

COA Opinion: Police officer is entitled to governmental immunity in claims stemming from the handcuffing an individual after an arrest for interfering with the police

24. November 2010 By Jason Byrne

On November 23, 2010, the Court of Appeals published its per curiam opinion in *Oliver v. Smith*, No. 292585. This case arose out of tort claims asserting excessive use of force by a police officer in handcuffing plaintiff following plaintiff's arrest for interfering with the field sobriety tests the police were conducting with another individual. The defendant police officer raised the defense of governmental immunity and, in this appeal, the Court of Appeals found that the trial court erred in not granting summary disposition to the officer pursuant to that defense. First, the Court found that, given the plaintiff's acts to resist being handcuffed there was insufficient evidence to establish the officer's allegedly too-tight handcuffing of the plaintiff (versus plaintiff's own actions) as the cause of the alleged continuing pain and decreased range of motion. Thus, the court found that plaintiff could not establish gross negligence causing injury to overcome the governmental immunity defense. Next, the Court of Appeals found that there was insufficient evidence that the officer had not acted in good faith, and that because of plaintiff's resistance to arrest, the decision to handcuff the plaintiff was a discretionary act. Based on those findings, the Court of Appeals concluded that the officer was entitled to governmental immunity against plaintiff's intentional tort claims.