

Search and Seizure in Police Responses to Mental Health Crises

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Eleventh Circuit Holds That Questions of Fact Exist as to Police Officer's Conduct of Mental Health Seizure That Preclude Summary Judgment for Qualified Immunity

In *May v. City of Nahunta*, 841 F.3d 1173 (11th Cir. 2016), the Eleventh Circuit Court of Appeals considered the limits of qualified immunity for a police officer's conduct in seizing a person for a mental health assessment. The district court granted qualified immunity to the officer. On appeal, the Eleventh Circuit ruled that the officer had qualified immunity for initiating the seizure and for claims of false imprisonment. However, the court ruled that the district court erred in granting the officer qualified immunity for his conduct during the seizure and remanded to determine whether the officer conducted the seizure in an extraordinary manner that was unusually harmful to plaintiff's privacy interests.

Facts of the Case

Phillis May had been serving as the sole caregiver for her elderly mother. Ms. May was reportedly exhausted from her duties. When her brother came to relieve her, he was unable to awaken her. After her brother's call to 911, four emergency medical technicians (EMTs) arrived and roused Ms. May. The EMTs inquired about Ms. May's current health status, and she informed them that she had been diagnosed with "caregiver breakdown" and Pick's disease. Ms. May declined to go to the hospital for further evaluation.

Officer Tommy Allen also received a 911 call requesting his assistance at Ms. May's home. Upon his arrival, EMTs informed Officer Allen that Ms. May had been "hitting herself in the head" and appeared upset. As he entered Ms. May's bedroom, Officer Allen observed Ms. May's hair in disarray. Based on

his own observations, coupled with the EMTs' statements, Officer Allen decided to seize Ms. May in her bedroom for transport to the hospital for a psychological evaluation.

After his decision to initiate a seizure, Officer Allen asked the EMTs to leave the room. Officer Allen locked the bedroom door and told Ms. May that she was going to the hospital. He instructed her to take off her nightgown and put on more suitable clothing. Officer Allen reportedly touched her shoulder roughly in an effort to pull off her nightgown. Despite Ms. May's request for privacy while she changed, Officer Allen refused to leave the room. When Ms. May refused to put on undergarments under her shorts, Officer Allen replied, "Yes, you will," and patted his gun. After 15 to 20 minutes alone with Ms. May in the locked room, Officer Allen announced that he was taking Ms. May to the hospital for evaluation.

Pursuant to 42 U.S.C. § 1983 (1996), Ms. May brought suit in the U.S. District Court for the Southern District of Georgia against Officer Allen, the City of Nahunta, and City Chief of Police Darren Crews ("Officer Crews") *vis-à-vis* vicarious liability. Ms. May alleged that the officers unlawfully seized her, in violation of the Fourth and Fourteenth Amendments, and falsely imprisoned her, in violation of the Due Process Clause of the Fourteenth Amendment. Finally, Ms. May asserted state law claims against Officer Allen for assault and battery, invasion of privacy, and false imprisonment. Officer Allen largely disputed Ms. May's version of events.

The defendants moved for summary judgment on grounds of qualified immunity and official immunity. With respect to Ms. May's federal claims, the district court granted Officer Allen qualified immunity based on its finding that Officer Allen had probable cause to seize Ms. May. The district court also concluded that no clearly established law would have put Officer Allen on notice that his actions were unlawful. Regarding Ms. May's state law claims, the district court held that Officer Allen was entitled to official immunity because Ms. May had not met her burden of demonstrating that he acted with actual malice. Ms. May appealed the decision.

Ruling and Reasoning

The Eleventh Circuit held that Officer Allen was entitled to qualified immunity for his decision to initiate a mental health seizure and transport Ms.

May to the hospital. Qualified immunity is protection given to government actors “performing discretionary functions from being sued in their individual capacities” (citing *Holmes v. Kucynda*, 321 F.3d 1069, 1077 (11th Cir. 2003)). In evaluating a government actor’s entitlement to qualified immunity, the Eleventh Circuit cited an objective-reasonableness test, developed by the Supreme Court, wherein “the official’s actions must be evaluated against ‘clearly established law,’ consisting of statutory or constitutional rights that a reasonable person should have known” (citing *Courson v. McMillian*, 939 F.2d 1479, 1487 (11th Cir. 1991)).

The court first considered whether the officer’s action was justified to initiate a seizure. A seizure occurs when an officer has in some way restrained the liberty of a citizen such that “a reasonable person would not feel free to terminate the encounter” (*United States v. Jordan*, 635 F.3d 1181, 1186 (11th Cir. 2011)). Furthermore, “[w]hen an officer stops an individual to ascertain that person’s mental state (rather than to investigate suspected criminal activity), the Fourth Amendment requires the officer to have probable cause to believe the person is dangerous” (*Jordan*, p 1186). The court ruled that Officer Allen possessed arguable probable cause for seizing Ms. May to transport her to the hospital for a psychological evaluation. The court stated that “facts and circumstances must be such that the officer reasonably could have believed that probable cause existed” (citing *Montoute v. Carr*, 114 F.3d 181, 184 (11th Cir. 1997)). In addition, the Eleventh Circuit ruled that Officer Allen was entitled to qualified immunity on Ms. May’s § 1983 false imprisonment claim because Ms. May did not show that Officer Allen acted with deliberate indifference by knowingly or recklessly violating her right to be free from continued detention after she was entitled to release.

