



DPS LEGAL REVIEW

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11TH CIRCUIT COURT OF APPEALS

USE OF FORCE - DOG BITE USED ON SUICIDAL SUBJECT

On the evening of July 20, 2014, Rose Landon discovered her adult son Mark Landon in their shared home with several self-inflicted slashes to his left wrist. Mark was depressed, suicidal, and bleeding heavily. Rose began to scream, which attracted the attention of Peter Madish, a neighbor and Mark's brother-in-law. Madish rushed to the garage of the Landon home, where he observed Mark in only his underwear standing with a knife in his hands. Madish was able to wrestle the knife away from Mark, but Mark then fled. Rose Landon then called 911 and reported that Mark was trying to kill himself.

North Port Police Officers Dino Murges and Keith Bush were dispatched to the scene. Upon arrival they met with Madish, who stated that "Landon was suicidal, likely intoxicated, and bleeding badly from a self-inflicted injury. Madish also informed the officers that Landon grabbed another knife before fleeing." Rose Landon confirmed Madish's account. The officers also observed a significant amount of blood in and around the home. Although Landon was not suspected of a crime, Officer Bush decided to use his K9, Tomy, to locate Landon and "make sure he was okay."

Officer Murges acted as back up to Officer Bush, and – using Tomy – the officers eventually located Landon in the woods "where he lay on the ground, partially concealed by a bush and clad in only his underwear." From approximately 15 feet away, the officers stopped and ordered Landon to show his hands. Though the officers' accounts of what happened next varied slightly, both officers agreed that Landon, while laying on his side, "rolled further into a fetal position... The officers warned Landon they would

release a K-9 dog on him if he did not comply with their demands." Officer Murges observed that Landon was "obviously bleeding" and both officers "acknowledged that Landon never made any movements towards them." Nevertheless, because the officers believed Landon was resisting commands, "Officer Bush gave Tomy the command to bite Landon" and Tomy bit Landon in the abdomen. The officers then discovered Landon was not armed. Landon received medical attention for the bite punctures, but the wounds "became infected and required extensive medical care." Landon claimed that he was unconscious at the time of the encounter and had no memory of the incident. Several other officers who responded after the bit stated that Landon was unresponsive, motionless, and bleeding.

Landon filed suit against the responding officers in the U.S. District Court for the Middle District of Florida, alleging among other things that the officers violated his Fourth Amendment rights because the use of a K-9 to bite him was excessive force. The officers moved for summary judgment, arguing that the facts did not demonstrate an excessive use of force, and the district court granted the officers' motion. Landon then appealed the ruling to the Eleventh Circuit.

The Eleventh Circuit explained that when considering a claim of excessive use of force, "we must ask whether the officers' actions were 'objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.'" Under the circumstances, the Court explained that even though it was uncontested the officers believed Landon was armed with a knife when they encountered him, they were not entitled to summary judgment because a jury could still find their use of force to be excessive. The Court held that there was "substantial evidence suggesting that the officers could not have reasonably thought Landon posed an

immediate threat to their safety or that of others.” The officers knew Landon was “bleeding profusely,” that he was not trying to harm anyone other than himself, and was not suspected of committing a crime. Moreover, “Landon never made any movements towards them, and to the extent he moved, it was only to curl further into a ‘fetal’ position.” The Court concluded that **“[v]iewing the evidence in the light most favorable to Landon and drawing all inferences in his favor, the officers ordered a dog to bite Landon from a distance of fifteen feet away even though Landon posed no threat to them and, indeed, appeared significantly incapacitated due to substantial blood loss. Landon did not physically move toward the officers and, based on Officer Bush’s testimony, offered no verbal resistance whatsoever. In fact, Landon may have made no “verbal noises,” much less statements, at all.” Based on these factors, the Court held that a jury could reasonably find the use of force was excessive, and therefore the officers were not entitled to summary judgment.** *Landon v. City of North Port*, No. 18-10108, 2018 WL 5920543 (11th Cir. Nov. 13, 2018).

GEORGIA COURT OF APPEALS

VEHICLE SEARCH BASED UPON FOURTH AMENDMENT WAIVER BY PAROLEE

A City of Acworth police lieutenant on patrol near a motel was flagged down by a man who stated he witnessed a verbal altercation between a man and a woman outside a room of the motel. During the argument, the woman threatened “to call the police and report what the man had in the room.” The police lieutenant parked and surveilled the room and observed “a man leave the room, enter a vehicle, park it near the room, enter the room, and move items from the room to the vehicle.” The man then drove the vehicle out of the parking lot, at which point the lieutenant contacted another officer and briefed him on the situation. The lieutenant directed the officer to follow and attempt to establish probable cause to stop the vehicle.

