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Dispatch Told Me, So It Must Be True! An Officer's Responsibility When Dispatched to an Incident



By Gene King, LEAF Coordinator

Officers are often asked after an incident occurs "How did you come in contact with the (Defendant, Plaintiff, Subject, pick one!)" Frequently the answer is "I was dispatched". It is a simple answer, but the reality of what the answer entails can be pivotal in the success of a prosecution or in the defense of litigation.

Most officers believe, "If Dispatch said it, then I can safely act upon the information." There are situations in which the information that the Dispatch System provides comes from a source that the courts have recognized as credible and reliable. These are the state and national law enforcement related computer systems, other officers, or related criminal justice officials. Problems may arise, however, when Dispatch receives a call from a person who reports a crime or suspicious situation and then relays the information to officers in the field for response.

The issue of officers' reliance on the information they have received from dispatch has been the focal point of many evidentiary hearings and much litigation of claims of Fourth Amendment violations. Audrey Forbush, LEAF Legal Advisor from Plunkett Cooney, told us that **the first contact that an officer has with an individual is**

often the most crucial in the entire encounter. Continuing, she said that the courts evaluate whether the officers acted reasonably given the information they had at the time of the encounter and the articulated facts that they knew or observed that led them to choose their course of action.

Reasonable and Articulated

Forbush emphasized that she hopes the phrases, "reasonable" and "articulated," sound familiar. She points to several LEAF Newsletters where it was reported that those phrases are the baseline for the courts to evaluate an officer's actions. (Newsletters found at mml.org/Insurance/Pool or Fund, under Risk Resources) For example, she explains that in a use of force situation, the main element in determining the justification for the level of force the officer used is the clear articulation of the facts and the reasonableness of the action taken given the totality of circumstances.

Forbush points to the LEAF Newsletter entitled, *"Yes, Cops Can Practice 'Catch and Release' With a Subject They Have Taken Into Custody"* (March 2008). This Newsletter outlines what officers need

to know when dealing with subjects from the point they make contact to their making the decision to either release or arrest. It explains what the law says officers can and cannot do depending on the subject's behavior during contacts. It also states that much of the court's evaluation of an officer's actions when arriving at the scene of a dispatched incident follow guidelines found in the U.S. Supreme Court case *Terry v. Ohio*, 392 U.S. 1, 22, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

In *Terry*, an officer observed some males watching a store, and coming and going in a manner that led the officer to believe that they were casing a place to rob. He watched as all of the men walked away in different directions. He followed one and watched as he and the others gathered for more discussion. Approaching the group, he identified himself as a police officer and began asking the men questions. Since he was concerned that the subjects were going to commit a robbery, he also searched them and found a gun on Terry. The U.S. Supreme Court ruled that the stop was justified and the search was for the protection of the officer.

The ruling said that when an officer makes a *Terry Stop* the officer must have a reasonable suspicion that the person has committed a crime, is about to commit a crime, or is committing a crime. The **reasonable suspicion has to be more than a "hunch." Its basis must be specific, well-articulated facts that, when put together with the officer's experience or other knowledge, justify an investigatory stop.** The court evaluated the officer's conduct by an objective standard: ***"Would the facts that the officer had at the moment of the seizure warrant a man of reasonable caution to believe the action was appropriate."***

The Michigan Supreme Court said in *People v. Custer*, 465 Mich. 319, 327, 630 N.W.2d 870 (2001) that a brief detention does not violate the Fourth Amendment if the officer has a **reasonably articulable** suspicion that criminal activity is afoot. In *People v. Oliver*, 464 Mich. 184, 192, 627 N.W.2d 297 (2001) the Court said when an officer makes a

determination regarding whether a reasonable suspicion exists, it "must be based on commonsense judgments and inferences about human behavior." (*Terry*) "

Each Call To Dispatch Is Like Getting Information From A Snitch!

