

Posture of the Case

Plaintiffs sued defendant for violation of their Fourth Amendment rights under 42 U.S.C. § 1983, and pendent state claims for wrongful death.

Defendant answered, claiming his affirmative defense of qualified immunity.

Defendant Strouse filed a Motion to Dismiss and a Motion for Summary Judgment. On July 29, 1999, this Court partially granted Defendant Strouse's Motion to Dismiss. The court denied Defendant Strouse immunity from Plaintiffs' Fourth Amendment claims regarding warrantless entry, and the false arrest of Nelly Mejia.

Defendant here asks for reconsideration of the Court's ruling denying Defendant Strouse immunity for the arrest of Nelly Mejia.

Moment of Arrest

For the court's convenience, Defendant Strouse repeats here the "moment of arrest" argument also found in Defendant's Response to Plaintiffs' Motion for Partial Reconsideration.

Fourth Amendment analysis requires an objective review of the totality of circumstances known to the arresting officer at the snapshot-moment of arrest. The plaintiffs' new proximate cause claim, assumed in the most favorable light, seems to claim that Darrell Strouse was involved at the moment of the decision-to-arrest. The decision-to-arrest and the arrest are two distinct moments in time. The distinction is important. *United States v. Tinkle*, 655 F.2d 617 (5th Cir. 1981), cert. denied, 455 U.S. 924, 102 S.Ct. 1285, 71 L.Ed.2d 467 (1982):

As the Supreme Court stated in considering the constitutionality of a warrantless arrest, the validity "depends in turn upon whether, at the moment the arrest was made, the officers had probable cause to make it" *Beck v. Ohio*, 379 U.S. 89, 91, 85 S.Ct. 223, 225, 13 L.Ed.2d 142 (1964). See *United States v. Savage*, 564 F.2d

728, 732 (5th Cir. 1977).

The critical time is the moment of arrest, not the moment the officer makes the decision to arrest. Two hypothetical situations focus this distinction. Imagine an officer who comes into possession of sufficient circumstantial evidence to convince even the most cautious officer that John Doe has committed an offense. He starts out to arrest Doe. While searching for Doe the officer is told by his superior that another person has confessed to the crime and that Doe has been provided with an unqualified alibi. Consider the reverse situation. An overzealous watch commander directs an arrest of John Doe based solely on suspicion. While the arresting officer is searching for Doe, another defendant implicates him. Armed with this information eyewitnesses are quizzed who make positive photo identification of Doe. This information is relayed to the arresting officer just before he locates Doe. In each situation, in determining probable cause, the factual situation which must control is that which exists at the moment of arrest. Consequently, we find no substance to the contention that an arrest is invalid if it is not supported by probable cause at the time the decision to arrest is made.

The moment of arrest of Nelly Mejia occurred immediately after the shooting. No one disputes that the officers **did not know** that Nelly Mejia was in the apartment when they entered. Therefore, the reasonableness of the arrest should be analyzed from the facts known to the officers when they encountered her in the apartment.

When the shooting stopped, Darrell Strouse moved from his cover position to the back of the apartment. He knew that a shooting had occurred and a number of rounds had been fired. He saw Officer Tillery down, shot, on the floor of the bathroom. He saw Pedro Oregon lying dead inside the bedroom door. He reasonably believed that Officer Tillery had been shot by Pedro Oregon. He knew that the apartment had not been cleared. At that moment, there existed the reasonable possibility that other persons in the apartment may present a threat to the officers safety. Simultaneously, he observed a hysterical Nelly Mejia, unsecured, in the bedroom. 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.

Sergeant Strouse had his hands full. His first priority was to get immediate medical assistance for Officer Tillery. He also had to make sure the dispatcher was sending notification to Homicide, Internal Affairs, Watch Command, and the Harris County District Attorney's Office as required in an officer-involved shooting. He also had to preserve the shooting scene for the arriving investigators. All these events were happening at the same time, or in very brief succession. He had no further contact Nelly Mejia after she was led away from bedroom. Shortly after Nelly Mejia was detained, Sergeant Strouse relinquished control of the scene to arriving officers and investigators.

Other than temporary detention at the scene, Nelly Mejia was not arrested. She was released at the scene. She was not charged with any offense by the investigating officers. She went to the Homicide Offices voluntarily to give a witness statement.¹

Reasonableness

Defendant Strouse asks the court to reconsider the reasonableness of his "arrest" of Nelly Mejia as an investigatory detention under *Terry v. Ohio*, 392 U.S. 1 (1968); *Hart v. O'Brien*, 96-40151, (5th Cir. 1997). Sergeant Strouse knew that someone had just shot a police officer, a felony. He did not know the extent of Nelly Mejia's involvement, if any. It was reasonable to detain her until the Homicide Investigators arrived to question her. It is not what happened before, or what we

¹ Plaintiffs' Response to Individual Officers' Summary Judgment Motions, Tab 23, Witness Statement of Nelly Mejia, dated July 12, 1999.

all know after, with hindsight, that matters. What matters is what Darrell Strouse knew when he arrested Nelly Mejia, and whether his detention of her was reasonable under the circumstance. It was.

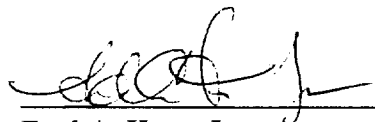
Pleading

It is not Darrell Strouse's summary judgment burden to prove that the conclusory allegations in plaintiff's pleadings are not true. It is the plaintiffs' burden to specifically allege facts that show the arrest of Nelly Mejia was unreasonable under the circumstances, and that Sergeant Strouse participated in the indignities she claims after Homicide Investigators took charge of this investigation.² They cannot do this. It did not happen.

Prayer

For these reasons, Defendant Darrell Strouse, asks the court to grant his motion to reconsider and dismiss plaintiffs' claim for the false arrest of Nelly Mejia based upon qualified immunity. Defendant further asks for any other relief to which he may be entitled.

Respectfully submitted,



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² *Petta v. Rivera*, 143 F.3d 895 (5th Cir. 1998); *Sorenson v. Ferrie*, 134 F.3d 325 (5th Cir. 1998).

CERTIFICATE OF SERVICE


I certify that I mailed a copy of Defendant Strouse's Motion for Reconsideration to the following counsel of record, on August 27 1999.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CLAUDIA NAVARRO PINEDA, et al.

Plaintiffs

v.

CITY OF HOUSTON, et al.

Defendants.

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CIVIL ACTION NO. H-98-3877

Jury Requested

**Order on Defendant Darrell Strouse's Motion for Partial Reconsideration of
Qualified Immunity Order**


On _____, 1999, the court considered Defendant Darrell. Strouse's **Motion for Partial Reconsideration of Qualified Immunity Order**. After considering the motion and the response, the court:

GRANTS the motion and dismisses Plaintiffs' claim for the false arrest of Nelly Mejia.

SIGNED: _____, 1999.

UNITED STATES DISTRICT JUDGE

APPROVED & ENTRY REQUESTED:



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