ELEVENTH CIRCUIT DISCUSSES FALSE ARREST AND MUNICIPAL LIABILITY

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On September 1, 2016, the Eleventh Circuit Court of Appeals decided *Arnold-Rogers v. City of Orlando et al.*[i], which serves as an excellent review of the law pertaining to probable cause to arrest, municipal liability and arrests in residences under the Fourth Amendment. The relevant facts of *Arnold-Rogers* are as follows:

> Rodriguez and another officer, Jabiel Hernandez, responded to a 911 call placed by Berghuis's wife, Jessica Wood. Berghuis and Wood told the officers that while Wood was driving with Berghuis as a passenger, they encountered Arnold-Rogers in her car. Berghuis and Wood reported that Arnold-Rogers bumped her car into Wood's vehicle. When Berghuis exited the vehicle to check for damage, Arnold-Rogers also came out of her vehicle and pushed Berghuis several times.
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> The officers then questioned Arnold-Rogers at her apartment. She denied touching Berghuis. Hernandez described Arnold-Rogers as belligerent and intoxicated during the conversation. After the officers reported to Berghuis that Arnold-Rogers denied anything had happened, he decided to press charges.
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> The officers then had Berghuis and Wood prepare sworn statements describing the incident in more detail. In his statement, Berghuis explained that Wood was driving when they came upon Arnold-Rogers's car stopped in a parking lot. After Wood drove around the car, Arnold-Rogers nudged Wood's car with her vehicle. At that point, Berghuis and Arnold-Rogers exited their vehicles. Arnold-Rogers then shoved Berghuis while yelling obscenities at him. When Berghuis tried to return to Wood's car, Arnold-Rogers followed him. Once Berghuis was sitting in the car, Arnold-Rogers blocked the car door, reached into the car, and pushed Berghuis two more times.
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> After taking the written statements, the officers returned to Arnold-Rogers's apartment. Rodriguez claims that he asked—but never ordered—Arnold-Rogers to come outside,

> and she voluntarily complied. When Arnold-Rogers came outside, Berghuis identified her for the officers. Rodriguez then arrested her for burglary and battery.
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> Arnold-Rogers recounts her arrest differently. She claims that when the officers returned for a second time, Rodriguez ordered her to come out of her home. When she refused, Rodriguez reached inside, grabbed her arm, and yanked her outside. Arnold-Rogers claims Rodriguez then slammed her into a banister before placing her under arrest. Although the parties disagree about whether Arnold-Rogers voluntarily left her home or whether Rodriguez entered her home to arrest her, they agree that Officer Rodriguez made a warrantless arrest.
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> Arnold-Rogers spent the night in jail. The next day, at her initial appearance, the state court judge dismissed the burglary charge for lack of probable cause. Arnold-Rogers then posted bond and was released from jail. The State Attorney's Office declined to prosecute the battery charge.[ii]

Arnold-Rogers sued Officer Rodriguez for arresting her without probable cause and arresting her in her home without a warrant, consent or exigent circumstances. She also sued the City of Orlando and claimed that the city had a policy, custom or practice that caused her violation. The city and the officer filed a motion for summary judgment. The district court held that Officer Rodriguez had probable cause to arrest Arnold-Rogers and dismissed that claim on summary judgment in favor of the officers. The district court also granted summary judgment in favor of the city and held that Arnold-Rogers failed to show a policy, custom or practice caused her violation. Lastly, the district court denied summary judgment for the officer regarding the warrantless arrest in Arnold-Roger's home because of the contradictory evidence. The case went to trial and a jury found in favor of the officer, deciding that Arnold-Rogers was arrested outside her home.

Arnold-Rogers appealed the grant of summary judgment regarding the probable cause claim against the officer, the summary judgment in favor of the city, and the decisions made by the trial court regarding evidence at trial regarding the in-home arrest claim.

The first issue the court examined was whether district court erred when it granted summary judgment for the officer regarding whether there was probable cause to arrest Arnold-Rogers. The court first looked at the law related to this issue and stated

> **Under the Fourth Amendment, "[a] warrantless arrest is constitutionally valid only when there is probable cause to arrest**." *Holmes v*. *Kucynda*, 321 F.3d 1069, 1079 (11th Cir. 2003). **An officer has probable cause to arrest "if the facts and circumstances within the officer's knowledge, of which he or she has reasonably trustworthy information, would cause a prudent person to believe, under the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense**." *Williamson v*. *Mills*, 65 F.3d 155, 158 (11th Cir. 1995).[9] **Probable cause does not require the same "standard of conclusiveness and probability as the facts necessary to support a conviction.**" Lee, 284 F.3d at 1195 (internal quotation marks omitted). **In deciding whether probable cause exists, arresting officers "are not required to sift through conflicting evidence or resolve issues of credibility, so long as the totality of the circumstances present a sufficient basis for believing that**

> **an offense has been committed**." *Dahl v*. *Holley*, 312 F.3d 1228, 1234 (11th Cir. 2002); *see also Rankin v*. *Evans*, 133 F.3d 1425, 1441 (11th Cir. 1998) ("**Generally, an officer is entitled to rely on a victim's criminal complaint as support for probable cause**.")[iii] [emphasis added]

The court then examined Arnold-Roger's arguments regarding this issue and reiterated that the officer was entitled to rely on the sworn statements provided by the witnesses and the victim that Arnold-Rogers shoved the victim multiple times. The court went on to state that "officers are not required to resolve credibility issues in deciding whether probable cause exists…"[iv] The court then held that since no reasonable jury could conclude that that the witness and the victim were not reasonably trustworthy, Officer Rodriguez had probable cause to arrest Arnold-Rogers for battery; therefore, the decision of the district court was affirmed regarding probable cause to arrest.

