April 2020

THE LOCAL GOVERNMENT
LIABILITY
BEAT

Presented by Local Government Risk Management Services, Inc.
A Service Organization of the Association County Commissioners of Georgia and the Georgia Municipal Association Risk Management Programs

Eleventh Circuit Discusses False Arrest and Excessive Force

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On August 22, 2019, the Eleventh Circuit Court of Appeals decided *Huebner v. Bradshaw et al.,* [i] which serves as an excellent review of the law related to false arrest and excessive force as it pertains to handcuffing. The relevant facts of *Huebner,* as written by Judge Newsome, are as follows:

> You can't make this stuff up. We have hair-pulling, wrist-scratching, face-punching, and rock-throwing—all the makings of a good old-fashioned schoolyard scrap. But alas, the combatants in the fracas underlying this Fourth Amendment case were grown-ups—sisters, in fact. Sheesh . . .
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> The sad story underlying this appeal began when one of our two antagonists, Kathleen Dobin, dropped off her elderly mother at her sister Lori Huebner's home in Palm Beach County, Florida. Just as Dobin was about to leave, she and Huebner got into a dispute, apparently over the specifics of their cancer-stricken mother's last wishes. [2] Dobin alleged that as she was pulling away, Huebner ran outside, reached into Dobin's car, and "pulled her by the hair, punched her several times in her left cheek, and scratched her on the left wrist." Dobin called 911; just 11 minutes later, Huebner did the same. About half an hour after the fight, Deputy Yhon Gutierrez met Dobin down the street from Huebner's house. He took Dobin's statement, in which she alleged that Huebner had tried to attack her while she was inside her car—"pulling [her] hair" and "punching [her] in the face"—and that even Huebner's husband got in on the action, coming out of his house to "throw[] rocks at [Dobin's] car." Roughly an hour after the 911 calls came in, Deputy Peter McDonough arrived to relieve Gutierrez. He examined Dobin for scratches or other injuries but didn't find any. Dobin's car showed no signs of damage.

> McDonough then went to Huebner's home, where her daughter answered the door. Huebner came to the door and identified herself, and McDonough placed her under arrest. Huebner said that she was the one who had called 911, that she had "a cut on [her] arm where [Dobin] scratched [her]," and that she had "two witnesses" to the incident with her sister—presumably her daughters. McDonough declined to speak with Huebner's "witnesses"; instead, Huebner alleges, he handcuffed her and "tried to pull [her] rings off [her] finger." Throughout the arrest, Huebner says, she repeatedly complained that McDonough was hurting her—that the handcuffs were too tight, that her arms were pulled too far back, and that his efforts to remove her rings were painful. [3]

McDonough initially took Huebner to a police sub-station, where he had to complete domestic-battery paperwork before he could transport her to the main detention center. Because the small sub-station didn't have a place to hold arrestees, Huebner remained in the patrol car for what she says was between an hour and a half and two hours. McDonough explained to Huebner how to position herself in the car to minimize the discomfort caused by the handcuffs, but she declined because it too, she said, was uncomfortable. Although the record isn't clear about exactly what happened next, we think we can fairly deduce that McDonough took Huebner from the sub-station to the central jail, where she was processed and then later released.

Huebner alleges that as a result of her arrest, she suffers from neck and shoulder pain as well as and nerve damage. She has received epidural and cortisone shots for the pain, and her doctor attributes her injuries to her handcuffing. [ii]

Huebner later filed suit against Deputy McDonough for (1) false arrest where she argued that the deputy lacked probable cause and did an inadequate investigation, and (2) excessive force where she argued that the deputy used unreasonable force when he handcuffed her tightly and pulled on her arms and fingers to remove her rings. The district court held that the deputy had probable cause to arrest Huebner and did not use excessive force; the court granted qualified immunity to the deputy. Huebner appealed to the Eleventh Circuit Court of Appeals.

On appeal, Huebner again argued that her rights under the Fourth Amendment were violated because (1) the deputy arrested her without probable cause and conducted an inadequate investigation, and (2) the deputy used excessive force when he pulled her arms to handcuff her and remove her rings.

The court of appeals first noted that in order to defeat the deputy's motion for qualified immunity, Huebner must show (1) that the deputy did violate the Fourth Amendment, and (2) that the law was clearly established such that any reasonable deputy in the same situation would have known his actions violated the Fourth Amendment.

