

February 17, 2000

LEGAL BULLETIN NO. 00-2

SUBJECT: Investigation Required Prior to Making An Arrest

On March 29, 1999, the United States Court of Appeals for the Eighth Circuit handed down an opinion dealing with requirements to conduct an investigation when making an arrest.¹ To understand the ruling of the Court it is necessary to understand the facts of the case, which are as follows.

On May 4, 1996, Ezekial James McBeth entered the Metro Boutique in Sioux Falls, South Dakota. The Boutique was owned by Karla Kaye Kuehl. While in the store, McBeth, who is an African-American, believed that Kuehl was following him and watching him too closely because of his race. McBeth approached Kuehl, pushed her roughly, stated he was not a thief, and called Kuehl a "prejudice bitch" and a "mother fucker." McBeth's behavior and size frightened Kuehl; when she began to retreat from the encounter, McBeth followed her. Kuehl asked McBeth to leave the store but he refused. She then tried to reach a telephone in order to call police, but McBeth blocked her way. McBeth remained three (3) to four (4) inches from Kuehl and Kuehl tried to push him out of the way. In doing so, she inadvertently struck McBeth's face with her hand. In return, McBeth struck Kuehl with a closed fist. Kuehl flew some eight (8) feet through the air, lost her glasses and earrings and suffered marked facial bruising. When Kuehl was still on the floor, Walid Lakdhar, one of her employees, stood nearby fearing that McBeth would again attack Kuehl. As McBeth approached Kuehl, Lakdhar stepped in front of him. McBeth and one of his friends threw Lakdhar against a wall then onto the floor. Another of Kuehl's employees contacted mall security. Security guards restrained McBeth, removed him to the outside of the store and called police. Officer Stephen Burtis was dispatched to the scene along with two (2) or three (3) other members of the Sioux Falls Police Department. Burtis interviewed McBeth, McBeth's brother and two (2) friends, an employee of Kuehl's named Doris Gunsolus and two (2) shoppers in the store. All of them stated that Kuehl struck McBeth on the face and Burtis observed some "very slight bruising" on his face. Gunsolus tried to retract her statement that Kuehl had slapped McBeth, but Burtis ignored this retraction and omitted it from his police report. Meanwhile, Burtis spoke to Kuehl for only about twenty seconds. Kuehl explained to Burtis that McBeth had hit her, that she had feared for her safety, and that she had pushed him out of the way so that she could reach a telephone and call the police. Despite the pronounced bruising on Kuehl's face, Burtis refused to speak further with her and he omitted Kuehl's version of events from his police report. Lakdhar, the only witness who saw the entire altercation between Kuehl and McBeth, attempted to explain to Burtis what had transpired between Kuehl and McBeth, but Burtis indicated that he was not interested in what Lakdhar had to say, he declined to interview Lakdhar and made no mention of Lakdhar's account in the police report.

¹ Kuehl v. Burtis, 173 F.3d 646 (8th Cir. 1999).

Throughout his investigation, Burtis ignored the circumstances that would have explained why Kuehl struck McBeth. Having once more told Kuehl that he would not listen to her and that he had made up his mind, Burtis arrested Kuehl for simple assault.

State prosecutors eventually reduced the charge of assault to disorderly conduct. When McBeth failed to appear at Kuehl's trial and after Gunsolus informed the prosecutor that Burtis' police report was inaccurate, the charges against Kuehl were dropped. Kuehl sued Burtis under the Federal Civil Rights law for arresting her without probable cause.

The issue considered by the Court was whether Burtis had probable cause to arrest Kuehl and therefore would be entitled to qualified immunity. The Court first held that law enforcement officers are entitled to qualified immunity if they arrest a suspect under the mistaken belief that they have probable cause to do so provided that the mistake is objectively reasonable. The Court held that probable cause exists when the totality of the circumstances demonstrates that a prudent person would believe that the arrestee has committed or was committing a crime.

In looking at the totality of the circumstances, evidence that tends to negate the possibility that a suspect has committed a crime is relevant to whether the officer has probable cause. An officer contemplating an arrest is not free to disregard plainly exculpatory evidence (evidence which tends to suggest innocence) even if substantial inculpatory evidence (evidence which tends to incriminate) suggests that probable cause exists. Law enforcement officers have a duty to conduct a reasonably thorough investigation prior to arresting a suspect at least in the absence of exigent circumstances and so long as law enforcement would not be unduly hampered if the officers wait to obtain more facts before seeking to arrest. An officer need not conduct a "mini-trial" before making an arrest but probable cause does not exist when a "minimal further investigation" would have exonerated the suspect. While the police do not need to interview alleged alibi witnesses they must reasonably interview witnesses readily available at the scene, investigate basic evidence or otherwise inquire if a crime has been committed at all before invoking the power of a warrantless arrest and detention. While officers may weight the credibility of witnesses in making a probable cause determination, they may not ignore available and undisputed facts.

The Court held in this case that Burtis was not entitled to qualified immunity and that this case should be remanded for trial.

Findings and conclusions are as follows:

1. When making an arrest, an officer must consider all reasonably available information, including information which tends to establish that the suspect did not commit the crime in question.
2. If exigent circumstances exist, an officer need not engage in any

investigatory process. Exigent circumstances exist where the officer must quell a disturbance or use force in order to bring a suspect under control. Once the situation is under control, the officer may use the available evidence, including any evidence of struggle, to make a determination as to whether an arrest should be made.

3. Officers may not seek or obtain immunity from litigation when they blatantly fail to consider all evidence and information reasonably available to them at the time of making the arrest.

For further information concerning this opinion and the requirement for conducting an investigation in connection with an arrest, please contact the Legal Office.

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