

Officers denied immunity in excessive force lawsuit

By Scott Lauck

scott.lauck@molawyersmedia.com

A federal judge allowed key allegations to go forward in an excessive force lawsuit against several Kansas City Police Department officers.

Judge Ortrie D. Smith on Tuesday denied summary judgment on excessive force and assault and battery claims against two officers and an unlawful entry claim against a third officer. However, related charges against the city's Board of Police Commissioners, as well as claims of infliction of emotional damage by the officers, were thrown out.

In his federal lawsuit filed in December 2007, Wilson Smith alleged police were looking for his brother when they appended and

injured him. The petition asked for more than \$1 million in compensatory damages in addition to a punitive award.

According to the lawsuit, Smith answered the door when officers came looking for his brother, Terry Smith, who had allegedly been involved in a domestic disturbance earlier. The officers grabbed Wilson Smith, threw him against the porch railing and proceeded to throw him from the porch, according to the petition. He allegedly sustained several inju-



Ortrie Smith

ries, including a meniscus tear in his knee. He was not charged with anything.

The petition claimed the police department allows "a mob-like culture of violence in which the use of excessive force is an accepted and customary part of police work" in Kansas City.

However, the federal court threw out several claims related to those allegations.

"Plaintiff offers no explanation — either legal or factual — about his claim that the Board had a policy or custom of covering up constitutional violations," Judge Smith wrote. "Even if this is an accurate description of what happened in this case,

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the Record would not support a conclusion that it happens enough for there to be a de facto policy or custom of doing so." Judge Smith is not related to the plaintiff.

The judge also dismissed the police board from claims of complicity in the alleged excessive force and unwarranted entry. The plaintiff claimed the actions were due to the officer's training. One of Smith's attorneys, Christopher Lawler, of the McCallister Law Firm in Kansas City, said such claims have a high legal burden.

"It's a very difficult standard to meet," he said. "That wasn't totally unexpected. We'd have liked to have kept them in, but I think the main claims in the case are the excessive force claims against the officers and the unlawful entry."

The court said two of the officers, Troy Taff and Manuel Anchondo, couldn't claim qualified immunity for their physical handling of Wilson Smith, as the officers had no evidence that he had committed a crime and had reason to believe he wasn't the man they were looking for. Caselaw generally gives police officers the benefit of the doubt in cases that are "tense, uncertain and rapidly evolving."

"The situation could be considered 'rapidly evolving' only because force was used to remove Plaintiff from his house — but nothing had

occurred to justify such actions," the judge wrote.

A third officer, Lee Malek, was given immunity on the excessive force charges because there was no evidence he'd touched Smith. However, a claim that Malek entered Smith's home in violation of his Fourth Amendment rights was allowed to proceed. The court found no reasonable basis for Malek to have entered the house. However, qualified immunity was granted to the other two officers, who entered only after hearing Malek shouting for Terry Smith to show his hands.

"Although Malek's improper entry created the exigent circumstances, at this point, Taff reasonably believed Malek needed help, and it was not unreasonable for Taff to enter the home to help him," Judge Smith wrote. "Likewise, it was not unreasonable for Officer Anchondo to bring Plaintiff back into his home. It was likely cold outside, Plaintiff was wearing only a bathrobe, and Malek, Anchondo, and Terry were inside."

Sam Wendt, of Wendt & Goss, the lead attorney on the case, said the state's legal defense fund would be responsible for any eventual award or settlement. The case is currently set to go to a jury in April 2010, and Wendt said he doubted it would settle before then.

"I think we're going to trial," he said.

Officer Darin Snapp, a police spokesman, declined to comment on ongoing litigation.