This brings us to the issue of a dispatch call to officers in the field. When Dispatch receives a call in this era of Enhanced 911, Caller ID, Cell Phone ID and GPS, it is relatively easy to identify the location from which the call came and possibly the caller. Dispatchers receive training in gathering as many facts from the caller as they can in an attempt to evaluate the reliability of the information they receive. They need to be able to provide officers in the field with as much information as possible, so the officers can anticipate what they may encounter when arriving on the scene.

The call to Dispatch falls in the same category as a credible informant giving reliable information that law enforcement uses to establish reasonable suspicion to investigate, or probable cause to arrest or get a search warrant. The Michigan Supreme Court ruled in *People v. Tooks*, 403 Mich. 568, 577, 271 N.W.2d 503 (1978) that law enforcement should consider three factors to determine if information from a citizen-informant appears sufficiently reliable to create a reasonable suspicion for a stop:

1. the reliability of the particular informant,
2. the nature of the particular information given to the police, and
3. the reasonability of the suspicion in light of the above factors.

In addition, the Michigan courts have ruled that identified citizens, crime victims, and police officers are presumptively reliable informants. *People v. Powell*, 201 Mich.App. 516, 522-523, 506 N.W.2d 894 (1993); *People v. Goeckerman*, 126 Mich App 517, 522; 337 NW2d 557 (1983). The U.S Sixth Circuit has also concluded that law enforcement should deem a known caller as reliable as a known

informant because a known caller may be subject to criminal penalties for making a false report. *United States v. Long*, 464 F.3d 569, 573-74 (6th Cir. 2006). In *Illinois v. Gates*, 462 U.S. 213 (1983), the U.S Supreme Court said "If an unquestionably honest citizen comes forward with a report of criminal activity-which, if fabricated, would subject him to criminal liability-we have found rigorous scrutiny of the basis of his knowledge unnecessary."

What does this all mean?

Forbush said that law enforcement may consider individuals who take the initiative to call 911 to report a crime or suspicious situation and are willing to provide identification or know that some form of electronic means will identify them are reliable. She went on to say the courts opine that law enforcement, may rely on the person's information to be truthful because the individual has taken the initiative to report and understands the threat of criminal sanctions for making false reports.

Dispatch must then relay the informant's information to the officer as accurately as possible while also communicating that Dispatch has identified the informant. Upon arrival at the scene, with the informant's information, **the officer can then use observation, articulable facts, experience and knowledge to establish reasonable suspicion to investigate the incident further.**

We Have Gone Full Circle

When officers are dispatched to a scene with information that they believe to be reliable about a suspicious situation or potential crime, what do they do?

First, look around and observe activity and behavior that corroborates the informant's information and would prompt an experienced and knowledgeable officer to draw articulable conclusions that some criminal activity may be occurring.

➔ A police officer may conduct an investigatory search and seizure "so long as the officer is able to point to specific and articulable facts which give rise to a reasonable suspicion of criminal activity." *United States v. Hardnett*, 804 F.2d 353, 355-356 (6th Cir.1986) (quoting *Terry*)

Second, watch the subjects and, if there is reasonable suspicion that they are a threat, take them under control. If needed put on restraints and detain them.

➔ If the police have a reasonable suspicion that criminal activity is underway, they may detain the suspect for a reasonable time to confirm or dispel their suspicion without the stop ripening into an arrest. *United States v. Avery*, 137 F.3d 343, 349 (6th Cir. 1997).

➔ "During a *Terry* stop, officers may draw their weapons or use handcuffs so long as circumstances warrant that precaution". *Radvansky v. City of Olmsted Falls*, 395F.3d 291, 309 (6th Cir. 2005)

Third, do not become narrowly focused. Look at the overall scope of the incident. LISTEN to the information that subjects provide and evaluate its value based on the totality of the circumstances and observations of an incident.

➔ The totality of circumstances will determine whether reasonable suspicion existed for the detention. *United States v. Martin*, 289 F.3d 392, 397 (6th Cir. 2002). "[T]he totality of the circumstances approach allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person."

