POLICE

Police: Immunity – Qualified

Hudson v. Hall,
231 F.3d 1289 (11th Cir. 2000)

Police officers are entitled to qualified-immunity protection when they coerce suspects to consent to a search of their person by stating, "If you don't want to be searched, start walking," and officers do not exceed the scope of that search by looking down the pants of suspects to search for contraband.

BACKGROUND AND PROCEDURAL HISTORY

After witnessing Hudson commit a questionable traffic violation, Officer Hall stopped the vehicle and searched the vehicle, Hudson, and the two passengers, Meadows and Gaston. Officer Hall received consent from Hudson to search the vehicle, but did not receive consent to search Hudson's or Gaston's persons. When Meadows seemed reluctant to consent to a search of his person, Officer Hall stated, "If you don't want to be searched, start walking." *Hudson*, 231 F.3d at 1292. Meadows then consented. During the search of Hudson and Meadows, Officer Hall looked down their pants for contraband.

Meadows, Hudson, and Gaston all sued Officer Hall under 42 U.S.C. Section 1983, alleging that he had violated the Fourth Amendment. The district court found that Officer Hall had probable cause to stop the vehicle because he had reason to believe a traffic violation had occurred and Hudson "freely and voluntarily consented to the search of the car." *Id*. at 1293. As a result, the district court granted Officer Hall qualified immunity at the summary-judgment stage for the initial traffic stop and the search of the car. However, he did not receive qualified immunity for the search of Hudson, Meadows, and Gaston. At the summary-judgment stage, a "reasonable officer in Officer Hall's circumstances would have" (1) known that he did not have "free and voluntary consent" to search the plaintiffs' persons; and (2) assuming there was consent, "Officer Hall clearly exceeded the scope of such consent by looking into Plaintiffs' pants." *Id*.

ANALYSIS

"Qualified immunity protects government officials performing discretionary functions . . . from liability if [the] conduct" does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* at 1294 (quoting *Lassiter v. Ala. A&M Univ. Bd. of Trustees*, 28 F.3d 1146, 1149 (11th Cir. 1994)). "Clearly established" rights are those that "dictate, that is, truly compel, the conclusion for every-like situated, reasonable government agent that what defendant is doing violates federal law in the circumstances." *Id.* at 1150.

Georgia law provides that no person shall turn a vehicle without signaling. Ga. Code Ann. § 40-6-123(a) (2001). The court found that the record was "clear" that Officer Hall stopped the vehicle after witnessing Hudson, the driver, make a turn from a gas station onto a boulevard without using a turn signal. *Hudson*, 231 F.3d at 1295. Therefore, Officer Hall had probable cause to stop the vehicle. As for searching the vehicle, the court considered the totality of the circumstances to determine whether the search was voluntary. *U.S. v. Tovar-Rico*, 61 F.3d 1529, 1535 (11th Cir. 1995). One circumstance the court noted was that Officer Hall did not threaten force or violence, and was not verbally abusive. *Hudson*, 231 F.3d at 1296. Furthermore, the court found that Hudson voluntarily consented to a search of the vehicle. As a result, Officer Hall was entitled to qualified immunity for searching the vehicle.

After affirming the district court's grant of qualified immunity to Officer Hall for the vehicle stop and search, the court addressed the more delicate issue of Officer Hall's search of Meadows, Hudson, and Gaston. At the summary-judgment stage, the court found that, because Hudson and Gaston testified that Officer Hall did not request or receive permission from them to search their person, their testimony "must" be accepted. Consequently, because of the disputed issue of material fact, Officer Hall was not entitled to qualified immunity at the summary-judgment stage for searching Hudson and Gaston.

As for Meadows, the court held that the district court erred in denying Officer Hall qualified immunity for searching Meadows. The court began its analysis by examining Officer Hall's possibly coercive statement, "If you don't want to be searched, start walking." *Id.* at 1292. After assuming that Officer Hall's statement was coercive, the court nevertheless found that "the impropriety of Officer Hall's statement [was] not plain." *Id.*

at 1297. The court noted that police officers have the authority to control situations by directing and moving the location of people. *Id*. Therefore, a police officer may properly direct an individual who refuses to be searched "to walk a reasonable distance away from the officer." *Hudson*, 231 F.3d at 1297. Additionally, the court did not find any cases that dealt with a similar statement in similar circumstances, and therefore, a reasonable police officer might not have known that the passenger's consent was involuntary. Hence, Officer Hall was entitled to qualified immunity for his search of Meadows. The court also disagreed with the district court's second explanation that Officer Hall was not entitled to qualified immunity for looking down Hudson's and Meadows's pants because, had there been consent, Officer Hall would not have "clearly" exceeded the scope of the consent.

SCOPE OF SEARCH

"In a consent search, the scope of the consent given governs the scope of the search that may be conducted." *Id*. at 1298 (quoting *U.S. v. Hidalgo*, 7 F.3d 1566, 1570 (11th Cir. 1993)). Assuming that the plaintiffs consented to the search of their persons without expressing specific limits, the court held that "Officer Hall did not exceed the scope of the consent just by looking into Hudson's and Meadows' pants." *Id*. Additionally, it is common for drug dealers and couriers to hide drugs down their pants, and this search involved a "brief and discreet" look by a same-sex officer. *Id*. Moreover, Officer Hall did not exceed the scope of the search by looking down Hudson's pants either, "if Hudson, in fact consented." *Id*.

RESEARCH REFERENCES

- Laurence H. Tribe, *American Constitutional Law* vol. 1, 1302 (3d ed., Found. Press 2000).
- Christopher Lyle McIlwain, *The Qualified Immunity Defense in the Eleventh Circuit and Its Application to Excessive Force Claims*, 49 Ala. L. Rev. 941 (1998).
- Alicia Trinley, Student Author, *Recent Development*, 28 Stetson L. Rev. 763 (1999) (discussing *Jones v. City of Dothan*, 121 F.3d 1456 (11th Cir. 1997)).

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