

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States District Court  
Southern District of Texas  
FILED

CLAUDIA NAVARRO PINEDA, et al. §  
*Plaintiffs* §  
§  
vs. §  
§  
THE CITY OF HOUSTON, et al. §  
*Defendants* §

SEP 24 1999

Civil Action: H.98-5877  
MICHELLE L. MILES, Clerk

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**PLAINTIFFS' RESPONSE TO DEFENDANT DARRELL STROUSE'S MOTION  
FOR PARTIAL RECONSIDERATION OF QUALIFIED IMMUNITY ORDER**

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TO THE HONORABLE SIM LAKE, UNITED STATES DISTRICT JUDGE:

Plaintiffs respectfully file this response to Defendant Strouse's motion for partial reconsideration of the Court's order denying qualified immunity.

**NATURE AND STAGE OF THE PROCEEDING**

This is a civil rights action arising out of the shooting of Pedro Oregon Navarro. On July 29, 1999, this Court granted in part and denied in part the individual Defendants' motions to dismiss and motions for summary judgment on the basis of qualified immunity. Specifically, the Court denied Defendant Strouse's motion to dismiss the false arrest claim, because Plaintiffs alleged that Strouse had "handcuffed and arrested Nelly Mejia without probable cause." July 29 Order at 18-19. Likewise, the Court denied Strouse's motion for summary judgment on the false arrest claim. *Id.* at 25-27. Strouse now asks the Court to reconsider its denial of qualified immunity for the false arrest of Nelly Mejia.

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## ISSUE PRESENTED AND STANDARD OF REVIEW

Defendant Strouse asks this Court to reconsider its denial of his summary judgment motion regarding Plaintiffs' claim for the wrongful arrest of Nelly Mejia. Consequently, the issue is whether Strouse has conclusively established that his participation in the arrest of Nelly Mejia was objectively reasonable in light of clearly established law at the time of the event. *See Siegert v. Gilley*, 500 U.S. 226, 231-32, 111 S. Ct. 1789, 1792-93 (1991).

Summary judgment is appropriate only if there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); *Coleman v. Houston Indep. Sch. Dist.*, 113 F.3d 528, 533 (5th Cir. 1997).

## ARGUMENT

### **I. Defendant Strouse Is Not Entitled to Qualified Immunity for the Wrongful Arrest of Nelly Mejia.**

#### **A. Strouse improperly tries to recharacterize the false arrest as an investigatory stop.**

In his motion to reconsider, Defendant Strouse tries to recharacterize the legal issue: he acknowledges that Plaintiffs have asserted a claim for the false *arrest* of Nelly Mejia, but he now asks this Court to analyze that arrest under the constitutional standard for an "investigatory detention," contending that he had "reasonable suspicion" to detain Mejia. *See Terry v. Ohio*, 392 U.S. 1 (1968). But this is not an "investigatory detention" case; it is a false arrest case.

In his summary judgment motion, Strouse did not dispute that he arrested Mejia without a warrant, but he argued that his warrantless arrest of Mejia was "reasonable." *See* July 29 Order at 25-26. The Court properly denied his motion for summary judgment, explaining that mere "reasonableness" is not the constitutional standard for a lawful arrest; without a warrant or probable cause, the arrest could not have been objectively reasonable. *Id.* at 26 (citing *Mangieri v. Clifton*, 29 F.3d 1012, 1016 (5th Cir. 1994)).

A warrantless arrest violates the Fourth Amendment unless the arrest is supported by "probable cause." *See Beck v. Ohio*, 379 U.S. 89, 91, 85 S. Ct. 223, 225 (1964). Probable cause exists to support a warrantless arrest "when the totality of the facts and circumstances within a police officer's knowledge at the moment of arrest are sufficient for a reasonable person to conclude that the suspect had committed or was committing an offense." *Spiller v. City of Texas City*, 130 F.3d 162, 165 (5th Cir. 1997). In this case, Defendant Strouse did not—and cannot—present summary judgment evidence conclusively establishing that he possessed information regarding any illegal conduct by Nelly Mejia. Consequently, the Court correctly denied qualified immunity on the "false arrest" claim. *See* July 29 Order at 26-27.

In his motion to reconsider, Strouse makes no attempt to demonstrate that he had probable cause to arrest Nelly Mejia. Instead, Strouse blurs the line between "arrest" and "investigatory detention," arguing that Mejia was simply "detained" for an investigation.

But this was no innocent traffic stop or investigatory detention; this was a formal arrest, made without a warrant or probable cause. Thus, it was unconstitutional.

