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11TH CIRCUIT COURT OF APPEALS

INVOLUNTARY MEDICAL TRANSPORT - AUTHORITY OF OFFICERS TO ASSIST

At approximately 4:30 A.M. on June 16, 2015, a Newnan, Georgia, resident called 911 seeking emergency medical services for her neighbor, Kimberly Ellison. The caller stated that “she was concerned about Ellison’s mental condition, as Ellison was bipolar and having a ‘manic breakdown.’” The caller stated that while she, along with Ellison’s sister, had intended to take Ellison to the doctor in the morning, she believed that Ellison would not “make it until the morning, she’s incoherent, she’s having racing thoughts, nothing she’s saying is making sense.” The caller also reported that Ellison was “becoming combative” and that she “needed to go to the hospital and ‘to be medicated before this escalates into something.’” The caller went on to give further details of Ellison’s condition and stated that although Ellison had not hurt herself or anyone else, and did not have access to any weapons, she stated that she might hit other people and become combative.

Officers Kenneth Hobbs and Michael Condit and Sergeant Patricia Ayers all responded to Ellison’s apartment building following the call. A Coweta County paramedic, Eric Gasaway, and EMT, Brandon Howard, also responded. Throughout their subsequent interaction with Ellison, Ellison exhibited symptoms of “a manic state of mind,” including “racing, rambling, and disjointed thought patterns, excessive and rapid non-stop talkativeness, and hyperactivity, which indicated that she was suffering a manic episode.” At times, Ellison stated that she wanted to go to the hospital and agreed to go, but would become distracted and not agree to go until she had completed other tasks. She also stated to Officer Hobbs at one point

that “I’m going to get combative. That’s why you’re here.”

The officers on scene questioned Ellison and assisted the EMT and paramedic in controlling and evaluating her. Eventually, the on-scene paramedic, Gasaway, determined that Ellison required transportation to the hospital for evaluation and also determined that she “did not possess adequate medical decision-making capacity to make an informed decision to refuse transport to the hospital.” He further determined that the use of soft restraints was necessary to transport Ellison because she “was a potential danger to herself and others” based upon “her erratic, uncontrolled violent verbal outbursts and unpredictable behavior.” Paramedic Gasaway and EMT Howard applied the restraints to Ellison and transported her to the hospital. While the law enforcement officers remained on the scene until Ellison was transported, they did not assist in restraining her.

Ellison later filed suit against the medical personnel and officers on the scene, alleging, among other things, that “Paramedic Gasaway and EMT Howard violated her clearly established Fourth Amendment rights by restraining and involuntarily transporting her to the hospital without having probable cause to believe that she posed a threat of harm to herself or others.” Ellison also argued “that the three defendant police officers aided and abetted that illegal restraint and transport.” The defendants, in turn, argued that they were entitled to qualified immunity with respect to Ellison’s claims, because they were engaged in legitimate job-related functions and performed those functions in an authorized manner that did not violate Ellison’s clearly established constitutional rights. The district court granted the defendants’ motion for summary judgment, and Ellison appealed the ruling to the Eleventh Circuit.

The Eleventh Circuit held that the paramedic and EMT on scene were authorized under Georgia law to determine whether Ellison required transport to a hospital for evaluation and whether she “had adequate medical decision-making capacity to refuse transport.” They were also authorized to utilize soft restraints in performing that function. **With respect to the law enforcement officers, the Court explained that assisting emergency medical personnel and maintaining safety on the scene “is a classic police activity and well within the officers’ job responsibilities and discretionary authority.” Furthermore, the officers performed that role in an authorized manner because “Ellison was never under arrest or in police custody” during the encounter, and the decision to transport Ellison and to do so in soft restraints was made by a paramedic on scene.**

Finally, the Court held that the decision to transport Ellison to the hospital did not violate any clearly established Fourth Amendment rights, even assuming that decision was made against her will. As the Court explained, **the information reported about Ellison, her behavior on scene, and admissions that she may become combative provided “considerable and reasonable cause for concern” that may have justified her transportation and restraint. Moreover, only the violation of clearly established constitutional rights can overcome qualified immunity, and Ellison failed to identify “any prior case... that provided fair warning to the defendants that, under the particularized facts they faced, their conduct violated Ellison’s Fourth Amendment rights.** As such, the Court upheld the district court’s decision to grant summary judgment to the defendants. *Ellison v. Hobbs*, No. 18-14142, 2019 WL 4110485 (11th Cir. Aug. 29, 2019)

