



## OFFICER PEPPER SPRAYS HANDCUFFED WOMAN

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On October 4, 2016, the Eleventh Circuit Court of Appeals of decided *Nigro v. Carrasquillo*<sup>i</sup>, in which the court examined the issue of whether an officer violated the Fourth Amendment when he twice pepper sprayed a handcuffed woman who was attempting to kick the window out of his police car. The relevant facts of *Nigro*, taken directly from the case, are as follows:

On September 7, 2014, Officer Carrasquillo and other officers responded to a call that Ms. Nigro was causing a disturbance in her neighborhood. The neighbors told Officer Carrasquillo that Ms. Nigro had yelled at them and had thrown a painting, causing superficial damage to a car. With no explanation for Ms. Nigro's behavior, Officer Carrasquillo believed that it was appropriate to detain Ms. Nigro under Florida's Baker Act, Fla. Stat. § 394.463. Ms. Nigro later explained that she was upset and may have been off her medication for certain psychiatric conditions that day.

The officers handcuffed Ms. Nigro and placed her in the back of a patrol car. Ms. Nigro began to scream and call Officer Carrasquillo names, and became "very angry" because she felt that he was deliberately trying to provoke her. In their depositions, Officer Carrasquillo and a neighbor testified that Ms. Nigro then began to kick the rear passenger-side window while she was handcuffed in the back of the patrol car. Photographs show that Ms. Nigro caused damage to the patrol car by kicking out the window casing of the doorframe.

In response to Ms. Nigro's conduct, Officer Carrasquillo pepper sprayed Ms. Nigro for two seconds while she was still in the back of the patrol car. Ms. Nigro stopped struggling momentarily, but resumed kicking the window after a few minutes. After being pepper sprayed again for two seconds, Ms. Nigro finally calmed down. Officers then placed her in leg shackles and a spit mask, and called an ambulance to treat her for pepper-spray exposure and to take her to a hospital.<sup>ii</sup>

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Nigro sued the officer and alleged that he used excessive force under the Fourth Amendment when he pepper sprayed her as she was handcuffed in the back of a police car. The officer filed for summary judgment and qualified immunity and the district court granted the officer's motion and dismissed the suit. Nigro appealed to the Eleventh Circuit Court of Appeals.

The issue on appeal was whether the officer violated the Fourth Amendment when he pepper sprayed Nigro twice, as she was handcuffed in the back of his police car, attempting to kick out the door window.

The court first noted that the Fourth Amendment standard based on "objective reasonableness" applies for a use of force case such as this. The court stated

**The "reasonableness" of a particular use of force "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* A court must take into account that "police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Id.* at 397. The reasonableness determination therefore requires "a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." *Lee v. Ferraro*, 284 F.3d 1188, 1197 (11th Cir. 2002) (internal quotation marks and citation omitted). The balancing test involves several factors, such as "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of officers or others, and whether the detainee is actively resisting arrest or attempting to evade arrest." *Graham*, 490 U.S. at 396.<sup>iii</sup> [emphasis added]**

Thus, the court acknowledged that officer must make split-second decisions in tense, rapidly evolving circumstances. The court also noted that one must balance the nature of the intrusion (the use of force) against the government interests at stake. Lastly, the court noted there are three factors to consider in determining whether an officer used reasonable force: (1) the severity of the crime at issue, (2) whether the suspect posed an immediate threat to the officer or others, and (3) whether the suspect is actively resisting or attempting to evade arrest.

The plaintiff argued that the Eleventh Circuit case of *Vinyard v. Wilson*<sup>iv</sup> supported her claim that the officer used excessive force. In *Vinyard*, an officer pepper sprayed a woman who was handcuffed in the back of a police car and yelling at the officer. She was not resisting arrest or attempting to flee, and she posed no threat to the officer. However, in *Vinyard*, the court also noted that they stated that there may be a time where it is reasonable to pepper spray a suspect who is handcuffed. Specifically, the court stated

**We recognized in *Vinyard*, that "[c]ourts have consistently concluded that using pepper spray is reasonable, [ ] where the plaintiff was either resisting arrest or refusing police requests." *Id.* at 1348. We stated that "pepper spray is generally of limited intrusiveness, and it is designed to disable a suspect without causing permanent physical injury." *Id.* And we further acknowledged that "pepper spray is a very reasonable alternative to escalating a physical struggle with an arrestee." *Id.*<sup>v</sup>**

Therefore, the Eleventh Circuit acknowledged that pepper spray is generally a degree of force that is considered to be of “limited intrusiveness.” Further, the court stated that “pepper spray is a very reasonable alternative to escalating a physical struggle with an arrestee.”<sup>vi</sup>

In light of the legal principles above, the court examined the facts of Nigro’s case. The court noted that the officer used two short (two second) bursts of pepper in response to Nigro’s violent kicking of the back door window of the patrol car and her resisting arrest. Again, as stated above, this is considered of limited intrusiveness. The court also balanced the government’s interest at stake. The government interest was preventing her from further damaging government property, injuring herself, or injuring officers. In balancing the limited intrusiveness of pepper spray against the government interest at stake the court stated

**First, we have explained—albeit under different facts—that “[p]epper spray is a specially noninvasive weapon and may be one very safe and effective method of handling a violent suspect who may cause further harm to himself or others.”** *McCormich v. City of Ft. Lauderdale*, 333 F.3d 1234, 1245 (11th Cir. 2003). **Here Ms. Nigro, who has been detained pursuant to Florida’s Baker Act, was acting violently inside the patrol car. Second, in *Vinyard* we said in dicta that the use of pepper spray to subdue an arrestee who was acting violently in a patrol car is not excessive force. See *Vinyard*, 311 F.3d at 1348 n.9.<sup>vii</sup>**

As such, the Eleventh Circuit held the officer did not use excessive force when he pepper sprayed Nigro, and they affirmed the district court’s grant of summary judgment for the officer in this case.

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<sup>i</sup> No. 16-10193 (11<sup>th</sup> Cir. Decided October 4, 2016 Unpublished)

<sup>ii</sup> Id. at 2-3

<sup>iii</sup> Id. at 5

<sup>iv</sup> 311 F.3d 1340 (11<sup>th</sup> Cir. 2002)

<sup>v</sup> Nigro at 6

<sup>vi</sup> Id.

<sup>vii</sup> Id. at 6-7