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TRAINING BULLETIN

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Must You Call for Medical Assistance for a Detainee? If You Don't, You May Find Yourself on a Limb

Case Law:

- The Fourth Amendment and timely medical care
- Fourth Amendment violations and qualified immunity

Rule: Police officers must seek necessary medical attention for an injured detainee or arrestee by either promptly summoning the necessary medical help or by taking the person to a hospital. Failure to do so is a Fourth Amendment constitutional violation. However, for an officer to be held civilly liable, the rule of law must be “clearly established” by prior case law, putting the officer on notice that he or she is violating the plaintiff’s constitutional rights.

Facts: On June 1, 2018, plaintiff Steven D’Braunstein was involved in a single-vehicle car crash on a freeway onramp in Costa Mesa, California, around 4:50 p.m. A California Highway Patrol Officer responded, arriving within 10 minutes. The officer found the 55-year-old D’Braunstein standing next to his crashed car. It seems that D’Braunstein had driven his car head-on into a wall with sufficient force to deploy the steering wheel airbag and crush the hood, causing other major front and side damage. D’Braunstein told the officer that he had been driving at about 20 miles per hour when “[t]he car did something,” causing him to hit the wall, but otherwise he “[d]idn’t know what happened.” The officer noticed that D’Braunstein exhibited “dry mouth, slurred speech, profuse sweating, confusion, poor balance, slow reaction time and constricted pupils.” It was also noted that plaintiff “made multiple spontaneous and incoherent statements,” and that he had “difficulty answering basic questions, including where he was going and what had caused the collision.” D’Braunstein eventually asked if he could sit down because he was having difficulty maintaining his balance. The plaintiff having no visible injuries, the officer did not call for an ambulance and instead began to evaluate him for possibly being under the influence of alcohol or drugs. D’Braunstein denied the use of either. In the absence of any indication that alcohol was involved, the officer suspected that D’Braunstein was under the influence of drugs. As D’Braunstein was unable to perform a field sobriety test as directed, the officer administered a breathalyzer test which revealed a 0.00 blood-alcohol level. The officer said D’Braunstein denied needing medical care, having any

medical issues, or needing to take any medication (all of which D’Braunstein later denied occurred). Paramedics were never called to the scene. The officer also did not request the assistance of a CHP drug recognition expert despite not being qualified as one herself.

Instead, at approximately 5:44 p.m., around 54 minutes after the crash and 44 minutes after the officer arrived on the scene, she placed D’Braunstein in handcuffs, arresting him for driving a vehicle under the influence of drugs (CVC § 23152(f)). She then transported him to the Orange County jail for booking, arriving at the jail around 6:30 p.m. The jail nurse medically evaluated the plaintiff, determining that he had high blood pressure. She therefore refused him admittance to the jail and directed the officer to take him to the hospital. Almost two hours later, the officer drove D’Braunstein to the Orange County Global Medical Center. Admitted to the hospital at approximately 8:40 p.m., almost four hours after the officer first contacted him, he was immediately diagnosed with having had a stroke.

D’Braunstein filed this lawsuit under 42 U.S.C. § 1983 in California state court (although eventually removed to federal court) against the CHP and the officer. The federal district (trial) court eventually granted summary judgment in favor of the officer and the CHP. Specifically, the district court magistrate ruled that the officer did in fact commit “a grievous mistake of fact,” because a reasonable officer encountering the collision damage and someone with D’Braunstein’s symptoms ‘should have summoned medical assistance’” instead of arresting him. However, the court determined that such a rule is not clearly established in the law. As such, the officer was entitled to qualified immunity. Summary judgment in the officer’s and CHP’s favor was granted and the lawsuit dismissed. The plaintiff appealed.

Held: The Ninth Circuit Court of Appeals, in a 2-to-1 decision, reversed the district court’s ruling, reinstating the lawsuit. There were two issues on appeal. The first was whether the officer had unconstitutionally deprived the plaintiff of medical care, arresting him instead, thus violating the Fourth Amendment. If answered in the affirmative, then the second question to be answered was whether the rule of law in such a circumstance was clearly established so that the officer should have been aware that by arresting him instead of seeking immediate medical assistance, she was violating the plaintiff’s constitutional rights.

(1) Fourth Amendment Right to Medical Care: The district (trial) court held that the officer made a “a grievous mistake of fact,” ruling that a reasonable officer encountering the collision damage she saw and the plaintiff’s symptoms “should have summoned medical assistance.” In other words, the officer should have recognized that arresting him instead of seeking medical treatment was the wrong thing to do. This is important because expert testimony in this case alleged that the delay in receiving medical treatment aggravated the plaintiff’s injuries. Specifically, “the delay prevented doctors from providing D’Braunstein intravenous tissue plasminogen activator (TPA) treatment, which would have mitigated the stroke’s effects, because this treatment must be administered within a certain number of hours after the onset of stroke symptoms.” As a result, it was alleged that plaintiff suffered greater lasting damage from the stroke than he would have if he had been diagnosed and treated earlier.

Because D’Braunstein was not properly diagnosed when first contacted, and as a result did not receive the necessary medical treatment until four hours later, plaintiff suffered permanent brain damage and other injuries from the stroke, which resulted in him being unable to care for himself. As a result, he was thereafter required to live in a long-term residential care facility. If proven, then the Fourth Amendment was violated. Per the court: “The Constitution has been

interpreted to require state actors to provide adequate medical care in certain circumstances when the government is confining a person or otherwise restricting his liberty.” A number of constitutional amendments cover these circumstances. If the situation involves a person who has already been convicted of a criminal offense and is imprisoned, then “the right (to medical care) is sourced to the Eighth Amendment.” It is the Fourteenth Amendment that is violated, however, when it is a pretrial detainee who has yet to be convicted. “[F]or persons who are detained by police in the course of an arrest, (it is) the Fourth Amendment’s prohibition on the use of excessive force (that) protects against the deprivation of necessary medical care.”

