Law Enforcement Digest

August 2016

Law enforcement officers: Thank you for your service, protection and sacrifice.

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HONOR ROLL

734TH Basic Law Enforcement Academy - April 6, 2016 to August 11, 2016

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Best Overall:	Joshua Struiksma, Skagit County SO
Best Academic:	Joshua Struiksma, Skagit County SO
Patrol Partner:	Douglas Dreher, Kirkland PD
Tac Officer:	Russ Hicks, Fife PD
	Karim Boukabou, WSP

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NINTH CIRCUIT COURT OF APPEALS

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CIVIL RIGHTS LAWSUIT: A PRE-TRIAL DETAINEE HAS A CONSTITUTIONAL DUE PROCESS RIGHT TO BE PROTECTED FROM VIOLENCE BY OTHER DETAINEES.
Castro v. County of Los Angeles, __ F.3d __, 2016 WL 4268955 (August 15, 2016).

Jonathan Castro was arrested for public drunkenness, a misdemeanor. For Castro's safety, the police placed him in a "sobering cell" because he "was staggering, bumping into pedestrians, and speaking unintelligibly." A sobering cell is "used to house inmates who are a threat to their own safety or to others' safety." Later that night, the police arrested Jonathan Gonzalez for

shattering a glass door at a night club, a felony. Jail personnel noted that Gonzalez exhibited bizarre behavior and was combative.

Jail personnel placed Gonzalez in the sobering cell with Castro. The sobering cell did not comply with the state building code because it did not have an inmate or sound-activated audio monitoring system. After Gonzalez was placed in the cell, Castro pounded on the window to call an officer. No officers responded. The jail's supervising officer had an unpaid community volunteer check on the cell approximately 20 minutes after Castro pounded on the door.

The volunteer saw Gonzalez inappropriately touching Castro. The volunteer reported his observations to the supervising officer. The supervising officer, six minutes later, went to the cell and saw Gonzalez stomping on Castro's head.

Castro later filed a 42 U.S.C. § 1983 (Section 1983) lawsuit against the jail officers and the county. A jury awarded Castro more than $2,000,000 in damages. The officers moved the trial court for judgment as a matter of law (which asked the trial to find that the evidence was contrary to the jury's verdict). The trial court denied that motion. The officers appealed to the Ninth Circuit Court of Appeals. The Ninth Circuit found that substantial evidence supported the jury's verdict that the officer's violated Castro's due process right to be protected from violence by other detainees.

Under Section 1983, a person may sue an officer for a violation of constitutional rights. An officer may be entitled to qualified immunity when: (1) the officer did not violate a constitutional right; or (2) that constitutional right was not clearly established at the time of the incident.

A pre-trial detainee has a constitutional "due process right to be free from violence from other inmates." The Ninth Circuit found that this constitutional right was clearly established, and the officers' failure to protect a detainee from violence could violate that right. Specifically, the Ninth Circuit held that a pre-trial detainee's due process right is violated by an officer failing to protect the detainee when:

> (1) The [officer] made an intentional decision with respect to the conditions under which the [pre-trial detainee] was confined;
>
> (2) Those conditions put the [pre-trial detainee] at substantial risk of suffering serious harm;
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> (3) The [officer] did not take reasonable available measures to abate that risk, even though a reasonable officer in the circumstances would have appreciated the high degree of risk involved - making the consequences of the [officer's] conduct obvious; and
>
> (4) By not taking such measures, the [officer] caused the [pre-trial detainee's] injuries.

