

WINTER 2011 NEWSLETTER

CIVIL RIGHTS LAW UPDATE

by Joshua Skinner

U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

- ***Sama v. Hannigan*, No. 10-40835, 2012 U.S. App. LEXIS 2107 (5th Cir. Feb. 3, 2012)**

Doctors were entitled to qualified immunity from substantive due process claim where, in the course of medical treatment (surgery) of a prisoner that the prisoner consented to, the physicians provided additional treatment that was deemed medically necessary as well as necessary to complete the consented-to procedure that was underway, and the physicians determined that it would be potentially life-threatening to end the surgery without performing the additional treatment.

Sama, a prison inmate, consented to a radical hysterectomy due to cervical cancer. Sama contended that she told the attending physicians that she would not consent to removal of her one remaining ovary. In the course of the procedure, the physicians concluded that the one remaining ovary was likely nonfunctional and that removal was medically necessary both because it was a continuing threat to Sama and because its presence prevented the physicians from completing the radical hysterectomy. Sama brought suit against the attending physicians. The district court granted summary judgment to the doctors, holding that they were entitled to qualified immunity. Sama appealed and the Fifth Circuit affirmed.

- ***United States v. Lamar*, No. 10-11150, 2012 U.S. App. LEXIS 1874 (5th Cir. Feb. 1, 2012)**

The Fourth Amendment was violated by the proctoscopic examination under sedation of a suspect, despite the presence of a search warrant. Nevertheless, the illegal narcotics removed from the suspect during the examination were admissible in the suspect's criminal trial under the "good faith" exception to the exclusionary rule.

Gray was arrested on outstanding warrants because the police had heard from a confidential informant that Gray was in possession of and selling crack cocaine. At the time of his arrest, Gray was in a vehicle with Simmons. Simmons informed the police that, as the police approached the vehicle, Gray threw at her a plastic bag containing what she believed to be crack cocaine and asked her to conceal it. Simmons refused to conceal the crack cocaine. The police conducted multiple strip searches of Gray and of the vehicle, but were unable to locate the plastic bag or any cocaine. Believing that Gray must have, at some point, concealed the bag in his rectum, the police requested and received a search warrant to search for the narcotics "in accordance with recognized medical procedures." The physicians performed various procedures (including x-rays) and ultimately sedated Gray and performed a proctoscopic examination. During the examination, the narcotics were located in Gray's rectum. At his criminal trial, Gray moved to exclude the evidence alleging that the search

violated the Fourth Amendment. The district court denied the motion. After conviction, Gray appealed. The Fifth Circuit held that the search did violate the Fourth Amendment because of its intrusive nature, but that the evidence need not be excluded because it was subject to the “good faith” exception to the exclusionary rule.

- ***Wilson v. Birnberg*, No. 11-20035, 2012 U.S. App. LEXIS 638 (5th Cir. Jan. 12, 2012)**

The plaintiff’s claim that he was denied a place on an election ballot in retaliation for having criticized the sitting mayor during the prior election stated a claim upon which relief could be granted, despite assertions by the defendant, a political-party chairman, that the plaintiff had failed to properly fill out his application for inclusion on the election ballot.

Wilson sought a place on the ballot for selection of the Democratic Party’s nominee for Harris County Commissioner’s Court, Precinct No. 4. Because there were no other Democratic candidates, Wilson would have received the nomination by the Democratic Party if his application had been accepted. However, after the deadline for filing applications, Wilson’s application was denied. Wilson alleged that his application complied with the relevant election law requirements and that the denial of his application was in retaliation for having criticized a successful Democratic mayoral candidate. Birnberg, the political-party chairman, claimed that Wilson’s application was rejected because he had not properly listed his residential address, in violation of the relevant election laws. Wilson brought suit alleging various causes of action, including violation of the equal protection clause of the Constitution. Birnberg moved for dismissal for failure to state a claim, which was granted. Wilson appealed and the Fifth Circuit reversed the dismissal of Wilson’s equal protection claim, holding that the facts alleged were sufficient to overcome a motion to dismiss for failure to state a claim.

- ***Cantrell v. City of Murphy*, No. 10-41138, 2012 U.S. App. LEXIS 63 (5th Cir. Jan. 4, 2012)**

Police officers were entitled to qualified immunity from a “special relationship” claim under the Fourteenth Amendment because prior case law would not have provided reasonable officers with notice that they would have an affirmative constitutional duty to provide medical care and protection to a young child when they temporarily physically separated the child from his mother.

