

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION

RALPH W. GOLDEN,

Plaintiff,

vs.

Case No. 1:05cv129/SPM/MD

JOSHUA CREWS,

Defendant.

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**TRIAL BRIEF OF DEFENDANT JOSHUA CREWS**

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COMES NOW Defendant JOSHUA CREWS, through undersigned counsel and pursuant to this Court's Order entered July 25, 2007 [Doc. 63], files his Trial Brief.

STATEMENT OF THE CASE

Plaintiff alleges that during his arrest on August 9, 2004, Deputy Crews used excessive force in affecting the arrest in violation of Plaintiffs rights under the Fourth Amendment to the United States Constitution.<sup>1</sup> Defendant Crews maintains that he used only a standard take down in arresting Plaintiff and that if Plaintiff sustained injury during the take down, it was an accident which, at most, would support a claim of negligence which as a matter of law does not state a cause of law for violation of constitutional rights.

Plaintiff's Fourth Amendment Claim

"The Fourth Amendment's freedom from unreasonable searches and seizures encompasses the plain right to be free from the use of excessive force in the course of an arrest." Lee v. Ferraro, 284 F.3d 1188, 1197 (11<sup>th</sup> Cir. 2002), *citing*, Graham v. Conner, 490 U.S. 386, 394-95, 109 S.Ct. 1865, 104 L.Ed. 2d 443 (1989). "All claims that law enforcement officers have used excessive force - deadly or not - in the course of an arrest, investigatory stop or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard." Graham, *supra*, 490 U.S. at 395, 109 S.Ct. at 1867, 104 L.Ed. 2d at 454. Determining the reasonableness of the law enforcement

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<sup>1</sup>Defendant Crews had no involvement in obtaining the warrant for Plaintiff's arrest. Deputy Crews, through witnesses, will be prepared at trial to address the validity of the warrant for Plaintiff's arrest.

officer's actions is an objective test that "under the Fourth Amendment requires a careful balancing of the 'nature and quality of the intrusion on the individual's Fourth Amendment interests' against counter-veiling governmental interests at stake." Graham, 490 U.S. at 395, 109 S.Ct. 1870, 104 L.Ed. 2d at 455 (*citation omitted*).

Claims of excessive force are evaluated for objective reasonableness based on the information the officer had when the conduct in question occurred. Saucier v. Katz, 533 U.S. 194, 206, 121 S.Ct. 2151, 2159, 150 L.Ed. 2d 272, 284. "Use of force must be judged on a case-by-case basis from the perspective of a reasonable officer on the scene rather than with the 20/20 vision of hindsight." Vineyard v. Wilson, 311 F. 3d 1340, 1347 (11<sup>th</sup> Cir. 2002).

The determination must embody allowance for the fact that the police officers are often forced to make split-second judgments - - in circumstances that are tense, uncertain, and rapidly evolving - - about the amount of force that is necessary in a particular situation. Graham, *supra*, 490 U.S. at 396, 397, 109 S.Ct. at 1872, 104 L.Ed 2d at 455.

The pivotal determination is whether the actions of Deputy Crews in placing Plaintiff under arrest were objectively reasonable under the circumstances present at the scene of the arrest. Deputy Crews is a certified law enforcement defense tactics instructor as are Sgt, Bessinger and Deputy Johnson, the other two deputy sheriffs who were present at the scene of the take down. As evidenced by the Affidavits of Deputy Crews, Sgt. Bessinger and Deputy Johnson, previously filed in this case, Deputy Crews employed a standard law enforcement technique while taking Plaintiff to the ground. Deputy Crews took Mr.

Golden's left wrist and elbow and, utilizing a standard law enforcement arm bar technique, took Mr. Golden directly to the ground and handcuffed him. It was important that Mr. Golden be handcuffed as quickly as possible to prevent him from again running.

Mr. Golden had an extensive criminal history and was known to carry guns. He had fled in his car from Deputies Crews and Bessinger reaching a speed of approximately 100 mph, eventually wrecking his vehicle in a wooded area. After wrecking his vehicle, Mr. Golden then fled into the woods on foot. When Mr. Golden finally emerged from the wooded area, it was necessary for Deputy Crews to handcuff him as quickly as possible.

Deputy Crews used a standard law enforcement technique in taking Plaintiff to the ground and did not use any more force than that necessary to take Plaintiff to the ground and handcuff him. It is a policy of the Alachua County Sheriff's Office that felony suspects are to be taken to the ground to be handcuffed so that they can be properly controlled.

Deputy Crews' use of a standard law enforcement arm bar technique to take Plaintiff to the ground so that he could be handcuffed and arrested was objectively reasonable under the circumstances present.

