Illinois Association of Defense Trial Counsel
Springfield, Illinois | www.iadtc.org | 800-232-0169
IDC Quarterly | Volume 22, Number 3 (22.3.25)

Civil Rights Update

By: John P. Heil, Jr.
Heyl Royster Voelker & Allen

Mental Illness, Extreme Danger Creation, and the Denial of Qualified Immunity

Shortly before nightfall on May 8, 2006, a 21-year-old California college student named Christina Eilman posted a personal recognizance bond and walked out of the Chicago Police station at 51st Street and Wentworth Avenue in Chicago. Eilman had been arrested for behaving erratically and causing a disturbance in and around Midway Airport the day before. While in police custody, Eilman exhibited bizarre and disruptive behavior arguably indicative of either mental illness or methamphetamine use. Once she left the station, Eilman paused in the parking lot as if she were confused. She then appeared to bless a passing detective by making the Sign of the Cross. Officer Pauline Heard, who had already been exposed to Eilman's odd behavior within the station, silently pointed her toward 51st Street. Eilman began walking in that direction. Lacking any familiarity with the city and without her cell phone, Eilman wandered through one of the city's most dangerous neighborhoods at night while scantily dressed and while experiencing a severe manic episode caused by a diagnosed bipolar disorder. Five hours after she was released from custody, Eilman was forcibly confined to a vacant seventh floor apartment in the notorious Robert Taylor Homes housing project by Marvin Powell. Powell placed a knife to Eilman's throat and threatened to kill her if she did not complete a sex act. Moments later, Eilman fell or was thrown out of a window. She survived the seven story fall but now has the cognitive ability of a child. *Paine v. Cason*, No. 10-1487, 2012 WL 1434961, *1-2 (7th Cir. April 26, 2012).

Eilman's mother, in her capacity as Eilman's guardian, sued several members of the Chicago Police Department under 42 U.S.C. § 1983, claiming that the officers violated Eilman's constitutional rights by failing to provide her with mental health treatment. The plaintiff also singled out Officer Heard, claiming that she affirmatively placed Eilman in a position of danger by pointing her to 51st Street. The officers unsuccessfully moved for summary judgment based upon the affirmative defense of qualified immunity.

The district court, in a particularly detailed opinion, ruled as follows: that while she was in police custody, Eilman possessed a clearly established Fourteenth Amendment right to prompt medical attention for an objectively serious medical condition; that there was a genuine issue of material fact as to whether her bizarre behavior made it obvious to lay persons that she required immediate medical care; and that, since the officers released her from custody without providing her with that care, they were not entitled to qualified immunity. *Paine v. Johnson*, 689 F. Supp. 2d 1027, 1084-87 (N.D. Ill. 2010), *rev'd in part sub nom. Paine v. Cason*, No. 10-1487, 2012 WL 1434961 (7th Cir. April 26, 2012). The court further ruled that, under the circumstances, Officer Heard's act of pointing may have placed Eilman in a more dangerous situation than she otherwise would have encountered. *Paine*, 689 F. Supp. 2d at 1087.

The officers filed an interlocutory appeal to the Seventh Circuit. On April 26, 2012 the court issued its opinion. To dramatically illustrate Eilman's unfortunate odyssey from the lockup at 51st and Wentworth to an

abandoned apartment in the Robert Taylor Homes, Chief Judge Easterbrook utilized a "Google Maps"-type graphic depiction of the neighborhood that Eilman traversed. The map identifies nearby public transportation stations that Eilman could have used to ride back to the airport or to a safer neighborhood, thereby highlighting the court's belief that Eilman lacked a rational understanding of her surroundings on the night of her injury. *Paine*, 2012 WL 1434961 at *2. The Seventh Circuit tackled the following three arguments: (1) that Eilman possessed a constitutional right to medical care while she was in police custody; (2) that Eilman should have been kept in custody for a longer period to facilitate medical care; and (3) that the defendants "gratuitously put Eilman in danger by releasing her where and when they did, and in a mental state that left Eilman unable to protect herself." *Id.* at *3.

With respect to the first theory – that Eilman was denied her clearly established right to medical care while in police custody – the court noted that the defendants presented an interesting argument in response. Rather than futilely insisting that the right was not "clearly established" at the time of this incident, the defendants argued that the plaintiff was unable to demonstrate the essential element of *causation*. *Id.* In other words, even if one or more of the defendants should have seen to it that Eilman receive mental health treatment while in custody, it was not the lack of such care that injured Eilman. Eilman was released from custody, and only later did Powell – and Powell alone – cause her injuries. Although a potentially powerful argument, Judge Easterbrook dispatched it in short order. The issues of whether the defendants should have known that Eilman possessed a serious medical condition and whether the defendants' actions caused Eilman's injuries were, in the court's view, factual issues not suited for resolution via an interlocutory appeal on qualified immunity grounds. *Id.* Since such appeals are limited to legal issues only, *see Johnson v. Jones*, 515 U.S. 304, 115 S. Ct. 2151 (1995), the court was unwilling to alter the trial court's ruling on these bases. *Paine*, 2012 WL 1434961 at *3.

