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By **Daigle Law Group**

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Background

In *Hemry v. Ross*, the Tenth Circuit Court of Appeals recently addressed the issues of false arrest and excessive force during an investigative stop when Yellowstone National Park Rangers mistook the identity of a family, believing that they were a wanted fugitive tied to the murders of three women.¹ While the district court denied qualified immunity to the rangers, the Tenth Circuit Court of Appeals reversed the decision, finding that the use of firearms to detain subject of Terry stop was reasonable and did not escalate detention into arrest where officers reasonably suspected they were confronting a fugitive triple-murderer.

Summary

This case arose when a Yellowstone National Park worker mistakenly identified Brett Hemry and his family as the wanted fugitive, Michael Bullinger. Bullinger was sought for allegedly murdering three women in Idaho and had disappeared just three weeks earlier. After receiving the tip from the employee, park rangers located the car that matched the provided description of the make and license plate. The rangers followed the white Toyota marked with a Missouri plate as it carried the Hemry family; Brett Hemry, his wife, and their seven-year-old daughter, out of the park. After traveling for approximately sixteen miles, Mr. Hemry noticed that the Yellowstone rangers were following their vehicle, causing him to pull over to a nearby campground. The rangers detained the family at gunpoint until local law enforcement arrived. After separating the husband and wife in different vehicles, the officers verified Hemry's identification and released the family.

Subsequently, the Hemrys filed a lawsuit against the rangers under 42 U.S.C. § 1983, accusing them of false arrest and excessive force in violation of their Fourth Amendment rights.

The district court sided with the Hemry's, denying the rangers qualified immunity for Mrs. Hemry's false arrest claim and for Mr. And Mrs. Hemry's excessive force claims. The park rangers appealed the district court's decision.

Upon hearing the case, the Tenth Circuit considered whether the law clearly established that the rangers acted with excessive force as to both Hemry's, and whether these actions violated the Fourth

Amendment.

Analysis & Implications

The Tenth Circuit reversed the district court's denial of qualified immunity to the officers. The court held that the law did not clearly establish that the investigative stop at issue amounted to an arrest of Mrs. Hemry without probable cause. Moreover, the Hemrys failed to show that the law clearly established that the rangers' use of force against either of them was excessive thus the officers are entitled to qualified immunity.

The court's analysis of Mrs. Hemry's false arrest claim began by examining the argument that the rangers' detention escalated to an arrest without probable cause. To distinguish between an arrest and a Terry stop, the court considered the rangers' use of force and the duration of the detention. The critical inquiry focused on the reasonableness of the Rangers' actions of holding the Hemrys at gunpoint based on the information available to the officers during the encounter. The court determined that the rangers had reasonable suspicion to stop Mrs. Hemry due to the park employee's report that the driver was a fugitive wanted for triple murders, which implied that Mrs. Hemry could be a collaborator or hostage. In its reasoning, the court cited two cases that found similar forceful measures to be reasonable when a potential danger existed, and when officer safety was a concern.²

The court distinguished this case from *Maresca v. Bernalillo County*, where officers used deadly force against a family wrongly suspected of car theft without having any evidence that indicated they were armed.³ Here, the rangers had valid reasons to anticipate the possible dangers associated with encountering a fugitive triple-murderer and potentially an accomplice or hostage. Furthermore, the rangers could not be certain that the danger had subsided when the Hemry car stopped.

In considering Mrs. Hemry contention that the 50-minute detention escalated the stop into an arrest without probable cause, the court noted that the reasonableness of the length of detention is assessed by considering both the purposes served by the stop and the time reasonably needed to effectuate those purposes. In this case, the 50-minute detention was deemed reasonable and did not escalate the situation to an arrest requiring probable cause, as the rangers spent most of the time waiting for backup under potentially dangerous circumstances.

Turning to the Hemrys' excessive force claims, the court evaluated whether the law clearly established that the rangers used excessive force towards both Mr. and Mrs. Hemry. In its reasoning, the court noted the rangers' response to Mrs. Hemry was based on their belief that Mr. Hemry was a wanted fugitive. As such, making a distinction between the spouses as to how much force was reasonable is unnecessary.

The Tenth Circuit found that because the Hemrys could not prove that every reasonable official would have understood that aiming guns at both of them constituted excessive force, the officers were granted qualified immunity. As such, the Tenth Circuit reversed the district court's decision.

Conclusion

Henry v. Ross highlights the importance for officers to consider all relevant circumstances, context and potential dangers when assessing the reasonableness of force to use and the duration of a detention. The court emphasized that forceful measures and longer detentions can be justified when potential danger and officer safety are concerns. This case serves as a reminder for officers to carefully consider the situation and any potential dangers when making decisions to ensure their actions align with the law.

Henry v. Ross, 62 F.4th 1248 (10th Cir. 2023).

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