

Judge Allows Man Hit With Stun Gun to Proceed With Suit Over

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A MAN who was shocked by a police stun gun multiple times in the course of an involuntary hospitalization can proceed with his suit alleging false imprisonment, excessive force and municipal liability, a judge has decided.

Eastern District Judge William Kuntz II said the factual issues surrounding an April 2010 incident involving Nassau County police and Shuay'b Greenaway prohibited summary judgment for a number of claims, as well as defendant assertions of qualified immunity.

In *Greenaway v. County of Nassau*, 11-cv-2024, Kuntz said because "a reasonable fact-finder could find that Greenaway was not actively resisting arrest, the record here precludes qualified immunity for the Nassau police officers." He discarded some claims, including negligence and intentional infliction of emotional distress.

Greenaway, a married field engineer with a son, was diagnosed with bipolar disorder in 2002. When his mental health deteriorated, he would become talkative, have difficulty focusing and wander aimlessly.

The sides dispute if Greenaway had a history of violence. In 2007 and 2009, Greenaway's mother, Sharon Knight, called 911 to ask for help taking her son to the hospital. Both times, Greenaway was reluctant, but was not violent nor did he threaten violence against the Village of Hempstead police officers responding to the scene.

On April 25, 2010, Knight again called for assistance, telling the 911 operator that her son was "not dangerous." Greenaway, then a 32-year-old college student weighing about 225 pounds, had been off his medication for one day.

Both Hempstead and Nassau County police arrived at the scene. Greenaway's attorneys said Nassau County police did not ask about the man's mental health behavior and history beforehand, even though police policy required such inquiries.

Police found Greenaway painting the bathroom of a house owned by his parents, into which he was planning to move. Greenaway's attorneys said he was speaking with Hempstead officers, but not making threats, cursing or being violent.

The officers decided Greenaway needed to be hospitalized, but when he would not leave the bathroom, the officers physically removed him.

Greenaway was subsequently shocked three or four times by one or more of the Nassau officers. Nassau County said before the first stunning, Greenaway "threatened" the officers with a paint roller, took his pants off, rubbed paint on himself and taunted them.

Greenaway denied any such behavior, countering that Greenaway became covered with paint when he fell on the floor once he was stunned.

The Nassau County defendants said Greenaway subsequently struggled with the officers, tried to punch them and reached for one officer's weapon. Greenaway denied the struggle, saying he was calm at all times and only removed his clothing after feeling intense heat from the shock.

In the wake of the April 2010 incident, Greenaway sustained puncture wounds that resulted in a scar. He said he was also being treated for anxiety after the altercation.

Greenaway was never criminally charged for the April 2010 incident. A Nassau County Police Department Internal Affairs probe did not prompt any officer discipline.

Months later, Greenaway's mental health again decompensated. His mother was reluctant to call for help but ultimately did. Greenaway went peacefully with the mobile crisis outreach team connected to Nassau University Medical Center.

In 2011, Greenaway and his parents sued Nassau County, the Village of Hempstead and the individual officers, seeking \$50 million in damages. Though Kuntz ruled March 31 in the county's dismissal bid, a ruling on the village's dismissal bid is pending.

The county argued for dismissal, saying it had probable cause to confine Greenaway. New York State Mental Hygiene Law says confinement is privileged if the individual is "conducting himself ... in a manner which is likely to result in harm to [himself] or others."

Nassau County argued that Greenaway's alleged behavior was likely to hurt himself or others.

In allowing the false imprisonment claims to proceed, Kuntz said even if he accepted Nassau County's version of the events, "which is not the standard on summary judgment, there still remain genuine issues of material fact. The Nassau defendants fail to show that engaging in 'bizarre and unreasonable' behavior, including stripping naked and rubbing paint on oneself inside one's own residence, is 'likely to result in serious harm to the person or others.'"

The judge said a "reasonable fact-finder could decide," even with an accurate statement of the facts by the county, that Greenaway's behavior "did not rise to the level of being 'likely to result in serious harm.'"

Likewise, the excessive force and assault and battery claims withstood summary judgment because "a reasonable jury could conclude that the officers had not right to arrest Greenaway and that Greenaway did not pose a threat to officer safety."

The judge said it was too soon to rule on municipal liability. Greenaway noted no officer discipline or retraining happened after the incident and then-Police Commissioner Lawrence Mulvaney defended the officer conduct.

"The severity of the incident, the failure to investigate, retrain or discipline, and the then-Commissioner's approval of the incident provide sufficient indication of a failure to supervise such that summary judgment on this issue is premature," the judge said.

Greenaway and his family are represented by Frederick Brewington and Gregory Calliste Jr. of the Law Offices of Frederick K. Brewington in Hempstead.

"Mr. Greenaway and his family have suffered enormously and now will have the opportunity to make the Nassau County police respond for this wrongful action to a jury," Brewington said.

"We do not comment on pending litigation," Nassau County Attorney Carnell Foskey said in a statement.

Andrew Preston, then a deputy county attorney, appeared for the county.