The court next examined the issue of municipal liability. The court examined the law related to this issue and stated

> **It is well established that the City "cannot be held liable under § 1983 on a *respondeat superior* theory**." *Monell v*. *Dep't of Soc*. *Servs*., 436 U.S. 658, 691 (1978). **Instead, "a plaintiff seeking to impose liability on a municipality under § 1983 [must] identify a municipal policy or custom that caused the plaintiff's injury**." *Bd*. *of Cty*. *Comm'rs v*. *Brown*, 520 U.S. 397, 403 (1997) (internal quotation marks omitted). **Thus, the City "is not automatically liable under section 1983 even if it inadequately trained or supervised its police officers and those officers violated [Arnold-Rogers's] constitutional rights**." *Gold v*. *City of Miami*, 151 F.3d 1346, 1350 (11th Cir. 1998). **Instead, a municipality may be held liable under § 1983 for failure to train under "limited circumstances.**" *City of Canton v*. *Harris*, 489 U.S. 378, 387 (1989). **These limited circumstances occur "only where the municipality inadequately trains or supervises its employees, this failure to train or supervise is a city policy, and that city policy causes the employees to violate a citizen's constitutional rights**." *Gold*, 151 F.3d at 1350.[v] [emphasis added]

Thus, in order to defeat summary judgment in favor of the city on this claim, the plaintiff must show
(1) the city did in fact inadequately train its officers,
(2) this failure to train is a city policy, and
(3) this policy of failing to train caused the officer to violate the plaintiff's rights.

In this case, Officer Rodriguez testified in a deposition that he was trained by the city to make warrantless arrests in residences, even when there were no exigent circumstances. Based on this, the court noted that a reasonable jury could conclude that the city *inadequately trained Officer Rodriguez* regarding arrest in residences without consent or probable cause. This is because

> **an officer violates the Fourth Amendment by making a warrantless arrest of a person in his home absent exigent circumstances or consent**. *See Payton v*. *New York*, 445 U.S. 573, 589-90 (1980); *McClish v*. *Nugent*, 483 F.3d 1231, 1238 (11th Cir. 2007) ("**The Fourth Amendment . . . does not permit an officer to . . . forcibly remove a citizen from his home [without a warrant] absent an exigency or consent**.").[vi] [emphasis added]

However, Arnold-Rogers must also show that the city had a *policy of inadequately training its officers*. Regarding this, the court stated

> **It is true that a plaintiff may prove a municipality had a policy of inadequate training "by showing that the municipality's failure to train evidenced a deliberate indifference to the right of its inhabitants**." *Gold*, 151 F.3d at 1350 (internal quotation marks omitted). **A plaintiff establishes deliberate indifference by showing that the municipality knew of its inadequate training yet "made a deliberate choice not to take any action**." *Id*.[vii] [emphasis added]

This can be shown by presenting evidence that the city knew of it's deficient training and then made a conscious choice not to take action to train properly. The court then noted that Arnold-Rogers presented no evidence of a city policy or custom of deliberate indifference regarding training on in-home arrests and, as such, summary judgment in favor of the city was proper.

Lastly, the court examined the Arnold-Rogers argument regarding whether certain evidence should have been admissible at trial. The court concluded that the trial court did not err in the case. This will not be discussed as it is outside of the scope of this article.

As such, the court of appeals affirmed the decision of the district court.

Notable Points for officers from this case:

- Officers need probable cause to make an arrest. **Probable cause to arrest is defined as "facts and circumstances within the officer's knowledge, of which he or she has reasonably trustworthy information, would cause a prudent person to believe, under the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense**."

- **In deciding whether probable cause exists, arresting officers "are not required to sift through conflicting evidence or resolve issues of credibility, so long as the totality of the circumstances present a sufficient basis for believing that an offense has been committed."**

- **Generally, an officer is entitled to rely on a victim's criminal complaint as support for probable cause.**

- **To make a warrantless arrest inside the suspect's residence, the officer needs to be in the residence by consent or through the existence of exigent circumstances.**

[i] No. 15-13198 (11th Cir. Decided September 1, 2016 Unpublished)
[ii] Id. at 4-6
[iii] Id. at 12
[iv] Id. at 13
[v] Id. at 16
[vi] Id. at 17
[vii] Id. at 18