REASONABLE FORCE – USE OF KICKS DURING ARREST OF RESISTING SUSPECT

On the afternoon of August 14, 2012, several plainclothes Miami-Dade County police officers were meeting outside a coffee shop when they witnessed Ariel Marantes exit the coffee shop and “begin yelling profanities at someone in a car that was driving through

the parking lot.” Marantes then removed his shirt and a passenger in the vehicle exited the car. The pair “started to get into a fistfight,” but it was unclear whether they ever actually exchanged punches. As the fight began, one of the plainclothes officers, Officer Ruperto Peart, “immediately moved to intervene.” Marantes then began to flee and Officer Peart pursued him until Marantes tripped and fell. Officer Peart stood over Marantes and identified himself as a police officer and Officer Russell Giordano arrived to assist. Officer Peart then left to assist two other officers, while Officer Giordano stayed with Marantes and instructed him to stay where he was.

While Marantes was compliant at first, he eventually became “‘more aggressive,’ flailing around and trying to stand up.” A struggle ensued during which Marantes attempted to punch Officer Giordano and Officer Peart returned to assist. Marantes continued to struggle and, at one point while Officer Giordano left to retrieve his handcuffs, Marantes struck Officer Peart. Officer Giordano eventually returned with handcuffs, at which point “Marantes was still on his back on the ground and was not allowing the officers to put his hands behind his back and arrest him.”

“As Officer Peart was on top of Marantes attempting to control and handcuff him, Officer Giordano issued several ‘distractionary’ kicks to Marantes’s arm area, in an attempt to get Marantes to comply with the officers’ commands and allow himself to be handcuffed. Officer Peart explained that distractionary kicks are used to distract a person so that officers can effect an arrest and are not done for the purpose of causing harm. According to both Officer Peart and Officer Giordano, Marantes continued actively resisting while Officer Giordano was kicking him. Officer Giordano testified that he did not kick Marantes as hard as he could, but rather just used the amount of ‘force necessary to effect the arrest.’ Despite the kicks, the officers were unable to handcuff Marantes from behind, but managed to handcuff Marantes with his hands in front. No other force was used against Marantes, and Marantes was transported to the hospital shortly thereafter.” Notably, a portion

of the encounter, including Officer Giordano's kicks, was captured on video by a bystander. Marantes' injuries included redness, bruising, swelling, and abrasions to his head, trunk, and upper extremities, as well as a laceration to his lip that required stitches. Marantes also suffered some internal bleeding in the head and muscle and kidney damage that required his hospitalization two days later for approximately one day.

Marantes later sued the officers who arrested him, alleging among other things that the "distractionary kicks" that Officer Giordano used constituted excessive force during the arrest. Officer Giordano, in turn, moved for summary judgment arguing that the kicks were a reasonable use of force against a resisting suspect and that even if they were *not* reasonable, Officer Giordano was entitled to qualified immunity because it was not clearly established that they were not reasonable. The district court granted Officer Giordano's motion, and Marantes then appealed that ruling.

On appeal, the Eleventh Circuit explained that "[t]o evaluate whether the force an officer used was reasonable... we must consider several factors, including (1) the severity of the crime at issue, (2) whether the plaintiff posed an immediate threat to the safety of the officers or others, and (3) whether he was actively resisting arrest or attempting to flee. We also consider the nature and extent of the arrestee's injuries in determining whether the force used was excessive."

The Court explained that here, the video footage reflected that at the time the kicks were issued, **"Marantes was only partially restrained by Officers Peart and Gonzalez and had one arm free, which he was flailing around and using to try and push Officer Peart away." Furthermore, "Officer Giordano did not kick Marantes for a prolonged period or employ the maximum amount of force possible in administering each kick."** While Marantes stated that he was flailing because he wanted to get off the hot asphalt, the scene was chaotic and he did not communicate his desire to get off the pavement or comply with the officers' demands. As such, **"[a] reasonable officer, reacting quickly under these hectic circumstances, could have**

interpreted Marantes's flailing, squirming, and arm movements as attempts to resist arrest." Furthermore, "Marantes's aggressive behavior [in starting an altercation outside the café] would suggest to a reasonable officer that Marantes might pose a threat. Knowing that Marantes had so recently been engaged in, or about to engage in, a physical confrontation, a reasonable officer in Officer Giordano's position could have believed that Marantes posed a safety threat if he remained unsecured, necessitating the use of force to bring him fully under the officers' control."

