



A T T O R N E Y S

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**Tarver v. City of Edna, Chief Crider,  
Officer Bubela  
410 F.3d 745 ( 5th Cir 2005)**

By  
*Reece Trimmer*

**Facts**

Officers called by mother to scene of child custody dispute put handcuffed grandfather of child in back of patrol car before releasing him without charges.

**Holding**

The Fifth Circuit Court of Appeals ruled:

- (1.) Officers were entitled to dismissal based on qualified immunity whether or not Tarver was under arrest or only detained on reasonable suspicion. Handcuffing did not make this an arrest. Chief Crider's use of the word "arrest" did not make it an arrest. Grandfather had no right to custody of child as opposed to mother. Officers had a reasonable basis to believe grandfather was committing a crime by refusing to allow mother to take her child.
- (2.) Force used to handcuff was not excessive because Tarver resisted being handcuffed. Claimed wrist injuries were too insignificant to support a 4th Amendment violation.
- (3.) Claim that Officer Bubela slammed car door on Tarver's head sufficiently stated a 4th Amendment claim to prevent summary judgment. After being told Tarver had undergone surgery recently, Officer Bubela is claimed to have replied: "I don't care." A doctor's affidavit said Tarver suffered serious spinal cord injury as a result of the door being slammed on his head. Tarver was handcuffed and not threatening the officers at the time the door was slammed. He was released without charges and had not committed a serious crime.

**REECE'S COMMENTS:**

- (1.) Complaints of "too tight" handcuffs should be checked and not ignored. Some officer on the scene should check the handcuffs. The Fourth Circuit (our circuit in North Carolina) has a similar rule that "de minimis" handcuffing injuries are not sufficient to support a

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constitutional deprivation claim. Not all handcuff injuries are insignificant. Intentionally tightening handcuffs to punish a prisoner is a sure fire lawsuit against not only the “tightening officer,” but also against unsuspecting “innocent” officers who may thereafter fail to check the handcuffs.

- (2.) This opinion affirms the claim that slamming the car door on the detainee's head may be excessive force. Serious injuries are claimed, as they almost always will be. The claim the officer said “I don't care” will, if believed by a jury, dramatically increase damages. Such talk, if it happened, is a disaster. Especially at a time when the prisoner is handcuffed in the back seat of a car - threatening no one, and not having committed a serious offense. Prisoners in that category must not be subjected to significant force unless they do some thing that clearly constitutes resistance or threat.

- (3.) IT IS THE CONDUCT OF THE SUSPECT THAT LEGITIMATES FORCE USED.  
WHAT DID SUSPECT DO THAT REASONABLY REQUIRED THE FORCED USED?  
MAKE SURE YOUR WRITTEN REPORT COVERS EVERYTHING THE SUSPECT  
DOES THAT REQUIRED YOU TO USE FORCE.