Ave Marie Cantrell, mother of twenty-one-month-old Matthew, called 9-1-1 after discovering that her son had inadvertently hung himself on a soccer net. After the police arrived, the officers removed the mother to another room. The mother was extremely distraught, threatening to commit suicide and, based on the strangulation marks on Matthew, the officers were concerned that “foul play” could have been involved in the injuries. Once the paramedics arrived, Matthew was turned over to their care. Matthew died a few days later. Matthew’s parents brought suit alleging that the officers had an affirmative duty to provide medical care and protection to Matthew during the brief period that Matthew was in their care, and that their failure to provide such care injured Matthew. The officers moved to dismiss, asserting the defense of qualified immunity, because it was not clearly established that they had a constitutional duty under the “special relationship” claim to

provide Matthew with medical care and protection. The district court denied the motion and the officers filed an interlocutory appeal. The Fifth Circuit reversed the decision of the district court, holding that the officers were entitled to qualified immunity because prior “special relationship” claim precedents were “materially distinguishable” from the situation faced by the officers.

- ***Juarez v. Aguilar*, No. 10-40611, 2011U.S. App. LEXIS 26084 (5th Cir. Dec. 22, 2011)**

School board members were not entitled to qualified immunity on a First Amendment retaliation claim brought by an employee based on failure to renew contract, despite the absence of a formal vote by the school board members.

Juarez was an employee of the Brownsville Independent School District who reported possibly illegal activity by the District to the FBI. The Superintendent of the District did not present Juarez’s contract for renewal and, consequently, it was not renewed. Juarez brought suit against various members of the school board in their individual (and official) capacities, alleging that his contract had not been renewed in retaliation for his exercise of First Amendment rights by reporting to the FBI. The school board members moved for summary judgment, asserting that they were entitled to qualified immunity because it was not clearly established that they could violate Juarez’ rights in the absence of a formal vote. The district court rejected the school board members’ argument and they appealed. The Fifth Circuit affirmed, holding that the school board members had sufficient notice that they could not retaliate against Juarez, whether or not they retaliated via a formal vote or some informal means.

- ***Rockwell v. Brown*, 664 F.3d 985 (5th Cir. Dec. 15, 2011)**

Police officers’ use of deadly force was reasonable where suspect was attacking officers with two large knives, had previously made threats, and had given other indications of violent inclinations. Claims that the conflict was precipitated by the officers when they broke down the suspect’s bedroom door are not relevant to whether the use of deadly force was reasonable in light of the danger to the officers at the moment of the threat that resulted in the use of deadly force.

Officers were called to a residence because the residents’ mentally ill twenty-seven-year-old son had threatened his mother with harm. The son had also barricaded himself in his bedroom, was pounding on the walls, and yelling (including at the officers). After calling for reinforcements, the officers decided to break down the son’s door in order to take him into custody. Once the door was kicked in, the son raced at the officers, holding a knife in each hand. He injured two officers before being shot and killed by one of the officers. The family brought suit alleging that the officers had used excessive force. The district court granted summary judgment and, on appeal, the Fifth Circuit affirmed.

- ***Short v. West*, 662 F.3d 320 (5th Cir. Nov. 2, 2011)**

Police officers were seized for Fourth Amendment purposes when they were ordered by deputy sheriffs to go to a meeting with the County Sheriff and were not permitted to return to their jurisdiction.

Short, along with various other El Paso Police Department officers, were serving on a task force in Hudspeth County. The Sheriff of Hudspeth County, upon learning that Short and the other officers were operating in Hudspeth County, ordered his deputy sheriffs to escort the task force officers to a meeting with the Sheriff. In order to accomplish his request, the task force officers were not permitted to return to El Paso and some deputy sheriffs allegedly used somewhat threatening language. The task force officers eventually went to the meeting, but were permitted to drive in their own vehicles and retain possession of their firearms. After meeting with the Sheriff, they were released. Short brought suit alleging that Sheriff West had violated his Fourth Amendment rights to be free from unreasonable searches and seizures. Sheriff West filed a motion for summary judgment, which was denied by the district court. Sheriff West appealed and the Fifth Circuit affirmed, holding that, under the totality of the circumstances, Short was seized for Fourth Amendment purposes and that Sheriff West lacked sufficient justification for the extended detention.