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Highlights

U.S. District Court Northern District of Oklahoma

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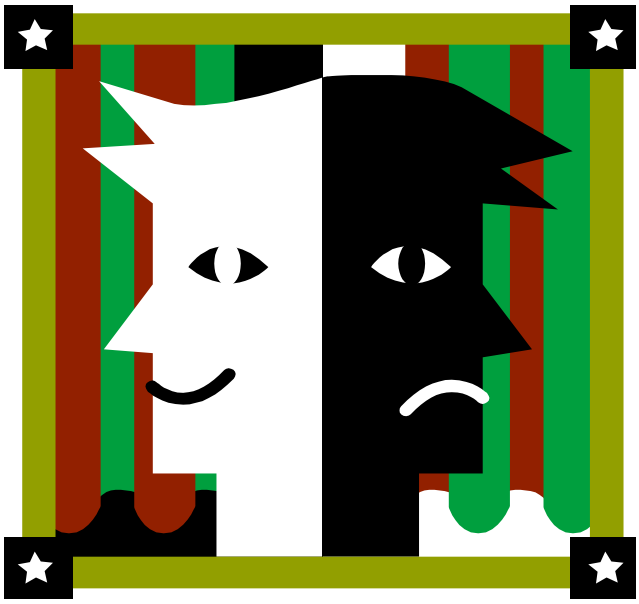
Racial Profiling Claims Denied by Court

Starr v. Oklahoma, et.al, 2007 U.S. Dist. LEXIS 72441, Decided September 27, 2007

In March 2001, Plaintiff , an African-American, entered a friend's basement apartment in a building allegedly used for drug trafficking. Plaintiff, however, was simply there to stay the night. He left the building approximately ten minutes after he first entered in order to obtain groceries from a nearby convenience store.

Unbeknownst to anyone in the apartment, Plaintiff's activities had been under police surveillance. After he left the apartment building, Plaintiff soon noticed a police car, driven by Officer Downs, following him so he



pulled over to the side of the road before Officer Downs activated his lights or siren. Officer Downs approached Plaintiff's car and asked him whether he had drugs with him. Downs then ordered Plaintiff out of the car, handcuffed him, and placed him in the front seat of the police cruiser.

In the police car, Downs continued his drug-related questioning. Downs obtained Plaintiff's name and radioed to dispatch for a record check. He eventually learned that the Plaintiff had an outstanding warrant for first degree rape, rape by instrumentation, and robbery. Downs informed Plaintiff of the warrants and arrested him.

After Plaintiff was convicted of the rape charges, he filed a lawsuit from prison against Officer Downs and alleged, in part, that he had been the victim of racial profiling.

The Court began its analysis of the case with the Constitution's Equal Protection Clause. For a claim to succeed under the Equal Protection Clause, the Plaintiff must prove that the Defendant exercised his discretion to enforce the law on account of race. This act, in turn, requires proof of both discriminatory effect and discriminatory purpose.

The Court acknowledged that discriminatory effect may be proven with specific evidence of similarly situated non-minority motorists who were not stopped for a traffic violation, or with statistical or other evidence which generally proves that members of a protected racial group receive less favorable treatment than nonmembers.

To show discriminatory purpose, the Court stated that a plaintiff must prove that the officer's decision to stop his vehicle was at least partially based on race. Additionally, a person alleging racial profiling is not required to prove that the officer lacked a race-neutral reason for conducting the traffic stop. Instead, the discriminatory purpose may be inferred from the totality of circumstances. However, a litigant alleging racial profiling must produce "some evidence of both discriminatory effect and discriminatory intent."

Once a plaintiff makes such a showing, the burden shifts to the officer to show the same enforcement decision would have been made even if race had not been considered. The Court stated that an officer's discriminatory selective law enforcement may be inferred from evidence of the officer's pattern and method of performing traffic stops and arrests; relevant departmental policies and training governing the officer's conduct; failure to uniformly comply with the relevant training and supervisory instruction received; the questions presented and statements made by the officer to vehicle occupants; the specific events of the traffic stop at issue; and any other relevant information which may support an inference of discriminatory purpose.

In the case at hand, the Court ruled that the Plaintiff's assertions regarding racial profiling were "meritless". The Court based its decision on the recognition that the issue before the Court was whether Plaintiff had submitted evidence that Defendant

stopped him, rather than other similarly situated non-black individuals, because of his race. The Court held that the Plaintiff offered only conclusory statements of personal opinion that he was stopped because of his race. The Court further found that the Plaintiff had wholly failed to identify any affirmative evidence from which a jury could conclude that Officer Downs had acted with discriminatory intent.

Instead, the Court ruled that the record established that Officer Downs was part of a surveillance operation which targeted multiple locations for drug activity. The officer stopped the Plaintiff because of his ten-minute visit to the apartment building - behavior which is consistent with drug activity. Furthermore, Plaintiff voluntarily stopped his vehicle and was ultimately arrested because of outstanding warrants. As such, the Court held that there was no evidence, direct or circumstantial, which supported the Plaintiff's claims of discriminatory intent.

Based upon the reasons set forth above, the Court held that the Plaintiff failed to prove that Officer Downs had engaged in racial profiling. Therefore, Officer Downs was entitled to judgment as a matter of law and was successful on his motion for summary judgment.

