

ADMINISTRATION OF JUSTICE

Case One - Police Discretion

The Speeding Corvette

It was early one July morning and virtually no other vehicles were in sight on Interstate 66. The skies were clear, the temperature was already a warm 80 degrees. The early 6:30 a.m. in the morning quiet was broken only by the music from the car radio that provided some comfort and companionship as Karen Caldwell drove north to visit her family. Karen lived in the southwest and faced a drive of about nine hundred miles to get home. Typically, she took these trips two or three times a year and usually started at 4:00 a.m. on a Sunday to avoid the heavy weekday traffic. She also left early as she put it, "to make some time." Make time she did as she usually drove at least 600 miles the first day and rather regularly exceeded the posted 65 m.p.h. speed limit.

This Sunday was no exception. Karen was driving at approximately 85 m.p.h. as she drove into a new state on Highway 66. The only indication that you were crossing jurisdictional lines was a sign posted at the state line that welcomed you to North Carolina. "Ah," Karen said to herself, "North Carolina. At this rate, I should be in Maryland or even New Jersey by night time and easily be in Vermont by Monday afternoon."

Karen's satisfaction and smugness, however, were abruptly broken when she noticed a police car in the distance. As her heartbeat accelerated, she looked in her rearview mirror again and saw the red/blue light that only topped police cruisers turned on. "Oh no," she said to herself, "I'm going to get a speeding ticket." Karen began slowing down and moved her bright red Corvette to the side of the road. She waited for the trooper to come up to her car with the ticket.

As he approached the car, Trooper Jackson stated, "Good grief lady. Where are you going so fast?" "Would you believe Vermont," Karen replied honestly. "Well at the rate you're going, it won't take long," Jackson responded. "Didn't you see me back there?" he added. "Of course not," Karen observed. "If I saw you, I would have slowed down." Well," Jackson continued, "you sure didn't slow down. Do you know what I paced your car at?" "Have no idea," Karen said, "although I suspect it was somewhere in the neighborhood of 75 m.p.h." "85," Trooper Jackson responded.

The remainder of the conversation continued in a more relaxed way as Karen realized that Jackson, however likely to give a ticket, was pleasant and cordial. "Well," Jackson went on, "I know it's early and the traffic is light, but 85 is too fast. Sixty-five's still the speed limit and I just can't let you go much beyond that." Karen didn't argue because she felt it was pointless to try to argue her way out of a ticket.

Jackson was toying with letting Karen off since she admitted she was speeding, didn't offer some half-baked excuse, and she didn't try the pretty legs routine. Finally, he looked at her and remarked, "I'm going to give you a ticket for violating the speed limit. I can't let you off the hook completely for going 85 m.p.h., but I will give you a break on the speed." Karen didn't argue. She knew as soon as the red/blue light appeared in the rearview mirror that it was pay-up time. "I understand," Karen said, "I know you've got to do your job."

Jackson left Karen's car and returned to the cruiser to write the ticket. As Karen waited she began to think about the fine she'd have to pay and wondered what the North Carolina scale was. Jackson came back, handed her the ticket, license, and registration, and told her he was going to write her up for 75. "You'll still have to pay a fine," he stated, "but it won't be as much as if I wrote up your actual speed. Let me give you a piece of advice, though," he continued. "Stick close to 70 to 75 - a lot of troopers won't pull you over if you're slightly above the speed limit. But twenty miles beyond is just asking for trouble. So, stay close to 70 to 75 and drive carefully."

Karen took the ticket and noticed that her fine was \$60. Well, I guess I'm lucky, she thought. It could have been worse. Karen took the trooper's advice and tried to stick close to the speed limit. When she did increase speed, she was careful to stay below 75 and paid particular attention to cars parked alongside the highway. As she continued her drive to Vermont, she listened to local radio stations. Sometime during the remainder of the drive, Karen monitored a national news report on a metropolitan radio station as the announcer summarized a police shooting that had occurred in Emerald City.

Like many other cities of its size, Emerald City had a substantial number of citizens living below the poverty line. Along with this were the standard public housing projects, many of which had been built years earlier and were now run down and, indeed, dangerous. The incident referred to in the radio news report had taken place at one of these projects and the details were rather grim. Saturday evening, Emerald City police received a report that an armed man was threatening several people in one of the city's more congested and troublesome projects. When the Emerald City police car arrived, the armed man, Ronald Williams, was brandishing a gun and pointing it at several people. "Do something, man," yelled one of the observers who by that time were afraid to make a quick exit from the project yard. As the two officers, Bob Harris and John Carlson, moved in, they called to Williams to drop his gun. Williams waved the weapon and challenged the cops to come and get him. From his actions and manner, it appeared that Williams had had too much to drink. Whatever the source of the problem, the gun was real and the people nearby were clearly afraid. Quickly, the police officers moved in and wrestled Williams to the ground. As Carlson started to put handcuffs on the suspect Williams reached for the gun that had dropped to the ground a few inches away. Without a warning, Harris fired several shots leaving Williams dead. The crowd that had originally called for the police's assistance quickly seemed to take Williams's side. "You didn't have to do that," one man cried, while a middle-aged woman yelled an obscenity and cried "murderers!"

The news reports didn't provide any more information about the killing other than to note that the Emerald City Police Department had suspended Harris and Carlson with pay and would start an inquiry into the death of Ronald Williams. The reporter also noted that the officers, especially Harris, could face criminal prosecution if he was found to have acted inappropriately. In summary, the reporter observed that the death of Ronald Williams had prompted a considerable and rather immediate outcry in the project and that residents were organizing a demonstration to be held in front of Emerald City police headquarters on Monday morning.

Continuing to drive north, Karen thought about the project killing and her own contact with the police earlier that morning. As a civil lawyer, Karen appreciated that police had considerable discretion in their job. She also realized that it was impossible to provide a blueprint for every citizen-police interaction. However, she wondered about the Emerald City case and was troubled when she recalled the report's description of deadly force.

"Why did the officer take such drastic actions," she asked herself, couldn't he have done something instead of shooting and why the repeated firings?" However trivial her own, earlier contact with the police, she wondered if things would have been different had she argued with the trooper or somehow resisted the ticket he really should have imposed. Should he have filed a report for the speed she was actually going? What made him write her up for a slower, and cheaper, speed? Would he have done the same thing if she had been speeding on a Saturday night? Although Karen's legal practice did not carry much criminal work or contact with criminal justice authorities, she thought about all of the day's police reports as she drove to her family and wondered what the average citizen thought about police discretion.

DISCUSSION QUESTIONS – Use a separate sheet of paper to answer the following questions.

WRITE THE QUESTION – Fully explain your answers.

1. Should the state trooper have filed a ticket for the full speed Caldwell was driving? **EXPLAIN ANSWER**
2. What do you think contributed to his decision to give Caldwell a break?
3. How typical do you think the trooper's behavior was? **EXPLAIN ANSWER**
4. Should police have the ability to use this type of discretion? **EXPLAIN ANSWER**
5. The shooting of Ronald Williams obviously represents a far more serious exercise of police authority or discretion than Caldwell's speeding. Considering this, how are the two situations similar?
6. How are the situations different?
7. What might have prompted Harris to take such drastic action in the case of Ronald Williams?
8. Do you think Harris's use of deadly force was justified? **EXPLAIN ANSWER**
9. What do both of these incidents tell us about police discretion? Could such discretion be controlled?
If you believe police discretion can be controlled, how would you do it?