- ➔ "Furtive movements made in response to a police presence may also properly contribute to an officer's suspicions." *United States v. Caruthers*, 458 F.3d 459, 466 (6th Cir. 2006).
- ➔ During a Terry stop, a police officer may conduct a limited search for concealed weapons, if the officer believes that a suspect may be dangerous. *United States v. Walker*, 181 F.3d 774, 778 (6th Cir. 1999)(citing *United States v. Strahan*, 984 F.2d 155, 158 (6th Cir. 1993)). "The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." Terry, 392 U.S. at 27. The general test for the allowable scope of law enforcement activity during a Terry stop is whether "the surrounding circumstances give rise to a justifiable fear for personal safety." *United States v. Garza*, 10 F.3d 1241, 1246 (6th Cir. 1993)(quoting *United States v. Hardnett*, 804 F.2d 353, 357 (6th Cir. 1986)

Fourth, if the decision is to take custody of a person, officers must be aware of the length of an investigative detention. The U.S. Supreme Court in *United States v. Sharpe*, 470 U.S. 675; 105 S.Ct. 1568; 84 L.Ed.2d 605 (1985), held that the Fourth Amendment imposes no rigid time limitations on investigative detentions, and that, given the circumstances, the investigation was conducted in a diligent and reasonable manner. Citing *Florida v. Royer*, 460 U.S. 491; 103 S.Ct. 1319; 75 L.Ed.2d 229 (1983), the court stated, "[a]n investigative detention must be temporary and last no longer than that is necessary to effectuate the purpose of the stop." *Sharpe*, 84 L.Ed.2d at 614.

- ➔ The reasonableness of the detention is judged on two distinct criteria: (1) whether it was sufficiently limited in

time, and (2) whether the law enforcement officials used the least intrusive investigative means reasonably available. *Bennett v. City of Eastpointe*, 410 F.3d 810, 825-26 (6th Cir.2005).

- ➔ The reasonableness of the detention was reaffirmed in *Williams v. Leatherwood*, 258 Fed. App'x 817, 822 (6th Cir. 2007) in which the Court determined that a subject being held for 15 minutes was reasonable while the officer investigated a road rage incident involving a gun. Therefore, the length of time that officers hold a suspect is not as relevant as the swiftness and reasonableness of the officer's investigation to resolve his suspicions and determine to arrest or release.
- ➔ When relying on information received from another officer the courts have said: "where one officer's claim to qualified immunity from the consequences of a constitutional violation rests on his asserted good faith reliance on the report of the other officers, we consider: (1) what information was clear or should have been clear to the individual officer at the time of the incident; and (2) what information that officer was reasonably entitled to rely on in deciding how to act, based on an objective reading of the information." *Humphrey v. Mabry*, 482 F.3d 840, 847 (6th Cir.2007)

Fifth, officers must meet the Fourth Amendment requirements of probable cause or exigent circumstances should they decide to enter or search a non-public place. The courts are very specific on the limitations of Search and Seizure and warrant requirements. (See Chapter 8, *Search and Seizure*, LEAF Law Enforcement Risk Control Manual at mml.org/Insurance)

- ➔ The Fourth Amendment provides the rights to be free from unreasonable searches and seizures and excessive force. Both rights are clearly established rights that any reasonable official would know. *Graham v. Connor*, 490 U.S. 386, 392-93, 109 S.Ct. 1865, 1869-70, 104 L.Ed.2d 443 (1989)
- ➔ The Michigan Constitution, Article 1 § 11 Searches and Seizures states: The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation.
- ➔ It is clearly a violation of the Fourth Amendment for police officers acting in a law enforcement capacity to seize a person and search his home without probable cause. *McKenna v. Edgell*, 2010 WL 3220018, C.A. 6 (Mich)
- ➔ Police may search the arrestee's person to discover and remove weapons and to seize evidence to prevent its concealment or destruction, and may search the area "within the immediate control" of the person arrested, meaning the area from which he might gain possession of a weapon or destructible evidence. *Chimel v. California*, 395 U.S. 752, 762, 763 (1969).
- ➔ Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search. Police may search a vehicle incident to a recent occupant's arrest if it is reasonable to believe the vehicle contains evidence of the offense

of arrest. *Arizona v. Gant*, 552 U.S. 1230 (2008).