The plaintiff's second argument begged the question of whether there exists a clearly established right to be held in custody by the police. *Id.* at *4. The court addressed this point at length. Citing the Supreme Court's landmark ruling in *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, 109 S. Ct. 998 (1989), the court initially acknowledged "that neither a potential victim's helplessness nor the state's knowledge that failure to intervene exposes a vulnerable person to a risk of crime requires the state to offer protection." *Paine*, 2012 WL 1434961 at *4. In addition, it is well-established that "[p]ersons stopped on suspicion of intoxication don't have a 'right to be detained' until sober, lest they come to harm while drunk." *Id.* The court further rejected the defendants' causation argument by concluding that, had the officers referred Eilman for a psychiatric evaluation, she would not have ended up in the seventh floor apartment on the night of May 8, 2006. *Id.* Nevertheless, the court concluded, requiring that action here would incorrectly infer that Eilman possessed a constitutional right to extended police detention for the purpose of receiving medical care. No such right is presently recognized. *Id.* at *4-6. Creating a "right to be detained for medical care," according to the court, would put the police in an untenable position. Judge Easterbrook explained the resulting conundrum as follows:

> Evidence . . . suggests that 10% of all persons arrested in Chicago are drunk or high on drugs, and a similar portion may have some mental illness. Existing law creates a right to be released on bail (for bailable crimes) as promptly as possible, with 48 hours as the outside time before presentation to a judicial officer who can make an authoritative decision. . . . When it is possible, police who do not need to hold someone for an appearance in court must release people faster.
> * * *
> A competing "right to be detained" would put police in a damned-if-you-do, damned-if-you-don't situation. Officers aren't psychiatrists and would have trouble separating persons who really need mental-health care . . . from persons who are faking or trying to make pests of themselves. Sending even a modest fraction of arrested persons for mental-health evaluation could swamp medical facilities

> – police in Chicago make about 25,000 arrests annually, many for minor infractions (such as Eilman's) that ordinarily are followed by prompt release. If the threat of financial liability induces the police to send any significant portion of these to hospitals, the average time in custody will go up . . . and for many of those people the extra time in custody will be unwelcome and unnecessary.

Id. at *5. In light of the potential deprivation of liberty to others logically resulting from the plaintiff's argument, Judge Easterbrook rejected the plaintiff's second argument.

The tone of the opinion changes dramatically when addressing whether one or more of the defendants endangered the strangely-behaving Eilman by releasing her far from the location of her arrest and at the time they did. The court blamed the police for creating an extra risk to Eilman's well-being and not taking any action to mitigate that risk. *Id.* at *6. It faulted the officers for not warning Eilman about the neighborhood's dangers, walking her to the nearest CTA station, driving her back to the airport, putting her in contact with her mother, or even returning her cell phone to her. According to Judge Easterbrook, the police "might as well have released her into the lion's den at the Brookfield Zoo." *Id.* This was, in the eyes of the court, a clear case of unjustified danger creation by state officials, a recognized due process violation. Summarizing its opinion, the court stated that, although a "detainee does not have a clearly established constitutional right that release may be delayed pending mental health treatment, . . . it *is* clearly established that the police may not create a danger, without justification, by arresting someone in a safe place and releasing her in a hazardous one while unable to protect herself." *Id.* at *8.

Ten defendants actually participated in the *Paine* appeal. The Seventh Circuit affirmed the district court's ruling as to six of the appellants, reversed as to two, and remanded the matter for additional proceedings with respect to the remaining two. As to Pauline Heard, the officer who pointed Eilman toward 51st Street on the night of the incident, the court commented that it did not appear that she played a role in either evaluating Eilman's need for medical treatment or in making the decision to release her from custody. Merely "[p]roviding walking directions to someone . . . released on bond does not violate clearly established rights under either the failure-to-treat theory or the augmented-danger theory." *Id.* at *9. The court concluded that, unless the record contains other facts not presented to it, Heard was entitled to qualified immunity for her actions. *Id.*

Paine obviously represents an extreme case, and the court took great pains to explain that the police should not be forced to prolong detentions of arrestees for medical treatment. Nevertheless, the court vehemently reiterated that officers violate citizens' procedural due process rights when they unnecessarily expose them to danger they would not otherwise have encountered. There will hopefully be few factual scenarios like *Paine*; however, defense counsel should be familiar with this opinion because plaintiffs' attorneys will certainly use it to attempt to bolster their danger creation claims.

About the Author

John P. Heil, Jr. is an of-counsel attorney with *Heyl, Royster, Voelker & Allen*. He joined the firm in November 2007 after serving eleven years an Assistant State's Attorney in Cook County, Illinois. He received his J.D. from Chicago-Kent College of Law in 1996 and his B.S. from Bradley University in 1993. His practice includes the defense of civil rights actions, municipal liability, and general negligence matters.

About the IDC

Illinois Association of Defense Trial Counsel, PO Box 588, Rochester, IL 62563-0588, 800-232-0169, idc@iadtc.org