

Bonogofsky v. Big Horn Sheriff's Dept. (decision)

FEDERAL COURT

EXCESSIVE FORCE/NEGLIGENT ARREST: No negligence per se; § 1983 violation, in warrantless arrest of PFMA victim ...Cebull.

Randy Bonogofsky was at home 6/3/05 when his wife, their son, and another juvenile arrived. An argument ensued, resulting in her pointing a rifle at him and allegedly firing. He wrestled it away without injury, but his son pointed a .22 at him. He managed to diffuse the situation and his wife and the juveniles left. Big Horn officers responded to 911 calls from neighbors. They were unclear as to who was the domestic abuse victim and who was the perpetrator; the only confirmed information was that a gun was used. They directed Bonogofsky to the ground, then handcuffed him and put him in a patrol car. When it was clear that he was the victim he was released. He contends that he told the officers he was recovering from back surgery, but an officer placed a knee in his back while handcuffing, and he was forced to sit for over an hour with his hands cuffed behind him. He alleges physical & emotional injury from the officers' negligence, excessive force, and failure to investigate prior to taking him into custody. The Court previously rejected Bonogofsky's claims leading up to his custody based on the Public Duty Doctrine. (MLW 1/9/10, 37 MFR 361.) The Sheriff's Dept. requests summary judgment as to negligence per se and § 1983 relating to the arrest.

Bonogofsky alleges that the Department violated MCA 46-6-311(1) (warrantless arrest) and 311(2)(b) (PFMA mutual aggression, predominant aggressor) by failing to determine that he was a victim of PFMA and violated § 312 by effecting a warrantless arrest resulting in injuries. However, there is no question that the officers had probable cause when they took him into custody to secure a crime scene and protect themselves and the public. It was reasonable to take him into custody until they were able to determine all facts surrounding the gun call. They would need to investigate to ensure that a potentially volatile situation was stabilized. He was released when it was determined he had not committed a crime. The Court can find no authority for his contention that the Legislature, in enacting MCA 46-6-311 or 312, intended to protect a specific class or that he is a member of that class.

Bonogofsky cannot establish that unconstitutional conduct was ratified by the Department for the purposes of triggering § 1983 liability. He cannot even demonstrate that a policymaker ratified any allegedly unconstitutional conduct by the officers. He argues that the arrangement between the Department and NPS and BIA to respond to emergency calls constitutes a policy pursuant to which he was injured for purposes of 1983 liability. However, there was no formal policy or custom that regularly results in the type of injury claimed and no evidence that the Department regularly injures people during handcuffing pursuant to an official policy or custom.

Summary judgment for the Department on negligence per se and § 1983.

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Robert Stephens (Southside Law Center), Billings, for Bonogofsky; Jared Dahle (Nelson & Dahle), Billings, for the Sheriff's Dept.

