



## ELEVENTH CIRCUIT DISCUSSES MENTAL HEALTH COMMITTALS AND FOURTH AMENDMENT

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Law Enforcement Risk Management Group, 700 N. Carr Rd. #595, Plainfield, IN 46168

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On January 19, 2017, the Eleventh Circuit Court of Appeals of decided *May v. City of Hahunta et al.*, in which the court discussed the Fourth Amendment and how it is implicated during an involuntary transport for a mental health examination. The relevant facts of *May*, taken directly from the case, are as follows:

The events preceding the underlying action took place on August 3, 2011. After a taxing few days taking care of her Alzheimer-stricken mother, May fell into a deep sleep. At the time, May was the sole caregiver for her mother, who—in addition to Alzheimer's disease—suffers from Sundowner's Syndrome, a condition that causes her to stay awake for days at a time. Before laying down, May called her brother, Ronnie Jacobs ("Jacobs") to relieve her. May told Jacobs that her "body [was] going down" and she could "take it no longer."

Some two or three hours later, Jacobs had still not arrived, despite living in a trailer adjacent to May's residence. By that time, May's mother had grown concerned at the length of time May had been laying down and went to Jacob's trailer to retrieve him. Back at the residence, Jacobs was unable to rouse May and called 911. In response, four emergency medical technicians ("EMTs")—three males and one female—arrived at the house, followed by May's sister, Wanda Smith ("Smith"). After checking May's vital signs, the EMTs placed an ammonia capsule under her nose. The harsh smell woke her up.

The EMTs asked May a series of questions about her health. May told them that she had been diagnosed with caregiver breakdown and Pick's disease, which she described as cerebral atrophy, or shrinking of the brain, accompanied by symptoms of headaches and seizures. After May declined to go to the hospital, the EMTs determined that she did not require any further medical treatment. May then executed a form refusing medical treatment and transport to the hospital, which Smith witnessed.

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In the interim, Officer Allen received a call from 911 requesting his assistance at May's residence. Upon his arrival, an EMT advised him that May had "been a little combative to herself" and was upset. Another EMT purportedly told Officer Allen that May had been clapping her fists and "scruffing and hitting herself in the head." Consequently, Officer Allen entered May's bedroom to investigate. There, he observed that her hair was "all over her head in disarray." Based on the EMTs' statements, coupled with his own observations, Officer Allen made the decision to seize May in her bedroom and transport her to the hospital for a psychological evaluation.

In conducting the mental-health seizure, Officer Allen asked the EMTs to leave the room and locked the door behind them. Officer Allen then told May that she was going to the hospital and instructed her to take off her nightgown and put on more suitable clothing. May began to cry. Despite her urging, Officer Allen refused to leave the room while she changed. Instead, Officer Allen began handing May her clothes and touched her shoulder roughly in an effort to pull off her nightgown. After she had put on her shorts, Officer Allen instructed her to take them off and first put on her undergarments. When May refused, Officer Allen replied, "Yes, you will," and patted his gun. Officer Allen remained in the locked room alone with May for fifteen to twenty minutes, all the while ignoring Smith's requests from the other side that he open the door.

After the two emerged from the room, Officer Allen announced that he was taking May to the hospital to talk with "someone in crisis." Outside the house, May told Jacobs that she did not want to go to the hospital. Nonetheless, Officer Allen placed May in the back of his police car and took her to Satilla Regional Medical Center in Waycross, Georgia.

Once they arrived at the hospital, Officer Allen escorted May to the emergency room. Inside, Officer Allen requested a hospital room for May and asked the staff about her prior diagnoses. After hospital staff informed him that May suffered from Pick's disease and caregiver breakdown, Officer Allen left the hospital.

May spent no more than two hours at the hospital before she was dismissed. During this time, she spoke with a nurse from psychiatry and had some blood work performed. According to May, another nurse told her that there was nothing wrong with her.<sup>ii</sup> [internal citations omitted]

May filed suit in federal court for violations of her rights under the Fourth and Fourteenth Amendment for being unlawfully seized and under the Fourteenth Amendment for being falsely imprisoned without due process. The district court granted summary judgment to Officer Allen and all other defendants. May appealed to the Eleventh Circuit Court of Appeals.