**B. Viewing the evidence in the light most favorable to the Plaintiffs, Strouse "arrested" Nelly Mejia.**

The necessary predicate to Strouse's motion for reconsideration is his assertion that Nelly Mejia was not "arrested," but was just "detained." *See* Motion to Reconsider at 4. But that factual predicate is controverted by the summary judgment record. In fact, Defendant Strouse—along with other individual defendants—arrested Mejia. Therefore, the "reasonable suspicion" standard is inapposite.

First, Defendant Strouse has offered no summary judgment evidence supporting his factual assertions. As the summary judgment movant, Strouse has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553 (1986) ("Of course, a party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact."). Because Strouse offered no summary judgment evidence to support his version of the facts or his assertion that Mejia was not "arrested," he is not entitled to summary judgment on the false arrest claim.

Indeed, Defendant Strouse does not even seem fully to believe his own argument. He repeatedly concedes that Nelly Mejia was "arrested." *See* Motion to Reconsider at 2-3 (discussing the "moment of arrest"), *id.* at 4 ("He participated in the arrest/detention of Nelly Mejia . . ."); *id.* at 5 ("What matters is what Darrell Strouse knew when he arrested Nelly Mejia . . ."). Given these concessions, Strouse cannot credibly maintain that there is no genuine issue of material fact as to whether he "arrested" Mejia.

In addition, the summary judgment evidence proves that Nelly Mejia was arrested, not "detained." She was handcuffed, placed in a patrol car, and taken to the police station. *See* Ex. 23 at H1676; Tab A.<sup>1</sup> Strouse has *admitted* he was the officer who "handcuffed the female and gave her to another officer." Ex. 20 at H1656. After Strouse arrested her, Mejia was taken outside—still in handcuffs—and forced to kneel on the patio. *See* Tab A. She was then confined in a police vehicle for an hour or two, in handcuffs the entire time. *Id.* She was never told that she had been handcuffed as a "witness," for her own safety, or for the safety of the officers. *Id.* She was not free to leave. *Id.*

Mejia was then taken—in handcuffs and against her will—to the police station. *Id.* She went to the police station involuntarily. *Id.* After she arrived at the police station, the handcuffs were finally taken off and she was interrogated. *Id.* At 5:40 in the morning, she gave a statement to the police. *See* Ex. 23 at H1675. She was not allowed to leave

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<sup>1</sup> Citations to exhibits refer to the Exhibits to Plaintiffs' Response to the Individual Defendants' Summary Judgment Motions on the Basis of Qualified Immunity.

until 9:00 the next morning—over seven hours after the shooting occurred. *See* Tab A. Thus, contrary to Strouse's assertions, Mejia was not "released at the scene" and she did not go to the police station "voluntarily"—she was arrested.<sup>2</sup>

Strouse now admits in his motion, "[t]he *moment of arrest* of Nelly Mejia occurred immediately after the shooting." *See* Strouse Motion to Reconsider at 3 (emphasis added). By his own account, Strouse admits he handcuffed Mejia "immediately after the shooting," and he also admits that his seizure of Mejia was the "moment of arrest." At a minimum, the evidence—coupled with Strouse's admissions—raises a genuine issue of material fact as to whether Strouse "arrested" Mejia in violation of the Fourth Amendment.

To be entitled to summary judgment under the "reasonable suspicion" standard, Strouse must conclusively prove that Mejia was not "arrested." He has failed to do so. Taking the evidence in the light most favorable to Mejia, she was "arrested" by Strouse. The factual dispute on this question precludes summary judgment.

**C. Because Strouse "arrested" Nelly Mejia without a warrant or probable cause, he is not entitled to qualified immunity.**

Because Strouse "arrested" Nelly Mejia, he is not entitled to qualified immunity. Strouse does not even attempt to prove that he had probable cause to support the arrest.

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<sup>2</sup> Although Strouse refers to Mejia's witness statement, which asserts that she went to the police station voluntarily, Mejia denies that she went to the station voluntarily. *See* Tab A. Her affidavit is corroborated by her account that she was taken to the police station in handcuffs—hardly the sign of a "voluntary" witness. At a minimum, there is a genuine issue of material fact as to whether Mejia went to the police station voluntarily.

He argues only that he "participated in the arrest/detention of Nelly Mejia for her safety, the officers' safety, and to detain her as a potential witness to the shooting that had just occurred." Motion to Reconsider at 4. Needless to say, these are not sufficient grounds to establish "probable cause." *See Spiller*, 130 F.3d at 165 (probable cause requires a reasonable belief that "the suspect had committed or was committing an offense"). Accordingly, Strouse is not entitled to summary judgment on the false arrest claim.

