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No Immunity After Curiosity Tased the Cat

By TIM HULL

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(CN) - Police may be liable for using a Taser on a man who asked, "What are you doing to Jack," as he watched officers wrestle with his suicidal neighbor, the 9th Circuit ruled Friday.

Donald and Kristi Gravelet-Blondin stepped outside in slippers one May night in 2008 in Snohomish, Wash., to find out what was going on at their neighbor Jack's house. The police were trying to get Jack out of his car, which, in an apparent suicide attempt, had a hose running from the exhaust pipe into one of its windows. Jack reportedly had a gun, and when he refused to show his hands after turning off the car, officers moved to put him in handcuffs, Tasing him twice.

The Blondins got within about 37 feet of the scene, heard Jack moaning and saw him pinned on the ground. Donald Blondin said, "What are you doing to Jack?" and faced a barrage of orders to get back. When he didn't move, or didn't move enough, Sgt. Jeff Shelton rushed him with Taser drawn.

A witness said that Blondin seemed to be "frozen with fear." Shelton warned Blondin that he was about to be Tased, but fired before he finished saying it, according to the ruling.

"Sgt. Shelton tased Blondin in dart mode, knocking him down and causing excruciating pain, paralysis, and loss of muscle control," the ruling states. "Blondin, disoriented and weak, began to hyperventilate. Sgt. Shelton asked Blondin if he 'want[ed] it again' before turning to Ms. Blondin and warning, 'You're next.'"

Blondin was later charged with obstructing a police officer, but the case was dropped. The Blondins then sued the city of Snohomish and Shelton for excessive force, unlawful arrest and various violations of state law, including common-law outrage for causing a wife to watch her husband being shot with a Taser.

U.S. District Judge Robert Lasnik granted the city summary judgment and Shelton qualified immunity on all of the Blondins' claims. A divided appellate panel reversed on Friday.

"His momentary failure to move farther than thirty-seven feet away from officers arresting his neighbor, after merely inquiring into what those officers were doing, can hardly be considered resistance," Judge Michael Daly Hawkins wrote for the three-judge panel. "This is especially so given evidence that Blondin was visibly frozen with fear."

The Seattle-based panel noted that, in 2008, when the "Tenth Circuit and a number of district courts had found taser use unconstitutionally excessive in some circumstances," the Snohomish Police Department viewed the employment of a Taser as a very light use of force, lighter even than a "firm grip." While this is no longer the department's policy, the city cannot escape the Blondins' claims that it may have played a part in the incident.

"The city's policy told Sgt. Shelton that tasing nonresisting individuals in circumstances like this one was acceptable," Hawkins wrote. "It informed him that even a firm grip entails more force than a taser and deputized him with the power to tase an individual who presents no threat at all."

The ruling also states that, about year after the incident with Blondin, Shelton was "reprimanded" on a performance evaluation for "being 'too quick to apply the taser when basic hands on defensive tactics would have brought the subject into compliance.'"

Writing in dissent, Judge Jacqueline Nguyen argued that the majority had failed to look at the incident from Shelton's point of view.

"Blondin interjected himself into a rapidly-evolving, highly volatile scene: officers struggling to restrain a combative, armed man in the process of trying to take his own life," Nguyen wrote. "At the time Blondin was tased, two loaded firearms were unsecured. Yet, at every turn, the majority attempts to minimize the precariousness of the situation, thinly splicing the facts to assess Blondin's conduct and the reasonableness of the officers' response in a vacuum. It is one thing to resolve disputed facts and inferences in Blondin's favor. But the majority goes well beyond this by choosing to ignore undisputed facts which do not favor Blondin's case. By discounting the danger and abstracting the qualified immunity inquiry, the majority's approach fails to accord appropriate deference to an officer's reasonable judgment exercised under exigent circumstances."

Timothy Ford of MacDonald Hoague & Bayless in Seattle represented the Blondins. He did not immediately return a request for comment on Friday. Neither did the defendants' attorney, Richard Jolley of Adam Rosenberg, Keating, Bucklin & McCormack in Seattle.

Timothy Ford of MacDonald Hoague & Bayless in Seattle represented the Blondins.

"This should have been an easy case," Ford said in an email. "This police officer shot Don Blondin with a dart gun, gave him a potentially deadly electric shock, threatened to do the same to his wife and then arrested him and charged him with a crime - all because he dared to ask what the police were doing tasing his elderly neighbor. The fact that the trial judge and one of the appeal judges didn't think such a case even deserves to be heard by a jury shows how badly our law has been skewed to promote police powers over citizens' constitutional rights."

The defendants' attorney, Richard Jolley of Adam Rosenberg, Keating, Bucklin & McCormack in Seattle, did not return a request for comment. 

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