Tenth Circuit Court of Appeals

Use of Force Declared Reasonable

Mecham v. Frazier, 2007 U.S. App. LEXIS 21810, Filed September 11, 2007

Trooper Frazier pulled Mecham over as she was driving on I-15 in Utah for speeding and seatbelt violations. Once he checked Mecham's license status, Frazier discovered that Mecham's Arizona license was suspended. He was, however, informed by his dispatch operator that Mecham had a valid Utah license.

When Frazier asked Mecham about the Utah license, she told him that she did not have one. Trooper Frazier then told Mecham that she could not drive without a license and that her car would be impounded unless she could arrange for someone to pick it up.

At that point, Mecham's mother called on her cell phone, and Mecham took the call. Frazier told her to put down the phone while he explained the citation, but Mecham ignored him and continued talking on her phone. Frazier then told Mecham that he would arrest her unless she cooperated. When she refused to end her conversation, Trooper Frazier called dispatch to order a tow truck.

When the tow truck arrived 15 minutes later, Frazier told Mecham her car was being impounded and to get out of the car. Mecham said she was going to sit in her car

because she allegedly feared that he had been lying to her about her license suspension. Trooper Frazier requested backup, and Officer Johnson arrived a few minutes later.

Frazier told Johnson that he was going to arrest Mecham because she was uncooperative and refused to get out of her car. Eventually the situation escalated, and Frazier sprayed Mecham in the face with pepper spray and physically removed her from the car. All charges against her were later dropped, and she sued the officers for using excessive force.

In its decision, the Court first examined the traffic stop. They found the stop was justified because Mecham was speeding and not wearing her seatbelt in violation of the law. The encounter escalated when Mecham: 1) balked at Frazier's report that her Arizona license was suspended; 2) denied that her Utah license existed; 3) used a cell phone despite Frazier's instructions to put it down; 4) ignored repeated warnings to get out of the car under penalty of arrest; and 5) forced Frazier to call for backup and a tow truck.

During this encounter, Mecham remained in the driver's seat with the keys to the car, exercising control of the car at all times. Under the cirumstances, the Court held that it was a "foregone conclusion" that the officers would have to use force to make the arrest.

Furthermore, the Court held that the objective reasonableness of the use of force was further reinforced by safety concerns. The encounter played out on the narrow shoulder of a busy interstate highway, and an officer could reasonably be concerned that Mecham might create a danger to herself or others if not subdued.

The Court of Appeals held that, in light of the Plaintiff's resistance to arrest and additional safety concerns, the officers' conduct was reasonable. The driver's disregard for the trooper's instructions, the length of the encounter, and the implausibiltiy of the driver's rationale for not cooperating led the Court to conclude that the use of force was jusitifed under the circumstances.

Investigatory Stop Based on Tip Is Constitutional

U.S. v. Hodges, 2007 U.S. App. LEXIS 2465

At approximately 4:30 a.m., Tulsa Police Officer Haywood responded to a suspicious person report in a high-crime area. The officer stopped Chester Alexander, who matched the suspect description, and began asking him questions. Alexander denied engaging in suspcious activity but did report that occupants of a silver vehicle threatened him. Alexander also stated that he believed that the occupants of the silver car were in possession of a firearm.

Additional officers arrived on the scene, and Alexander identified the car for the officers. When officers approached the car, it sped

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away and failed to stop for two blocks. Once the car was stopped, officers searched the driver, Defendant Hodges. They found a firearm in plain view in the front seat. The officers later discovered that Hodges was subject to a valid protective order which made it unlawful for him to possess a firearm.

After his conviction for illegal possession of a firearm, Hodges appealed and argued that the evidence against him should have been suppressed. Specifically, he argued that the investigatory stop was unconstitutional and not based on reasonable suspicion.

On appeal, the Court considered a two-part inquiry when addressing whether an investigative stop was constituional. First, the officer's action must be jusitifed at its inception. Second, the officer's action must be "reasonably related in scope to the circumstances which justified the interference in the first place."

The Court found that the stop was consitutional because Officer Haywood developed his reasonable suspicion based on a valid citizen's tip. The Court held that Alexander's information was reliable because it was detailed, he had a valid basis for his knowledge, and he honestly identified himself before providing the tip. Coupling the tip with the officer's own experience patrolling this high-crime area and the defendant's evasive behavior, the Court ruled that the officers were Constitutionally permitted to stop the defendant and investigate. Therefore, the defendant's conviction was upheld.

Traffic Stop Upheld

U.S. v. Hodges, 2007 U.S. App. LEXIS 1145

After receiving a tip that an SUV contained drugs, an officer attempted to run a records check on the vehicle. However, he was unable to complete the check because one license plate was obscured, and the other plate was missing. Due to the tag issues, the officer stopped the vehicle.

Defendant Stewart was driving the SUV and appeared to be extremely nervous. The officer asked Stewart if he had any weapons or contraband, and Stewart said there was a gun under the driver's seat. The officer looked under the seat and found the loaded firearm. Stewart was arrested for the firearms violation. A subsequent search of the vehicle uncovered methamphetamine. Stewart was eventually convicted of drug possession.

Stewart appealed his drug conviction and alleged that the officer's question was unconstitutional because there was no reasonable suspicion to believe that he had loaded weapons or contraband. Therefore, he argued, the question could not be justified on officer safety grounds.

The Court of Appeals disagreed with Stewart and upheld his conviction. In its decision, the Court stated that the issue was whether the question extended the time the driver was detained, not the content of the question. Even Stewart had to concede that the officer's question did not extend the duration of the stop. Additonally, the Court held that the officer had two objectively reasonable bases for stopping the vehicle - the tags. As a result, the stop was lawful.