The Court found that the other factors relevant to the analysis, the severity of the crime at issue and the seriousness of Marantes' injuries, either further supported the use of force or at least did not outweigh the "immediate threat" and "resisting arrest" factors. **As such, the Court found that the kicks were reasonable under the circumstances of this case.** The Court thus upheld the district court's grant of summary judgment to Officer Giordano. *Marantes v. Miami-Dade County*, No. 18-12439, 2019 WL 4200612 (11th Cir. Sept. 5, 2019)

GEORGIA COURT OF APPEALS

ROADBLOCK – PROPER AUTHORIZATION BY SUPERVISOR

At approximately 7:47 P.M. on September 3, 2016, the Georgia State Patrol began a vehicle checkpoint on Lavonia Highway in Hart County. The checkpoint was authorized by State Patrol Corporal Matt Baxley who stated on the approval form that the purposes for the checkpoint were for "driver's license, insurance and registration verification; seatbelt compliance; driver impairment checks; and vehicle fitness and safety compliance." All vehicles were stopped at the checkpoint except for a ten-minute period during which the checkpoint was suspended due to high traffic.

During the operation of the checkpoint, a motorcyclist later identified as Greg Turner approached and was stopped. The initial screening officer "smelled alcohol and requested a breath test. When that test returned a positive result, the officers asked Turner to pull into a nearby parking lot and

administered [an HGN] test there.” Turner exhibited six out of six clues of intoxication and was eventually arrested for DUI.

During his prosecution, Turner filed “a motion to suppress the results of the tests performed at and after the checkpoint,” arguing in part that (1) Corporal Baxley was not authorized to implement the checkpoint or that, if he was, he should have been required to testify at the hearing on his motion to suppress; (2) that not all vehicles were stopped at the checkpoint; and that (3) the screening officer did not have sufficient training and experience to make an initial determination to detain Turner. The trial court rejected these arguments and Turner was eventually convicted of DUI. He then appealed his conviction, arguing in part that his motion to suppress should have been granted.

With respect to Turner’s first argument, the Court of Appeals held that there was no authority to support the argument that Corporal Baxley was required to testify as the supervisor during the motion to suppress hearing. Rather, **an approval form for the checkpoint stating that Corporal Baxley “served in a supervisory capacity and was authorized to direct and establish lawful roadblocks” and an on-scene Trooper’s testimony to that effect was “sufficient to authorize the trial court to conclude that Corporal Baxley was authorized to set up the roadblock at issue.”**

The Court of Appeals also rejected Turner’s argument that the roadblock was invalid because not all vehicles were stopped (e.g. those that passed through when the roadblock was suspended due to traffic). The Court explained that **“the trial court was entitled to conclude that... all vehicles were actually stopped during the periods when the roadblock was staffed and operating.”**

Finally, the Court addressed Turner’s objections to the training and experience of the screening officer. As the Court explained, the State is *no longer required* to show that “the screening officer’s training and experience is sufficient to qualify him to make an initial determination as to which motorists should be given field tests for intoxication” in order to establish that a road checkpoint was legal. Rather, the State must only

show that “the screening officer had reasonable, articulable suspicion to refer the defendant for further detention and field tests.” In this case, the Court held that **“Turner’s positive breath test, taken with the odor of alcohol at the scene, gave the officers reasonable and articulable suspicion to detain him for further field tests.”** As such, all of Turner’s arguments were invalid, and his motion to suppress was properly denied. *Turner v. State*, No. A19A1028, 2019 WL 4315188 (Ga. Ct. App. Sept. 12, 2019).

ALS REMINDER

The OSAH website (www.osah.ga.gov) has a calendar of upcoming court dates and cases that are scheduled for an ALS Hearing. Go to the “Court Calendar” section of the website and under the section titled “Docket #,” type in the docket number of the case and click “Search” in order to confirm the date that a case is scheduled. The cases scheduled for a certain date can also be confirmed by going to “Advanced Search Options” on the Court Calendar page of the website. Under “Hearing Date,” put the date in the drop-down box in the “From” and “To” boxes as well as the Judge’s name in the drop-down box titled “Judge,” then click “Search.” The cases scheduled for that Judge on the selected date can then be viewed.

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