The first issue the court examined on appeal was whether Officer Allen is entitled to qualified immunity for his initial decision to transport seize and transport May to the hospital for a mental evaluation. This is an issue governed by the Fourth Amendment. The court stated

The Fourth Amendment protects people from unreasonable searches and seizures." *Roberts*, 643 F.3d at 905. "**For Fourth Amendment purposes, a seizure occurs when an officer, 'by means of physical force or show of authority, has in some way**

restrained the liberty of a citizen." *Id.* (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968)). "An encounter between a police officer and a citizen becomes a seizure when 'a reasonable person would not feel free to terminate the encounter.'" *Id.* (quoting *United States v. Jordan*, 635 F.3d 1181, 1186 (11th Cir. 2011)). In the context of a mental-health seizure, "[w]hen an officer stops an individual to ascertain that person's mental state (rather than to investigate suspected criminal activity), the Fourth Amendment requires the officer to have probable cause to believe the person is dangerous either to himself or to others." *Id.*<sup>iii</sup> [emphasis added]

In light of the above legal principles, the court stated that clearly Officer Allen seized May for Fourth Amendment purposes when he confined her to her bedroom to change clothes and transported her involuntarily to the hospital for a mental health examination.

The court then explained that when determining whether a seizure is legal under the Fourth Amendment, they must look at two specific issues. **First, they must determine whether the seizure is "justified at its inception."**<sup>iv</sup> This means they must determine if the seizure was legally justified. **Second, they must determine whether the seizure "was reasonably related in scope to the circumstances which justified" the seizure to begin with.**<sup>v</sup> This means the manner in which the seizure was executed was reasonable in light of the reason for the seizure.

In examining the first part of the inquiry above, the court stated

[W]e conclude that, at its inception, Officer Allen's action in seizing May for a psychological evaluation was justified. "[T]o be entitled to qualified immunity from a Fourth Amendment claim, an officer need not have actual probable cause, but only 'arguable probable cause'—that is, 'the facts and circumstances must be such that the officer reasonably could have believed that probable cause existed.'" *Montoute v. Carr*, 114 F.3d 181, 184 (11th Cir. 1997). **Based on the evidence, we hold that Officer Allen had arguable probable cause to seize May for a psychological evaluation.**<sup>vi</sup>

The court, having determined that May's seizure was justified at its inception, then had to determine whether the manner of the seizure was reasonably related in scope to the circumstances that justified the seizure to being with. The court stated

Under the Fourth Amendment, an individual is entitled to be free from unreasonable government intrusion wherever he harbors a reasonable expectation of privacy. *Terry*, 392 U.S. at 9. The legality—and, thus, reasonableness—of an officer's conduct is often judged "by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate, governmental interests." *Bouye v. Marshall*, 102 F. Supp. 2d 1357, 1362-63 (N.D. Ga. 2000) (citing *Graham v. Connor*, 490 U.S. 386, 397 (1989)), *aff'd sub nom.*, *Bouye v. Gwinnett Cty.*, 265 F.3d 1063 (11th Cir. 2001).

However, **where adequate justification for the initiation of the seizure has been found, courts limit their application of the balancing analysis to "searches or seizures conducted in an extraordinary manner"—that is, searches and seizures conducted in a manner "unusually harmful to an individual's privacy or even**

**physical interests."** *Whren*, 517 U.S. at 818. *Inter alia*, these "extraordinary manner" cases may involve seizure by means of a deadly weapon. *Id.*

**"Whether a search or seizure is 'extraordinary' turns, above all else, on the manner in which it is executed."** *Atwater v. City of Lago Vista*, 532 U.S. 318, 322 (2001). **Given that "[t]he Fourth Amendment proceeds as much by limitations upon the scope of governmental action as by imposing preconditions upon its initiation," the manner in which a seizure is conducted is "as vital a part of the inquiry as whether [it was] warranted at all."** *Terry*, 392 U.S. at 28-29. **At bottom, a government actor must employ reasonable means.** See *Evans v. Stephens*, 407 F.3d 1272, 1281 (11th Cir. 2005).

**Thus, an initially constitutional seizure can become unconstitutional where it is executed in an extraordinary manner, thereby subjecting the officer's conduct to a balancing analysis...**Applying the foregoing analysis here, the question we must answer is whether—considering the totality of the circumstances—an objectively reasonable officer would have known that May's right to personal security was unreasonably violated by Officer Allen's actions following the initial seizure. See *Terry*, 392 U.S. at 9.