The officer followed the vehicle and eventually performed a traffic stop based upon a suspected

window tint violation. During the stop, the officer determined that the vehicle was a rental and was thus exempt from Georgia’s window tint requirements. The driver of the vehicle, Samuel Burkes, appeared nervous, and the officer discovered upon checking GCIC records that Burkes was on parole. Burkes admitted to the officer that he was on parole for “drugs, possession, I think, distribution.” The officer also saw “‘baggies’ protruding from an open bag on the back seat,” and, while the vehicle window was down, smelled odors “such as air fresheners and cologne, which... are often used to mask odors inside a vehicle.”

The officer then contacted Burkes’ parole officer and inquired whether he had waived his Fourth Amendment rights by consenting to a search of his vehicle as a condition of his parole. The officer discovered that Burkes did in fact have a “Fourth Amendment waiver.” Based upon that waiver and “other information the officers had that the vehicle ‘probably’ contained narcotics, the officers searched the vehicle.” During the search, officers discovered methamphetamine and other evidence of drug distribution. Burkes was arrested and charged with trafficking in methamphetamine. During his prosecution, the parties stipulated that the search occurred “pursuant to [Burkes’] parole Fourth Amendment waiver,” which stated that “[m]y parole officer or any other parole officer may, at any time, conduct a warrantless search of my person, papers, and place of residence, automobile, or any other property under my control.” Burkes moved to suppress the evidence found in his car, arguing, among other things that, (1) the search was not valid under the Fourth Amendment because his waiver only provided consent for searches by *parole* officers, who could not delegate their authority to police officers; and (2) that “a Fourth Amendment waiver does not permit searches without reasonable grounds.” Burkes’ motion to suppress was denied, and he was eventually convicted. He appealed his conviction to the Georgia Court of Appeals, arguing that his motion to suppress should have been granted.

The Court of Appeals first explained that, in Georgia, it is permissible to require a parolee to “consent to a search of his property as a condition of

parole.” Burkes agreed to just such a waiver as a condition of his parole. Furthermore, there was no evidence that the police in this case were acting in bad faith. Rather, they had reasonable grounds to believe that Burkes’ vehicle contained illegal drugs, and they inquired and were specifically told by his parole officer that he had a Fourth Amendment waiver. The Court concluded that “even ‘a warrantless search based on unauthorized consent can be upheld if the law enforcement officer conducting the search reasonably (albeit erroneously) believed the consent given was valid.” **Here, the officer conducting the search reasonably believed the consent applied to his search. As such, “[u]nder the circumstances of this case, the fact that police officers conducted the search does not remove it from the ‘consent-waiver’ exception to the probable cause and warrant requirement of the Fourth Amendment.”**

Moreover, the Court rejected Burkes’ argument that the search was illegal because “a Fourth Amendment waiver does not permit searches without reasonable grounds.” Rather the Court stated that **the officer in this case in fact had reasonable grounds for the search based on the information he received from the police lieutenant and his own observations. As such, the search was permissible.** *Burkes v. State*, No. A18A0821, 2018 WL 5291973 (Ga. Ct. App., Oct. 25, 2018).

U.S. DISTRICT COURT - MIDDLE DISTRICT OF GEORGIA

STATEMENTS IN WARRANT AFFIDAVIT - IDENTIFICATION OF SUSPECT

On the morning of July 2, 2015, Henry County Police Officer Massimo Danese observed a vehicle with no registration decal. Officer Danese radioed the license plate number into his dispatch, which reported that the vehicle had suspended registration and no insurance. Officer Danese then initiated a traffic stop, which caused his dashboard camera to begin recording.

The vehicle then entered a food mart parking lot and slowed, but before stopping, “the driver exited the

vehicle and ran.” The driver did not put his vehicle in park, and it rolled into and struck Officer Danese’s patrol car, enabling the other driver to get a head start. “As the driver exited the car and ran toward a wooded area near the food mart, Officer Danese testified that he saw the driver's profile.” Officer Danese described the driver to other responding officers as “a black male approximately 5’9” tall, weighing about 180 pounds, and wearing a blue shirt.” He also “later testified that the driver had short hair about half an inch long.”