However, the Eleventh Circuit held that genuine points of fact precluded granting Officer Allen immunity at summary judgment for the claims challenging the manner in which he executed the seizure. [W]here adequate justification for the initiation of the seizure has been found, courts limit their application of the balancing analysis to ‘searches or seizures conducted in an extraordinary manner’—that is, searches and seizures conducted in a manner ‘unusually harmful to an individual’s privacy or even physical interests’” (*May* p 1184, citing *Whren v. United States*, 517 U.S. 806, 818 (1996)). The court

said that, based on the facts presented, one could conclude that the officer’s actions were unreasonable. The court specifically mentioned concern with the officer’s asking Ms. May to disrobe by threat of deadly force by patting his gun.

Discussion

Regarding the matter of reasonableness, the U.S. Supreme Court noted in *Graham v. Connor*, 490 U.S. 386 (1989), that there is no precise definition available for what constitutes “reasonable” force. The Court held that an excessive-force claim must be judged in reference to the specific constitutional standard that governs the Fourth Amendment right, rather than some generalized “excessive force” standard.

In *Saucier v. Katz*, 533 U.S. 194 (2001), the U.S. Supreme Court reiterated the above position in *Graham*, and again noted that the reasonableness of a particular use of force must be considered from the perspective of a reasonable officer on the scene, rather than by employing hindsight. In *Saucier*, the Court repeated its recognition that officers are often forced to make split-second judgments in circumstances that are “tense, uncertain, and rapidly evolving about the amount of force that is necessary in a particular situation” (*Saucier*, p 205).

Police officers who respond to mental health crises often encounter tense and uncertain situations, with the added complexity of acute emotional or behavioral disturbances exhibited by those individuals encountered at the scene. To determine whether to seize an individual in crisis, responding officers must weigh the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing interests at stake (including the safety of the individual and the safety of those proximately involved). However, as discussed in *May*, even though an officer may appropriately determine that there is probable cause to seize someone for a mental health concern, the execution of said seizure must be “reasonable” to receive qualified immunity. Police departments and hospital security services should take note of this distinction.

Addendum

After the 2016 decision, the Eleventh Circuit granted, in part, the defendant-appellant’s petition for rehearing. It withdrew its 2016 decision and issued a rehearing opinion. In the rehearing opinion, *May v. City of Nahunta*, 846 F.3d 1320 (11th Cir.

2017), the court again addressed (1) whether Officer Allen was entitled to qualified immunity for the § 1983 false imprisonment claim; (2) whether he was entitled to qualified immunity on his initial decision to seize and transport Ms. May; and (3) whether the seizure was unreasonable. The opinion is substantially similar to the 2016 decision in reasoning and outcome. As to the first two points, the court ruled that Officer Allen was entitled to qualified immunity. As to the third, there was a genuine point of fact as to whether the seizure was conducted in an extraordinary manner, unusually harmful to Ms. May's privacy interests. Like the 2016 decision, the court affirmed the district court in part, reversed in part, and remanded the third question to the lower court.

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Disability Evaluations in Veteran's Court

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Inconsistencies in Mental Health Disability Evaluation Renders Evaluation Incomplete

Since 2011, United States Army Veteran Richard Gillund attempted to obtain disability compensation for service-connected anxiety and depressive disorders. He underwent three separate mental health evaluations, all of which resulted in denial of disability, and he appealed the final decision to the U.S. Court of Appeals for Veterans Claims. In *Gillund v. McDonald*, 2016 WL 7190136 (Vet. App. 2016), the court found the most recent mental health evaluation to be inadequate because of internal inconsistencies, despite the concurrence of opinions among the three separate assessments.

Facts of the Case

Mr. Gillund was a U.S. Army Veteran who served on active duty from August 1967 through March 1969. He received service-connected disability ratings of 50 percent for anxiety disorder, not otherwise

specified (NOS) with depressive disorder, and 40 percent for residuals of prostate cancer. He retired from the post office in 2000 because of a back injury after 20 years of employment.

In October 2011, Mr. Gillund requested a total disability evaluation based on individual unemployability (TDIU). He underwent a VA mental disability examination in November 2011, which concluded that his anxiety disorder caused occupational impairment characterized by a decrease in work efficiency and "intermittent periods of inability to perform occupational tasks" (*Gillund*, p 1). However, overall, he was "generally functioning satisfactorily" and urinary symptoms were his primary problem. The VA Regional Office (RO) denied his request for TDIU, and Mr. Gillund filed a Notice of Disagreement. In April 2012, the RO upheld the denial. Mr. Gillund appealed to the Board of Veterans Appeals (Board).

In January 2013, Mr. Gillund underwent his second VA mental disability examination, which included review of the prior assessment, an in-person interview, and testing. The examiner opined that the veteran's anxiety NOS and depressive disorder NOS had remained about the same since his prior assessment, despite subsequent stressors. The examiner commented that the veteran's employability and quality of life were impaired by his psychiatric symptoms, but these were not seen as a large problem, mainly because the veteran was retired. In February 2013, the RO again denied TDIU, and Mr. Gillund was awarded a board hearing, which took place in November 2013. The board remanded the case, because some opinions in the January 2013 report appeared contradictory, and ordered a third VA mental disability examination, which took place in January 2015.

The third examiner noted that Mr. Gillund was hesitant to discuss his symptoms and that psychological testing revealed that he was not "psychologically minded." The examiner opined that the veteran had occupational and social impairment caused by transient exacerbations in mental health symptoms during periods of increased stress. However, the symptoms did not render Mr. Gillund unemployable, stating that nearly all of the functional limitations were due to the veteran's physical symptoms. As support, the examiner reported that the veteran had no problems while working years earlier, that he was unable to describe how his psychiatric symptoms af-