Depriving the plaintiff in this case of timely medical care, therefore, is a Fourth Amendment issue. The rule is simple enough: “(P)olice officers must ‘seek the necessary medical attention for a detainee when he or she has been injured while being apprehended by either promptly summoning the necessary medical help or by taking the injured detainee to a hospital.’” (*Id.*, at p. 1099; quoting *Maddox v. City of Los Angeles* (9th Cir. 1986) 792 F.2nd 1408, 1415.) In this case, the court held that viewing the circumstances objectively, the officer should have sought medical assistance in evaluating the plaintiff’s condition, but “for reasons that are difficult to understand,” she failed to do so.

The civil defendants in this case further maintained that D’Braunstein’s delay in receiving medical care did not affect his ability to receive TPA treatment because he had begun experiencing stroke symptoms the night before, arguing that the TPA treatment would have been unavailable to him anyway. The court glossed over this issue, inferring that this is a factual dispute for a civil jury to consider. As a result, summary judgment in the civil defendant’s favor was held to be inappropriate in this case, the court holding “that a reasonable jury could find that (the officer’s) failure to summon prompt medical treatment for D’Braunstein was objectively unreasonable, and that the officer acted with reckless disregard for D’Braunstein’s safety and well-being.”

(2) A Clearly Established Violation: The first question being answered in the affirmative, the court moved onto the second. Despite the officer’s failure to immediately seek a medical evaluation for D’Braunstein, she cannot be held civilly responsible for this Fourth Amendment violation unless she had prior notice that she had a constitutional duty to seek such aid. As a result, the court was required to “consider whether the constitutional violation under these circumstances was clearly established.”

As noted by the court: “A right is ‘clearly established’ when it is “sufficiently clear ‘that every reasonable official would have understood that what he (or she) is doing violates that right.’” In other words, ‘existing precedent must have placed the statutory or constitutional question beyond debate.’ (*Reichle v. Howards* (2012) 566 U.S. 658, 664; quoting *Ashcroft v. al-Kidd* (2011) 563 U.S. 731, 741.) Absent meeting these standards, an officer is entitled to qualified immunity from civil liability despite having violated the Constitution. The purpose behind these rules is to prevent the punishing of a law enforcement officer for violating some constitutional standard of which he or she was not familiar through no fault of their own. Until some court decision forewarns law enforcement in general that they might be violating the Constitution, it’s been held that it is not fair to hold them accountable.

The district (trial) court held that the officer was entitled to qualified immunity, not having prior notice that she was violating the Constitution. The Ninth Circuit disagreed. Specifically, the court held that “it is clearly established that officers must seek to provide an injured detainee or

arrestee with objectively reasonable medical care in the face of medical necessity creating a substantial and obvious risk of serious harm, including by summoning medical assistance.”

The officer (and the dissenting opinion) argued that there is no clearly established precedent that could have put the officer on notice that she had a duty to seek medical care for her arrestee. The majority of the Ninth Circuit disagreed. In support of its conclusion on this issue, the court cites its own decisions in several cases. For instance, in *Tatum v. City & County of San Francisco*, *supra*, the arrestee was suffering from cocaine intoxication that was not the officers’ fault. The court held that there was no doubt the officers still had a duty to “promptly summon the necessary medical care.” And in *Sandoval v. County of San Diego* (9th Cir. 2021) 985 F.3d 657, a Fourteenth Amendment pre-trial detainee case, the court held that nurses at a jail were not entitled to qualified immunity when they failed to summon paramedics for an inmate who was experiencing a methamphetamine overdose. Similarly, in *Russell v. Lumitap* (9th Cir. 2022) 31 F.4th 729, 739, the court held that jail medical personnel were not entitled to qualified immunity because a jury could find that they were deliberately indifferent for their inadequate treatment of an inmate experiencing an aortic rupture not caused by any official at the jail.

Other federal circuits are in accord. For instance, the federal Seventh Circuit in *Otis v. Demarasse* (7th Cir. (2018) 886 F.3rd 639, ruled that the plaintiff stated a Fourth Amendment claim against an arresting officer who delayed in securing the plaintiff medical care for her uterine bleeding. The court cites even more, but you get the point.

The court further rejected the civil defendants’ argument that there are no cases reflecting the specific circumstances with which the officer here was confronted. The law is that the prior cases only have to be close enough to forewarn the defendant that what he or she is about to do is a constitutional violation. Recognizing that although an appellate court “may not ‘define clearly established law at a high level of generality, since doing so avoids the crucial question whether the official acted reasonably in the particular circumstances that he or she faced,’...(a)t the same time, for purposes of qualified immunity’s ‘clearly established’ prong, there ‘does not have to be ‘a case directly on point.’” (*District of Columbia v. Wesby* (2018) 583 U.S. 48, at p. 64.)

“(T)o be clearly established, there is no requirement that ‘the very action in question has previously been held unlawful.’” (*Anderson v. Creighton* (1987) 483 U.S. 635, at p. 640.) The Ninth Circuit’s prior cases are sufficiently close in their facts to put the officer here on notice that she should have sought an immediate medical evaluation as opposed to arresting him and taking him to jail.

(3) **Conclusion:** As the officer is not entitled to qualified immunity, the judgment of the district court was reversed, and the matter was remanded to the district court for further proceedings.