DPS Legal Review

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TERRY STOP INSIDE OF A HOME

In the early morning hours on November 15, 2008, an officer working on road patrol received a dispatch in response to a call from a complainant at an apartment complex. The complainant reported that a male and two females were outside yelling at one another though the dispute did "not sound violent." At 4:45 a.m., the officer arrived at the apartment complex where the caller met him and explained that a man and two women were arguing in the parking lot and that one of the women left in a white vehicle. The caller told the officer that verbal disputes between the people were "an everyday occurrence." The caller directed the officer to the apartment unit where the people went into. The officer approached the defendant's apartment. The officer heard what he described sounded like an argument and music coming from the apartment. He knocked on the door and the defendant opened the door wearing only a towel wrapped at the waist. There were two women, one clothed and one naked, visible inside of the apartment. Neither woman asked for assistance or indicated that she was in distress. The officer thought that the look on one of the women's face appeared "visibly upset, pissed off." The officer's "initial impression" was that he thought "maybe this is a girlfriend that just walked in on a boyfriend who is with another woman."

The officer began interviewing the defendant in order to investigate his involvement in the parking lot disturbance. The defendant told the officer he had no knowledge of the disturbance. The officer requested the defendant to provide his name and identification and the defendant declined. The defendant continued to refuse subsequent requests from the officer to identify himself. At some point during the conversation, the officer handcuffed the defendant while the defendant was standing in the doorway of his apartment. During the walk to the patrol car, the defendant's towel fell off and he was placed in the patrol vehicle. The defendant was taken to the police station where he was booked and provided a jumpsuit to wear.

The defendant was charged with resisting an officer-obstructing without violence under Florida law. The charge was subsequently dropped. The defendant filed a complaint asserting claims for unlawful arrest in violation of 42 U.S.C. §1983 and intentional infliction of emotional distress alleging that the officer forced him to be naked. The officer filed a motion for summary judgment on the claims. The court granted summary judgment in favor of the officer on all claims. The defendant appealed.

HOLDING: The Court held that, in the absence of exigent circumstances, the government may not conduct the equivalent of a *Terry* stop inside a person's home. The Court concluded that while the officer violated the defendant's constitutional right to be free from unreasonable seizure it could not conclude that the law was clearly established that a *Terry*-like stop cannot be conducted in the home. Thus, the officer was entitled to qualified immunity.

Qualified immunity protects government officials engaged in discretionary functions and sued in their individual capacities unless they violate "clearly established federal statutory or constitutional rights of which a reasonable person would have known." The Court in a prior decision held that a "warrantless arrest in a home violates the Fourth Amendment unless the arresting officer had probable cause to make the arrest *and* either consent to enter or exigent circumstances demanding that the officer enter the home without a warrant." A *Terry* stop is a "brief, investigatory stop when [an] officer has a reasonable, articulable suspicion…" of criminal activity occurring. The officer argued that he had reasonable, articulable suspicion of a breach of the peace which the court assumed was correct; however, the officer's reasonable, articulable suspicion did not rise to the more stringent standards of probable cause or exigent circumstances to justify a warrantless arrest. The Court reasoned that the circumstances surrounding the caller's complaint and the officer hearing what he believed was arguing and music coming from the defendant's apartment did not satisfy the definition of exigent circumstances ("an emergency situation involving endangerment to life"). Therefore, the officer did not conduct a lawful *Terry* stop and did not have a warrant, lacked probable cause, exigent circumstances, and consent to arrest the defendant while he was standing in his doorway.

The Court determined that the law was not clearly established that an officer may not conduct a *Terry*-like stop in the home in the absence of exigent circumstances. There was no valid, binding caselaw at the time of the defendant's arrest that would have put the officer on notice. As a result, the officer was entitled to qualified immunity.

The Court also decided that the defendant failed to establish a claim for infliction of emotional distress. The officer had provided the defendant with proper personnel to assist him at booking per the defendant's

request and the defendant was provided a jumpsuit to put on. As such, the defendant failed to show, per Florida law, that he suffered "severe" emotional distress from the officer's actions. Moore v. Pederson, 2015 WL 5438845 (11th Cir.).

