Search and Seizure: No "Reasonable Suspicion" for Vehicle Stop Where Officer Did Not Confirm Automated License Plate Identification

Green v. City and County of San Francisco, No. 11-17892 (9th Cir. May 12, 2014).

A police officer who neglected to confirm the accuracy of an automated license plate identification before pulling an allegedly stolen vehicle over and publicly arresting the driver was not entitled to summary judgment on the plaintiff's section 1983 claim, according to the Ninth Circuit.

Denise Green's 1992 Lexus was stopped by the San Francisco Police Department (SFPD) when the SFPD's Automatic License Plate Reader (ALPR) mistakenly identified her car as having been stolen. After receiving the incorrect description from another officer, and without personally confirming Green's license plate, Sergeant Ja Han Kim of the SFPD made a "high-risk" stop at 11:15 pm during which Green, a 47-year old African American, was surrounded at gunpoint by multiple officers, handcuffed, forced to her knees, and detained for up to twenty minutes. She was released only after officers ran her actual plate number, verifying that the Lexus was not stolen.

Sergeant Kim knew from police radio communications that the plate number in question had been matched to a gray GMC truck, while the vehicle the ALPR photo had captured was a dark Lexus. At no point while he was following Green's vehicle did he visually confirm the entirety of her license plate number, even though nothing obscured his ability to do so. He did not confirm Green's plate number with dispatch, and admitted that if he had personally read the full plate, he would not have had the reasonable suspicion to make the stop.

Green sued the City and County of San Francisco, SFPD, and Sergeant Kim alleging Fourth Amendment violations for unreasonable search and seizure and unreasonable use of force, violation of Cal. Civ. Code § 52.1, intentional infliction of emotional distress, assault, and negligence. Defendants moved for summary judgment, arguing that Sergeant Kim merely subjected Green to an investigatory detention and not an arrest, that he had reasonable suspicion to stop Green's vehicle, and that the force used was reasonable in the context of a lawful investigatory stop.

The District Court for the Northern District of California granted Defendants' motion for summary judgment. It determined that Sergeant Kim reasonably assumed that the other officer had visually confirmed Green's plate, because the fellow officer did not expressly state otherwise. The district court concluded that Kim's belief that the plates had been matched to the ALPR hit was a "good faith, reasonable mistake" and that "no reasonable jury could find that Kim lacked reasonable suspicion to conduct an investigatory stop." As to the remaining Fourth Amendment claims, the district court decided that the tactics used by the officers were objectively reasonable in the context of a lawful investigatory stop and rejected Green's unlawful arrest and excessive force claims. The court also determined that Sergeant Kim was entitled to qualified immunity based on its finding that Green had not established a constitutional violation.

HELD: On appeal, the Ninth Circuit reversed the lower court's grant of summary judgment, finding that a rational jury could find that Defendants violated Green's Fourth Amendment rights on the grounds of wrongful seizure, false arrest and excessive force. It further found that Sergeant Kim was not entitled to qualified immunity, at least until later in the proceedings.

DISCUSSION: In assessing whether Sergeant could claim reasonable suspicion, the Circuit Court focused on ALPR procedures. It was well established by the record that an unconfirmed hit on the ALPR did not, alone, form the reasonable suspicion necessary to support an investigatory detention; addition confirmation was required. The parties disputed whose responsibility it was to perform these additional steps: Defendants stated that it is the responsibility of the officer in the camera car, while Green argued that it was reasonable to expect the officer actually making the stop (Sergeant Kim) to perform these steps. The parties cited no SFPD policy that expressly placed the responsibility with either officer.

In the absence of such a policy, it was disputable whether an officer conducting a stop could reasonably rely on a lack of qualifying information from the camera car operator as a justification for making the stop without making an independent verification. Reasonable suspicion thus remained a triable issue, not ripe for summary judgment.

Similarly, Green's detention amounted to a de facto arrest without probable cause. The facts pointed to a greater detention than a *Terry* stop. She was held at gunpoint, handcuffed, and directed to her knees. The Ninth Circuit had previously held that "under ordinary circumstances, when the police have only reasonable suspicion to make an investigatory stop, drawing weapons and using handcuffs and other restraints will violate the Fourth Amendment." (citation omitted). Factors which might justify such action included 1) where the suspect is uncooperative or takes action at the scene that raises a reasonable possibility of danger or flight; 2) where the police have information that the suspect is currently armed; 3) where the stop closely follows a violent crime; and 4) where the police have information that a crime that may involve violence is about to occur. A belief that a vehicle has been stolen did not suffice.

When viewing the facts in the light most favorable to Green, a rational jury could find that the tactics were not reasonable given the totality of the circumstances and that Green had been arrested.

Defendants also failed on the issue of excessive force. Green, a woman of 250 pounds, had been forced to her knees, handcuffed and surrounded by up to six officers with guns drawn. The applicable test for evaluating the legitimacy of these tactics was "(1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting arrest or attempting to evade arrest by flight." (citation omitted). By any standard, the Circuit Court found, these factors were not satisfied, preventing a grant of summary judgment to Defendants.

The district court had also dismissed Green's suit on the grounds that Sergeant Kim was protected by qualified immunity. The Ninth Circuit applied the standard test for qualified immunity, that is (1) whether the law governing the conduct at issue was clearly established and (2) whether the facts as alleged could support a reasonable belief that the conduct in question conformed to the established law. Act Up!/Portland v. Bagley, 988 F.2d 868, 873 (9th Cir. 1993). Both are questions of law to be determined by the court in the absence of genuine issues of material fact.

Here, the first element was satisfied as a matter of law: it was clearly established that individuals may not be subject to seizure or arrest without reasonable suspicion or probable cause. As to the second question--whether Sergeant Kim could reasonably believe that his actions were lawful, the Circuit Court saw significant issues of fact which precluded a determination as to qualified immunity at the summary judgment stage: "When viewing the facts in the light most favorable to Green, we cannot make a determination as a matter of law that Sergeant Kim 'could have reasonably believed at the time that the force actually used was lawful under the circumstances.' Instead, this question must go before a jury." (citation omitted).

http://cdn.ca9.uscourts.gov/datastore/opinions/2014/05/12/11-17892.pdf (last accessed June 3, 2014).