The court then set out to examine the first issue, whether the deputy violated the Fourth Amendment by arresting Huebner without probable cause. The court noted the legal principles that apply to this issue and stated:

> In order to make an arrest without a warrant, a police officer must have probable cause to believe that the suspect committed a crime. *Beck v. Ohio,* 379 U.S. 89, 91 (1964). In *Beck,* the Supreme Court described the probable-cause inquiry as follows: whether, at the time of the arrest, "the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense." Id. Probable cause exists when an arrest is "objectively reasonable under the totality of the circumstances." *Rankin v. Evans,* 133 F.3d 1425, 1435 (11th Cir. 1998) (quoting another source). [iii]

The court also looked at the Florida statute for which Huebner was arrested. The court stated:

> The offense of battery occurs when a person:
>
> 1. Actually and intentionally touches or strikes another person against the will of the other; or
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> 2. Intentionally causes bodily harm to another person.
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> Fla. Stat. § 784.03(1)(a) (2019). [iv]

Huebner argued that Dobin did not have visible scratches or injuries from the altercation, and the lack of such evidence rendered Dobin's statement to the deputy untrustworthy and therefore insufficient to establish probable cause. However, the court noted that the statute under which Huebner was arrested does not require an injury under the first subsection. Rather, all that is required is that Huebner intentionally "touched" Dobin against her will. Dobin made a 911 call where she alleged that Huebner scratched her, pulled her hair and punched her. She told that same story to the first deputy on scene, and also told the same story to Deputy McDonough when he arrived an hour after the incident. The court of appeals held that this was sufficient to establish probable cause for the crime of "Battery" under Florida law. Further, the court noted that the deputy arrived to the scene to investigate the allegations over an hour after the incident, which could also have caused some of the physical evidence to fade, therefore the absence of that evidence did not negate the probable cause or render Dobin's statement untrustworthy.

Regarding the false arrest claim, Huebner also argued that Deputy McDonough conducted an inadequate investigation. Huebner alleged that, had the investigation been complete, it would have negated any probable cause provided by Dobin's statement. However, the court stated:

> McDonough was "not required to forego arresting" Huebner "based on initially discovered facts showing probable cause simply because [Huebner] offered a different explanation." *Marx v. Gumbinner,* 905 F.2d 1503, 1507 n.6 (11th Cir. 1990); see also *District of Columbia v. Wesby,* 138 S. Ct. 577, 588 (2018) ("[P]robable cause does not require officers to rule out a suspect's innocent explanation for suspicious facts."). Nor was McDonough "required to sift through conflicting evidence or resolve issues of credibility, so long as the totality of the circumstances present[ed] a sufficient basis for believing that an offense ha[d] been committed." *Dahl v. Holley,* 312 F.3d 1228, 1234 (11th Cir. 2002). [v]

Therefore, the court stated that the deputy's investigation was sufficient to establish probable cause for the crime of battery under Florida law because (1) visible injury is not required under the statute, and (2) the type of battery that took place would be unlikely to leave lasting marks or injuries.

Since probable cause was present to arrest Huebner, the deputy is entitled to qualified immunity on the false arrest claim.

The court then examined the Fourth Amendment excessive force claim. Huebner claims the deputy violated the Fourth Amendment because (1) the handcuffs were too tight, (2) the deputy pulled her arms and fingers forcefully to remove her rings, and (3) she was left uncomfortably handcuffed in the police car for two hours while the deputy completed paperwork.

The court first noted legal principles relevant to this issue and stated:

> At this procedural juncture, "the question we ask is whether, under [the plaintiff's] version of the facts, [the officer] behaved reasonably in the light of the circumstances before him." *Stephens v. DeGiovanni,* 852 F.3d 1298, 1315 (11th Cir. 2017) (citations and quotations omitted). And when looking specifically at an excessive-force claim, we look to "whether an officer's conduct in making an arrest is objectively reasonable or if it is an over-reactive, disproportionate action for the situation." Id. at 1317.
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> We have long and repeatedly recognized that when making a custodial arrest, "some use of force . . . is necessary and altogether lawful." *Durruthy v. Pastor,* 351 F.3d 1080, 1094 (11th Cir. 2003). The force used "must be reasonably proportionate" to the need, which we measure by "the severity of the crime, the danger to the officer, and the risk of flight." *Lee,* 284 F.3d at 1198 (citing Graham, 490 U.S. at 394-95). [vi]

The court then observed that although Huebner's crime was relatively minor and she did not pose a flight risk, the force that the deputy used in this case was not "remotely unusual or disproportionate." The court stated:

> Officers routinely pull arrestees' arms behind their backs, and we have repeatedly held that painful handcuffing alone doesn't constitute excessive force. See *Rodriguez v. Farrell,* 280 F.3d 1341, 1351-52 (11th Cir. 2002) (holding that even where an officer "grabbed plaintiff's arm, twisted it around plaintiff's back, jerk[ed] it up high to the shoulder and then handcuffed plaintiff as plaintiff fell to his knees screaming that [the officer] was hurting him" the officer's actions didn't constitute excessive force). [vii]

Additionally, the court noted that, although Huebner alleged in her complaint and deposition that she received injuries in the incident, there were no medical records or other evidence to substantiate her claim. Therefore, since the deputy's use of force was not unusual or disproportionate and since there was no evidence to support Huebner's claim of injury, the court held that the deputy did not violate the Fourth Amendment regarding his use of force with Huebner.

Therefore, the court of appeals affirmed the grant of qualified immunity for Deputy McDonough in this case.

Citations

i. No. 18-12093 (11th Cir. Decided August 22, 2019)
ii. Id. at 2-5
iii. Id. at 8 (emphasis added)
iv. Id. at 8-9
v. Id. at 10-11 (emphasis added)
vi. Id. at 15-16 (emphasis added)
vii. Id. at 16 (emphasis added)

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