



Broward County Chiefs of Police Association, Inc.

Legal Update

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OCTOBER 2018 LEGAL UPDATE

Case Law Update

Crocker v. Beatty, 886 F.3d 1132 (11th Cir. 2018)

Facts: Crocker was driving on I-95 in Martin County when he stopped to assist an overturned SUV involved in an accident. Shortly thereafter, emergency personnel arrived on scene. Crocker then began taking photographs with his iPhone. Immediately thereafter, Beatty, a Martin County Sheriff's Deputy walked towards Crocker, reached out from behind him and took the iPhone out of his hand. Crocker was then asked to leave the scene. Crocker agreed to leave, but requested the return of his phone. Beatty refused because the photographs and videos on the iPhone were evidence. Beatty then instructed Crocker to await instructions at the nearest weigh station, however Crocker refused. Crocker was arrested for resisting an officer without violence.

Crocker filed a lawsuit against Beatty and the Martin County Sheriff in 2016, alleging false arrest and other violations of his constitutional rights pursuant to 42 U.S.C. § 1983. Beatty argued as to the phone seizure claim that no Fourth Amendment violation occurred and that, in any event, he was entitled to qualified immunity.

Holding:

4th amendment Claim: Generally, the seizure of personal property is *per se* unreasonable when not pursuant to a warrant issued upon probable cause. One exception is exigent circumstances. The exigent circumstances exception permits warrantless seizures of property when certain exigencies exist, including the "imminent destruction of evidence." Police officers relying on this exception must show that the facts would have led "a reasonable, experienced agent to believe that evidence might be destroyed before a warrant could be secured." First, Beatty argued that there was no violation because he had an objectively reasonable belief that evidence would be destroyed based on the nature of cell phones and the ease in which evidence could disappear. The Court found that evidence is more likely to be destroyed when it is in the possession of a person who may be convicted by it, not by a bystander who had no involvement with the car accident. The Court found no exigent circumstances existed to justify warrantless seizure of the bystander's cellular phone.

Qualified Immunity Claim: The Court focused on whether the seizure violated a "clearly established" right. Here, the Court found that the right to be free from warrantless seizures of personal property, absent an applicable exception, was clearly established to the point of obvious clarity and therefore, Beatty is not entitled to qualified immunity.

Note: Agencies should review their policies and procedures on the seizure of personal property, specifically cell phones and other electronic devices.

Case Law Update

JW v. Birmingham Bd of Educ., 2018 WL 4560682 (11th Cir. September 24, 2018)

Facts: SROs employed by the Birmingham PD used Freeze +P, an incapacitating chemical spray, on students, which SROs are authorized to do under certain circumstances. The students brought individual and class-based claims, alleging excessive force by spraying them and by failing to adequately decontaminate them. The district court found the SROs decontamination efforts inadequate and found in favor of the students. On appeal, the SROs argued that they are entitled to qualified immunity.

Holding: Class Claim: The SRO's were entitled to qualified immunity. To be entitled to qualified immunity, an official must first show that he was acting within his discretionary authority when the allegedly wrongful acts occurred. The plaintiff then must show (1) that the defendant violated one of his constitutional rights, and (2) that the right was clearly established at the time of the wrongful conduct. Finding that the SROs were acting in their discretionary authority, the court focused on the question of whether a "clearly established" right was violated and whether the state of the law in 2009, 2010, and 2011 gave the SROs fair warning that their treatment of the students as to decontamination was unconstitutional. The Court went on to hold (based on *Danley v. Allen*, 540 F. 3d 1298) (11th Cir.2008), that the rights of the students to be decontaminated to the degree demanded were not "clearly established" under the circumstances presented.

Individual Claim: The individual public-school student, Plaintiff, K.B., failed to show a real and immediate threat of future injury, as required to establish Article III standing to seek injunctive relief in a § 1983 action. The police department policy for using such spray on noncompliant students did not violate the Fourth Amendment on its face. The actual use of spray was infrequent, occurring 1.7 times each year per school on average, and students were capable of controlling their behavior so as to avoid being sprayed. The request for declaratory and injunctive relief has to be assessed in light of the revised BPD policies that were in place at the time of trial. These included determining the appropriate amount of control for a given situation, including the seriousness of the crime committed by the subject; the subject's size, age, and weight; the apparent physical ability of the subject; the number of subject's present; the weapons possessed or available to the subject; the subject's known history of violence; the presence of innocent or potential victims; and the possible destruction of evidence.

Note: Agencies should start reviewing their policies and procedures on chemical spray usage and decontamination procedure to ensure specificity

Case Law Update

Sierra v. School Bd. Of Broward County, 2017 WL 5591800 (11th Cir. September 27, 2017)

Sierra filed claims against SBBC alleging that it denied him "access to Defendant's archived video for streaming on demand and live streaming of Defendant's School Board meetings on the basis of his disability." Sierra is deaf and neither understands nor uses sign language. Sierra alleged that he is unable to observe and participate in such meetings because no services or auxiliary aids are provided for those who do not use sign language. Specifically, the streaming service does not offer closed captioning. When Sierra requested these services, SBBC failed to accommodate the request. However, the district court reopened the matter, after Mr. Sierra presented evidence that he had now exhausted his administrative remedies.

Note: ADA actions filed against government entities for failing to provide access to entities' websites are becoming more commonplace. Agencies should review their policies, procedures, websites, and streaming services to ensure that they are all in compliance with the ADA.