ Please remember that a conflict letter from a Petitioner's attorney **does not** mean that the **ALS hearing is automatically continued**. You must appear for the ALS hearing unless the Court continues the case. If you have questions regarding whether a continuance has been granted, you should contact Dee or Beverly.

### QUOTABLE WISDOM WORKS

*"Cheers to a new year and another chance for us to get it right."*

~ Oprah Winfrey

Published with the approval of Colonel Bill Hitchens. Legal Services: Melissa Rodgers, Director, Lee O'Brien and Jacqueline Bunn, Deputy Directors, and Dee Brophy, ALS

Attorney. Send questions/comments to [jbunn@gsp.net](mailto:jbunn@gsp.net).