**D. Alternatively, even if Strouse had only "detained" Mejia, he did not establish that his detention was "reasonable."**

Finally, even if it were true that Defendant Strouse merely "detained" Nelly Mejia, he still would not be entitled to summary judgment. Strouse offers no summary judgment evidence to conclusively prove that he reasonably believed Mejia was a threat to his safety, a flight risk, or any other grounds for taking a citizen into custody without probable cause. Moreover, given that Mejia remained in Defendant Strouse's handcuffs for several hours, it is implausible to believe that her confinement was simply an "investigatory detention" that was supported by "reasonable suspicion." It is not reasonable to place mere witnesses in handcuffs and restrain their liberty indefinitely—nor is it constitutional. Accordingly, regardless of whether this case is analyzed as an "arrest" or an "investigative detention," Strouse is not entitled to summary judgment.

**PRAYER**

Plaintiffs respectfully ask that this Court deny Defendant Strouse's motion for partial reconsideration of the Court's order denying qualified immunity for the false arrest of Nelly Mejia, and for all other relief to which they may be entitled.

Respectfully submitted,

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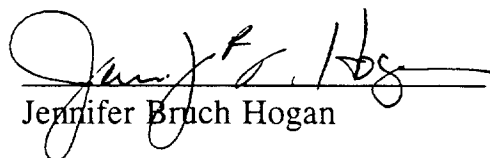
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## CERTIFICATE OF SERVICE

I served a copy of this document on counsel of record by certified mail return receipt requested and in accordance with Federal Rules of Civil Procedure.



Jennifer Bruch Hogan

Date: September 24, 1999

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**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**CLAUDIA NAVARRO PINEDA, §  
INDIVIDUALLY AND AS §  
REPRESENTATIVE OF THE ESTATE §  
OF PEDRO OREGON NAVARRO; §  
ANA ISABEL LORES, §  
AS NEXT FRIEND OF ASHLEY, §  
MINOR DAUGHTER OF PEDRO §  
OREGON NAVARRO; §  
BLANCA LIDIA VIERA, AS NEXT §  
FRIEND OF BELINDA, MINOR §  
DAUGHTER OF PEDRO OREGON §  
NAVARRO; ROGELIO OREGON §  
NAVARRO; SALVADOR LOPEZ; AND §  
NELLY MEJIA, §**

**Plaintiffs**

**v.**

**CITY OF HOUSTON; §  
D. H. STROUSE; D.R. BARRERA; §  
P.A. HERRADA; D.R. PERKINS; §  
L.E. TILLERY; JAMES R. WILLIS §**

**Defendants**

**CAUSE NO. H-98-3877**

**AFFIDAVIT OF NELLY MARITZA MEJIA**

**THE STATE OF TEXAS §  
§  
COUNTY OF HARRIS §**

BEFORE ME, the undersigned authority, on this day personally appeared Nelly Maritza Mejia, who after having been duly sworn upon her oath deposed and stated:

My name is Nelly Maritza Mejia. I am over the age of 18 years. I am of sound mind and competent to make this affidavit. I have personal knowledge of the facts contained in the affidavit.

When the shooting occurred on July 12, 1998, I was in Rogelio Oregon's bedroom. While I was in the bedroom, a police officer came in the room and handcuffed me. Later, I was taken outside in handcuffs and I was forced to kneel on the patio. I was then taken to a police vehicle and confined for an hour or two. I was in handcuffs the entire time. I was never told I was free to leave, and I was given the impression that I could not leave. During this entire time, I was never told that I was simply being "detained" as a witness, for my own safety, or for the safety of the police officers.

After an hour or two, I was taken to the police station. I was still in the handcuffs. I did not go to the police station voluntarily, but I was given the impression that I did not have a choice. After I arrived at the police station, I was placed in another room to wait. After I had been at the police station for more than an hour, the handcuffs were taken off. The police interrogated me, and I gave them a statement.

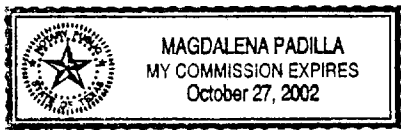
I was not allowed to leave the police station until 9:00 the next morning.

This statement has been read to me in Spanish and all the statements in it are true and correct and within my personal knowledge.

FURTHER AFFIANT SAYETH NOT.

Nelly Maritza Mejia  
Nelly Maritza Mejia, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME, on this the 22nd day of  
September, 1999.



My Commission Expires:

10-27-2002

Magdalena Padilla  
NOTARY PUBLIC in and for  
THE STATE OF TEXAS