

Arbitration result: *Taplin-Evans v. City of Auburn, et al*

By Luis Fragoso

On November 3, 2017, just before 1 a.m., the plaintiff's ex-girlfriend called 911 and reported that she and the plaintiff had an argument that escalated and terminated with the plaintiff pistol-whipping her. She provided a physical description of the plaintiff and reported that the plaintiff had the pistol in his vest. Unbeknownst to the reporting party, the plaintiff ran toward the bus stop and tossed the pistol into the bushes along the way.

The first responding police officer heard over the radio that there was probable cause to arrest the plaintiff for assault in the second degree domestic violence, so he arrived at the scene prepared to deploy his K-9 to assist in locating the suspect. This officer observed a male matching the suspect's description walking in the street in the opposite direction and the officer began to approach him. The plaintiff saw a police vehicle approach and ran through the parking lot of a church where he stepped into a hole or a ditch and fell, breaking his right leg and dislocating his left shoulder. He managed to crawl onto a cement pad and propped himself up against a power box. He realized that he could not run and yelled "I'm right here. Don't let the dog bite me! My arm and leg are broken, I can't move."

The first officer at the scene could not see the plaintiff's left hand because it was covered in leaves and stood with his K-9 approximately ten feet away while two other officers approached the plaintiff from behind. These officers ordered the plaintiff onto his stomach but he did not comply with their instructions and they turned him on his stomach and handcuffed him.

The plaintiff filed a lawsuit against the City and five of its officers alleging that while arresting him, the two officers who handcuffed him hurt his right leg and left shoulder when he was "peacefully surrendering" and the three other officers observed the arresting officers use excessive or unreasonable force and failed to intervene. He also claimed that the five officers mocked his pain at the time of his arrest causing him emotional distress and humiliation.

During the arbitration hearing last February, the plaintiff's attorney argued that, when analyzing the case under *Graham v. Connor*, the use of force against her client was not reasonable under the totality of the circumstances. The attorney conceded that the severity of the crime the plaintiff was suspected of did not weigh in his favor but given his injuries, he did not pose an immediate threat to the officers or others nor was he actively resisting arrest or attempting to evade arrest by flight.

The arbitrator took the matter under submission and the next day found in favor of the defendants noting that the key to her decision was the lack of knowledge by the police officers as to the location of the pistol. The 911 call indicated that the gun was in a vest that sat next to the plaintiff and the officers could not have known that the plaintiff had tossed the weapon and no longer posed a threat. Therefore, it was reasonable for the officers to conclude that they were searching for an armed suspect who had reportedly committed a violent felony and the force used to effect an arrest was reasonable under the circumstances.

We thank the City of Auburn, its Police Department as well as the City Attorney, for their help and effort in bringing this case to a successful conclusion. We also thank defense counsel George A. Mix with Mix Sanders Thompson PLLC, for his excellent work in this matter.