

First Circuit Court of Appeals Holds Police Officers Entitled to Qualified Immunity

First Circuit Court of Appeals Holds Police Officers Entitled to Qualified Immunity: Eldredge v. Town of Falmouth, 662 F.3d 100 (1st Cir. 2011)

PD&P recently earned a favorable decision from First Circuit Court of Appeals. In Eldredge v. Town of Falmouth, a pair of police officers was accused of several tort and civil rights violations stemming from a collision between the pedestrian-plaintiff and a police cruiser en route to a domestic abuse call. On June 24, 2009, at approximately 11:00 p.m., the Falmouth Police Department received a frantic call from a woman being accosted by her raging boyfriend. Three Falmouth patrolmen responded to the call in separate cruisers, each with lights and sirens activated. One-half mile from the caller's home, the first cruiser suddenly slowed to question the plaintiff who was walking beside the road but not involved in the 911 call. As he slowed, the officer in the lead cruiser shouted to plaintiff: "Stand right there!" Unaware of the sudden deceleration of the cruiser in front of him, the second cruiser glanced off the back of the lead cruiser and struck the plaintiff, launching him 70 feet through the air. The plaintiff suffered serious injuries as a result of the collision.

The plaintiff filed suit against the responding officers for negligence and civil rights violations under 42 U.S.C. § 1983 and G.L. c. 12, §§ 11H & 11I (the Massachusetts Civil Rights Act). Specifically, plaintiff argued that the combined efforts of the first and second officer were tantamount to a joint venture that culminated in an unreasonable seizure in violation of the Fourth Amendment.

Focusing on plaintiff's federal civil rights claims, the defendants moved to dismiss plaintiff's Complaint under Rule 12(b)(6), arguing there was no Fourth Amendment violation and, even if there was, the individual officers were entitled to qualified immunity. The United States District Court (Judge William Young presiding) allowed the motion and dismissed the federal civil rights claims. Plaintiff appealed.

The First Circuit noted, at the outset, that an unconstitutional Fourth Amendment seizure requires proof of an "intentional acquisition of physical control." Acknowledging there was no set of facts from which one could infer that the operator of the second cruiser intended to seize him, plaintiff argued, nonetheless, that the Court should impute the conduct of the first officer (in initiating an unlawful investigatory stop) to the second. The plaintiff did not match the assailant's description and, in the nine minutes that elapsed since receipt of the 911 call, could not have walked to the point where he was struck by the responding cruiser. Thus, the first officer's investigatory stop - i.e., "Stand right there!" - was not based on reasonable suspicion and, as a result, unconstitutional. But the Court disagreed. While "these factors may have reduced the likelihood that the plaintiff was the alleged assailant . . . , reasonable suspicion [which is needed to effect an investigatory stop] requires 'sufficient probability, not certainty.'" In due deference to police, the Court held that "when viewed through the lens of an officer making a split-second judgment . . . , we cannot say that [the first officer]'s assessment was so obviously misguided that no reasonable officer could have reached the same conclusion."

As to plaintiff's joint venture theory, the Court added that an officer's participation in a group operation, without more, is insufficient to impute liability for constitutional injuries arising out of that effort. Instead, each officer participating in a "team effort" must have "intentionally engaged in a series of acts that would foreseeably result in some member of the team inflicting constitutional injury." Here, the first and second officer were not intentionally engaged in a concerted effort to seize the plaintiff in violation of the Fourth Amendment. In fact, the second officer did not even know plaintiff was standing beside the road at the time his fellow officer shouted to him. Under such circumstances, no joint venture theory could prevail.



Plaintiff declined to file a petition for a writ of certiorari to the United States Supreme Court but, instead, opted to pursue his state law claims in Superior Court.

Published in *Developments in Municipal Law* Winter 2012 Newsletter.