Even if Deputy Crews were somehow negligent in taking Mr. Golden to the ground<sup>2</sup>, Section 1983 imposes liability for violation of rights protected by the constitution and not for

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<sup>2</sup>Deputy Crews does not concede that he was negligent in taking Mr. Golden to the ground so that he could be quickly handcuffed. He used a standard law enforcement technique. Additionally, it was extremely dark and there was no way Deputy Crews could have seen the rock that Mr. Golden claims he struck resulting in a broken jaw.

violations of duties of care arising out of tort law. Negligence, as a matter of law, does not support a cause of action for violation of constitutional rights. Baker v. McCollan, 443 U.S. 137,146, 99 S.Ct. 2689, 2696-97, 61 L.Ed. 2d 433 (1979).

Qualified Immunity.

Deputy Crews has been sued individually thereby entitling him to qualified immunity.

“Qualified immunity offers complete protection for governmental officials sued in their individual capacity if their conduct ‘does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.’” Vinyard v. Wilson, 311 F. 3d 1340, 1346 (11<sup>th</sup> Cir. 2002), *citing*, Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

“Qualified immunity protects all but the plainly incompetent or those who knowingly violate the law. Malley v. Briggs, 475 U.S. 335, 341 (1986). The law is well established in the Eleventh Circuit that a qualified immunity defense is to be decided by the Court as a matter of law. Stone v. Peacock, 968 F. 2d 1162 (11<sup>th</sup> Cir. 1992); Ansley v. Heinrich, 925 F. 2d 1339 (11<sup>th</sup> Cir. 1991).

“The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.” Vinyard, *citing*, Saucier v. Katz, 533 U.S. 194, 202 (emphasis added). Saucier further instructs: “If the law did not put the officer on notice that his conduct would be clearly unlawful, summary judgment based on qualified immunity is appropriate.” Saucier 533 at 202 (emphasis added).

The United States Supreme Court reiterated in Hope v. Pelzer that “the salient question . . . is whether the state of the law . . . gave [the officers] fair warning that their treatment of [the plaintiff] was unconstitutional. Hope v. Pelzer, 536 U.S. 730, 122 S.Ct. 2508, 2516 (2002). Hope repeated that officers sued in a section 1983 civil rights action have a “right to fair notice.” Hope at 2515 (emphasis added).

Hope also reaffirmed:

For a constitutional right to be clearly established, “its contours must be sufficiently clear that a reasonable officer would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful but it is to say that in the light of pre-existing law the unlawfulness must be apparent.”

Id. at 2515 (citations omitted).

Deputy Crews, with other Alachua County Deputy Sheriffs, was trying to serve outstanding arrest warrants on Ralph Golden and take him into custody. Mr. Golden actively resisted the efforts of the Alachua County Deputy Sheriffs. Mr. Golden fled Alachua County Deputy Sheriffs during a high speed pursuit of his car, crashed his vehicle into a tree line, and ran into a wooded area. Mr. Golden’s actions in fleeing from law enforcement officers required the use of a K-9, a bloodhound and the Alachua County Sheriff’s Office Helicopter to locate Mr. Golden in the highly wooded area into which he had fled. Accordingly, once Mr. Golden emerged from the wooded area it was necessary for him to be quickly taken into custody and handcuffed so that he could not again flee from the officers. Pursuant to the

policy of the Alachua County Sheriff's Office, felony suspects are taken to the ground to be handcuffed so that they can be properly controlled.

Deputy Crews knew that he had to quickly take Mr. Golden into custody so that he could not again flee. Utilizing a standard law enforcement arm bar technique, Deputy Crews took Mr. Golden by the left wrist and elbow and placed him directly on the ground.

No pre-existing law made it apparent to Deputy Crews, under the circumstances he faced, that apprehending Plaintiff by use of a standard law enforcement technique known as an arm bar violated Plaintiff's clearly established constitutional rights. To the contrary, the apprehension of Mr. Golden using a standard law enforcement arm bar technique was objectively reasonable under the circumstances. There is no record evidence to conclusively establish how Mr. Golden's jaw was broken. It might have been broken during the take down or during Mr. Golden's crash of his vehicle into a tree line. In any event, however Mr. Golden's jaw was broken, it was an accident and not due to excessive use of force by Deputy Crews.

Respectfully submitted this 24th day of September, 2007.

/s/ Barbara C. Fromm  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing document was furnished by mail to Ralph Warren Golden, DC #822807, Okaloosa Correctional Institute, 3189 Little Silver Road, Crestview, FL 32539-6708, this 24th day of September, 2007.

/s/ Barbara C. Fromm

BARBARA C. FROMM