Officers were unable to locate or apprehend the driver on scene. During a search of the vehicle, however, Officer Danese “found a... business card in the passenger seat with” the name and photo of Alexander Beadle printed upon it. “He also found a traffic citation dated April 11, 2015, for driving with a suspended registration, which was issued to [Beadle] by the Dekalb County Police Department.” The vehicle was also registered to Beadle. Based upon this evidence and his view of the driver who fled, Officer Danese determined it was Beadle who fled from the car.

Officer Danese then applied for an arrest warrant for Beadle based upon his traffic violations and other conduct. A magistrate judge granted the warrant and Beadle was later apprehended without incident. During his prosecution, however, Beadle claimed that he was not actually driving the vehicle. Beadle instead claimed that he “was at home on the night of the attempted traffic stop and that [his] friend, Samuel Wilson, admitted to taking [his vehicle] without permission and drinking and doing drugs.” Beadle, “his fiancé, and his daughter each submitted affidavits to the Henry County Solicitor-General” testifying to those facts. “A person claiming to be Samuel Wilson also called an investigator” in that office to admit to being the driver, but refused to cooperate further. Beadle later testified that Wilson was “approximately three inches taller than [him], weighs around 230 to 240 pounds, and has long dreads as opposed to [his] short haircut.” Officer Danese’s dashboard camera showed the driver of the vehicle for only a brief moment, and did not clearly show his face. Further, Beadle argued that the video appeared to show that the driver had long hair, unlike Beadle’s short hair and unlike the short hair Officer

Danese claimed the driver had when describing him to other officers.

The Henry County Solicitor's Office eventually declined to prosecute Beadle, believing that their inability to positively identify the driver would create reasonable doubt as to Beadle's guilt. Beadle subsequently filed suit against Officer Danese and other parties, alleging, amongst other things, that his arrest constituted a malicious prosecution under the Fourth Amendment because Officer Danese fabricated his identification of Beadle in order to obtain an arrest warrant against him. Officer Danese moved the U.S. District Court for the Middle District of Georgia for summary judgment, arguing that he did not violate Beadle's Fourth Amendment rights because he did not fabricate his identification.

The District Court explained that "making perjurious or recklessly false statements in support of a warrant" would be a violation of an accused's Fourth Amendment rights. In support of his argument that Officer Danese lied or included recklessly false statements by identifying the driver of the vehicle as Beadle, Beadle relied upon "'conflicts' between Officer Danese's sworn testimony and the dash camera footage of the attempted traffic stop." Particularly, Beadle relied upon the fact that Officer Danese stated at the time of the stop and subsequently testified that the driver had short hair – like Beadle's – whereas the video appeared to show the driver had longer hair.

The Court, however, explained that "[a]ny question about the length of the suspect's hair only becomes apparent when a still, pixelated shot from a one-second period of time is enlarged and viewed in isolation, as [Beadle] asks the Court to do now. **Although it can be fairly said that the video is a somewhat accurate depiction of what officer Danese may have seen for a brief interval during the incident, it cannot be questioned that Officer Danese absolutely did not have the benefit of what is effectively a simultaneous instant replay, freeze frame, and zoom feature to assist him in identifying the suspect when he witnessed the incident as it happened.**" Moreover, the Court explained, an officer is not required to be absolutely certain of a suspect's identity prior to making an arrest. Rather, the

arrest must be "objectively reasonable based on the totality of the circumstances."

In this case, "even if the Court discounted Officer Danese's determination that the driver had short hair, the evidence clearly establishes that the facts and circumstances within Officer Danese's knowledge, of which he had reasonably trustworthy information (i.e., that the driver was a black male approximately 5'9" tall, weighing 180 to 200 pounds, and wearing a blue shirt, which closely matched [Beadle's] description; that [Beadle] owned the [vehicle]; and that [Beadle] had a citation dated less than three months prior for driving with a suspended registration), would cause a prudent officer to believe, under similar circumstances, that [Beadle] was driving the car... **Because Officer Danese's positive identification was reasonable under a totality of the circumstances and because there is no plausible evidence that he falsified the identification, Officer Danese had actual—and not merely arguable—probable cause to arrest [Beadle] and is entitled to... summary judgment on this claim.**" *Beadle v. Danese*, No. 5:17-CV-00317, 2018 WL 5304110 (M.D. Ga., Oct. 25, 2018).

ALS REMINDER

The 1205 form must be personally served on the DUI driver. If the driver refuses to sign the 1205 form to acknowledge service of the form, write "refused to sign" on the drivers signature line on the service part of the form.

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