In this case, the Ninth Circuit found that there was substantial evidence to support the jury's verdict:

> The individual [jail officers] knew that Castro, who had been detained only for a misdemeanor, was too intoxicated to care for himself; they knew that Gonzalez, a felony arrestee, was enraged and combative; they knew or should have known that the jail's policies forbade placing the two together in the same cell in those circumstances; and they knew or should have known that other options for placing them in separate cells

> existed. Moreover, [one officer] decided to house Castro is a fully walled sobering cell with a "combative" inmate even though separate cells were typically available and unused. [The supervising officer] failed to respond to Castro's banging on the window in the door of the cell. Jail video of the hallway showed Castro pounding on his cell door for a full minute, while [the supervising officer] remained unresponsive, seated a desk nearby. [The supervising officer] failed to respond fast enough to Gonzalez's inappropriate touching of Castro. [The supervising officer] also erred in delegating the safety checks to a volunteer.

As a result, the Ninth Circuit affirmed the trial court's denial of the officers' motion for judgment as a matter of law.

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WASHINGTON STATE COURT OF APPEALS

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SUFFICIENCY OF EVIDENCE: DEFENDANT DARING TWO OTHER BOYS TO RING A NEIGHBOR'S DOOR BELL, SHOUT A RACIST COMMENT, AND RUN AWAY MADE HIM AN ACCOMPLICE TO SECOND DEGREE TRESPASS. State v. C.B., __ Wn. App. __, __ P.3d __, 2016 WL 4484366 (August 23, 2016).

C.B., a fourteen year old, dared his friends to "dingdong ditch" an African-American neighbor. "Dingdong ditch" involves "running up to someone's front door, ringing the doorbell, and running away." C.B.'s friends were reluctant, but eventually accepted the dare. C.B. then "upped the ante and urged the two boys to yell [a racist comment] when they rang the doorbell."

The neighbor's "property was fenced on all sides. To reach the front porch, one had to walk up the private driveway to an opening in the fence where a private sidewalk led to the porch. There was no mailbox within the front yard; it was located across the street. Because of prior harassment, the [neighbor] had installed surveillance cameras, and signs that the property was under video surveillance were posted in the window by the front door."

In the early evening, C.B.'s friends "ran on to the front porch, rang the doorbell," and yelled a racist comment. The neighbor's "initial reaction was shock and fear." The neighbor "immediately went outside to see who was responsible and saw three males running away."

C.B.'s friends were charged with second degree criminal trespass. C.B. was charged as an accomplice to second degree criminal trespass. The juvenile court found that C.B. committed second degree trespass as an accomplice. C.B. appealed and argued that there was insufficient evidence to support the juvenile court's finding. The Court of Appeals disagreed.

RCW 9A.52.080(1) provides "[a] person is guilty of criminal trespass in the second degree if he or she knowingly enters or remains unlawfully in or upon premises of another under circumstances not constituting criminal trespass in the first degree." RCW 9A.52.010(5) provides that a person "enters or remains unlawfully in or upon premises when he or she is not then licensed, invited, or otherwise privileged to so enter or remain."

In this case, the issue was whether an "implied license" permitted the boys to run onto the neighbor's porch, ring the doorbell, and yell a racist comment. The Court of Appeals found that there was no implied license for this behavior. An implied license allows a person to approach a homeowner's "front door for a customary purpose" such as solicitation. However, "the juvenile court concluded that neither the habits of the county nor local custom resulted in the [neighbors]

impliedly opening their private sidewalk and front porch for the purpose of dingdong ditching and shouting racist comments through open windows." As such, C.B. daring his friends to do so exceeded the implied license and constituted second degree trespass.

As a result, the Court of Appeals affirmed the juvenile court's finding that C.B. committed second degree trespass as an accomplice.

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The Law Enforcement Digest (LED) is edited by Assistant Attorney General Shelley Williams of the Washington Attorney General's Office. Questions and comments regarding the content of the LED are welcome and should be directed to Ms. Williams at ShelleyW1@atg.wa.gov. LED editorial commentary and analysis of statutes and court decisions express the thinking of the editor and do not necessarily reflect the views of the Office of the Attorney General or the CJTC. The LED is published as a research source only. The LED does not purport to furnish legal advice. LEDs from January 1992 forward are available via a link on the CJTC Home Page [https://fortress.wa.gov/cjtc/www/led/ledpage.html]

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