FLIGHT AS SUFFICIENT PROBABLE CAUSE

On February 1, 2014, an officer attempted to stop a vehicle for speeding in which the defendant was a passenger. When the vehicle failed to stop, two additional officers responded. The vehicle continued to flee and the officers gave chase until the pursuing officer performed a "pit maneuver" forcing the vehicle to stop. The driver and the two passengers immediately exited the vehicle and ran away. The pursuing officer told all three to stop but they continued to run from the officers. The officer pursued the defendant because he "felt there was reasonable suspicion to believe that [the defendant] was involved in criminal activity…" in the vehicle that was fleeing. After chasing the defendant for 200 yards the officer caught the defendant and "grabbed him by the arm to take him to the ground." According to the officer, the defendant turned around, struck the officer in the face, and began fighting him. While they were exchanging blows, the defendant allegedly threatened to kill the officer and attempted to remove the officer's weapon from its holster. Another officer arrived to assist and both officers were able to restrain the defendant and place him under arrest. During a search of the defendant incident to his arrest, they discovered a gun and cocaine.

The defendant was indicted for two counts of fleeing or attempting to elude a police officer, criminal attempt to commit murder, three counts of aggravated assault on a police officer, two counts of attempted removal of a weapon from a public official, three counts of obstruction of an officer, criminal attempt to commit a felony, possession of cocaine, two counts of possession of a firearm during the commission of a felony, and possession of a firearm by a convicted felon. The defendant filed a motion to suppress the evidence contending that the evidence was obtained as a result of the allegedly unlawful seizure. The trial court granted the motion. The State appealed.

HOLDING: The Court held that the officer's seizure of the defendant was not unlawful and thus, the evidence obtained should not be suppressed. The Supreme Court of the United States has set forth three tiers of encounters between police and citizens: "(1) communication between police and citizens involving no coercion or detention, (2) brief seizures that must be supported by reasonable suspicion, and (3) full-scale arrests that must be supported by probable cause." "Flight in connection with other circumstances may be sufficient probable cause to uphold a warrantless arrest or search; certainly these circumstances give rise to an articulable suspicion that a criminal act may have been occurring so as to authorize a brief investigatory stop." The trial court ruled that the officer's initial interaction with the defendant was a first-tier encounter from which the defendant had the right to leave. Flight from a first tier encounter is permissible.

The Court concluded that the defendant's flight, coupled with the circumstances of the stop, provided the officer with at least reasonable articulable suspicion to warrant further investigation. The Court further reasoned that the officer's act of grabbing the defendant's arm was a second-tier encounter which escalated to a third-tier encounter when the defendant violently fought the officer during the attempted detention. The third-tier encounter gave the officer probable cause to arrest the defendant for obstruction. State v. Quarterman, 2015 WL 5430295 (Ga.App.).

ALS REMINDERS

- A copy of a final decision on an ALS case can be obtained from the OSAH website at www.osah.ga.gov. You will need the docket number, the petitioner's zip code, and you will need to know if the petitioner was represented by an attorney. If you need assistance in obtaining a copy of a final ALS decision, please contact Dee Brophy.

- When arresting a driver for DUI, always take the driver's license (residents and nonresidents). Issue a temporary driving permit to a DUI driver with a valid license. If a DUI defendant has a valid driver's license and a 1205 form is issued, sign the 30 day temporary driving permit at the bottom of the 1205 form. If the DUI defendant has a valid driver's license and a 1205 form is not issued, attach a 180 day temporary driving permit sticker to the defendant's DUI citation. (See O.C.G.A. § 40-5-67). Only one type of temporary driving permit (30 day or 180 day) is to be issued to the driver.

QUOTABLE WORKS

"You are not here merely to make a living. You are here in order to enable the world to live more amply, with greater vision, with a finer spirit of hope and achievement. You are here to enrich the world, and you impoverish yourself if you forget the errand."

~ Woodrow Wilson

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