It is important to note that at this stage of May's case (motion of qualified immunity and summary judgment), the court is required to view disputed facts in a light most favorable to the non-moving party (here, the plaintiff, May). Thus, the court of appeals must assume, for the purpose of this appeal, that the facts as alleged by May are true.

The court then stated

[I]n May's version of the facts, Officer Allen detained May in a locked room for twenty minutes and forced her to disrobe. Officer Allen's purported rationale was to: (1) get May to change out of her nightgown and put on more appropriate clothing for transport to the hospital; and (2) ensure that May did not harm herself in the interim. Notwithstanding these objectives, it was clearly inappropriate for a male officer to lock himself in a room with a woman in a state of undress under the circumstances, particularly after she asked him to leave. The unreasonableness of such conduct is further underscored by his failure to summon the female EMT or any of May's female relatives present at the residence. As intimated at oral argument, one could certainly conclude that it was unreasonable for Officer Allen *not* to ask the female EMT to remain with May while she disrobed. Even more troubling is the testimony that Officer Allen attempted to pull May's nightgown from her shoulder and used the threat of deadly force to compel her to remove her shorts, in order to first put on undergarments, by patting his gun after she initially refused. Based on the totality of these facts, one could conclude that the manner in which Officer Allen conducted the seizure violated May's Fourth Amendment right. Moreover, not only could Officer Allen's patent disregard for May's personal dignity be deemed unreasonable, but so could the prolonged duration of the seizure. Thus, we conclude that factual questions remain with respect to whether Officer Allen's conduct violated May's constitutional right to personal security.<sup>vii</sup>

Thus, viewing the facts in a light most favorable to the plaintiff, the manner in which Officer Allen conducted the seizure was not reasonable.

The court then, for the purpose of determining whether Officer Allen is entitled to qualified immunity, had to determine whether the law was clearly established such that another reasonable officer in the same situation would have known his conduct was unreasonable. The law is “clearly establish” when there is a case from the U.S. Supreme Court, the Eleventh Circuit Court of Appeals, or the Georgia Supreme Court (in this case) that is similar enough in facts to put a reasonable officer on notice concerning the illegality of this conduct. The other manner in which the law can be considered “clearly established” is if is “obvious clarity” should put a reasonable officer on notice based on the obvious nature of the violation. Here, the court held that unreasonable nature of this seizure was clearly established based on “obvious clarity.” As such, qualified immunity on this Fourth Amendment claim is denied. Ultimately, it would be up to a jury to determine the facts of the encounter between Allen and May.

The court also examined whether the officer violated the Fourteenth Amendment regarding a due process common law false arrest violation. The court stated

**The elements of common law false imprisonment are an intent to confine, an act resulting in confinement, and the victim's awareness of confinement." *Id.* A plaintiff must also prove that the defendant acted with deliberate indifference in violating the plaintiff's right to be free from continued detention after the defendant knew or should have known that the detainee was entitled to release. *Id.*<sup>viii</sup>**

In May's case, she argued that the false imprisonment encompassed both the detention in the bedroom through the point where she was taken to the hospital the court of appeals held that this claim must fail. This is because they had already ruled that there was arguable probable cause seize May and transport her to the hospital, thus May failed to show that Officer Allen acted with “deliberate indifference by knowingly or recklessly violating her right to be free from continued detention after she was entitled to release.”<sup>ix</sup>

Therefore, in summary, the court of appeals held

[T]hat Officer Allen is protected by qualified immunity from May's challenge to his *decision* to seize and transport her to the hospital, but he is not entitled to qualified immunity from May's claims challenging the *manner* of such seizure. Accordingly, we affirm the district court's grant of qualified immunity with respect to the initial seizure. However, we reverse and remand on the question of whether Officer Allen's conduct during the seizure was done in an extraordinary manner unusually harmful to May's privacy interests.<sup>x</sup>

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<sup>i</sup> No. 15-11749 (11<sup>th</sup> Cir. Decided January 19, 2017)

<sup>ii</sup> *Id.* at 3-6

<sup>iii</sup> *Id.* at 9

<sup>iv</sup> *Id.* at 10

<sup>v</sup> *Id.*

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vi Id.  
vii Id. at 17-18  
viii Id. at 13  
ix Id. at 13-14  
x Id. at 21-22