- ➔ The Michigan Supreme Court held that the validity of an entry for a protective search without a warrant depends on the reasonableness of the response as perceived by the case. *People v. Cartwright*, 454 Mich. 550 (1997)
- ➔ **When an officer literally has no idea whether a presumptively law-abiding citizen has violated the law, the Fourth Amendment clearly commands that government let the individual be. Indeed, if anything is clear about the Fourth Amendment, it is this: government may deprive its citizens of liberty when, and only when, it has a viable claim that an individual has committed a crime, and that claim is supported empirically by concrete and identifiable facts.** See *Minnesota v. Dickerson*, 508 U.S. 366, 376 (1993); *United States v. Reed*, No. 99-3393, 2000 WL 665398, at *2 (6th Cir. May 23, 2000).

Sixth, Forbush stresses that when officers are at a scene of an incident, they need to remember that the basis for any judgment of their conduct will be the totality of circumstances at the time they chose to take the action they did. If officers act upon information that they receive from another officer or respond to directions from another officer, and the officers should reasonably have known that the information or actions were illegal -- based on the information available to him at the time -- the courts might hold them responsible for a law or civil rights violation. According to Forbush, the "just following orders" defense no longer works. The Sixth Circuit denied qualified immunity when a junior officer claimed he was ordered by a superior officer to do a particular act. **The Court said the officer has the responsibility to decide for himself whether to violate a clearly established constitutional right.** *Kennedy v City of Cincinnati*, 595 F.3d 327, 337 (6th Cir. 2010)

Seventh, Forbush is emphatic that the Supreme Court has over and over told law enforcement officers they have to be able to articulate to the trial court the objective facts as they knew them at the time of the incident. The court will defer to the experience of law enforcement officers and their assessments of criminal modes and patterns of behavior and will give them the benefit of the doubt in the decisions they made as long as they write, in plain English, the actual behavior or activity that led to their conclusions. (*People v Oliver*, 464 Mich 184, 627 NW2d 297 (2001))

Just Good Advice

Officers should not have blinders on when responding to and investigating an incident. They should not manipulate or manufacture facts so they fit a scenario that leads the officers to an outcome they prefer. Officers must be objective and identify the facts of the incident. They must follow the law and policies of the department while using the knowledge, experience and instincts that they have honed in an attempt to reach a reasonable and practical conclusion.

Most importantly, be safe. An injured officer cannot help anyone.

LEAF continues to develop policies and resource documents designed to help Law Enforcement Executives manage their risk exposure. Do not hesitate to contact the Michigan Municipal League's, Loss Control Services at 800-482-2726, for your risk reduction needs and suggestions.

While compliance to the loss prevention techniques suggested herein may reduce the likelihood of a claim, it will not eliminate all exposure to such claims. Further, as always, our reader's are encouraged to consult with their attorneys for specific legal advice.

Updated Policies:

The LEAF committee has updated the Manual for Law Enforcement Risk Control with new language in several policies. Go to mml.org/insurance/leaf, login and click "What's New".

Social Media Policy:

LEAF is preparing a Social Media Chapter that will include a Policy and Memorandum of Law. This chapter will remain fluid due to the rapidly evolving issues of law.

The most important issue remains that the application of the policy needs to be reasonable and focused on the preservation of the integrity of the organization while preserving the rights

LAW ENFORCEMENT ACTION FORUM (LEAF) is a group of Michigan law enforcement executives convened for the purpose of assisting loss control with the development of law enforcement model policy and procedure language for the Manual of Law Enforcement Risk Reduction. Members of the LEAF Committee include chiefs, sheriffs, and public safety directors from agencies of all sizes from around the State.

The LEAF Committee meets several times yearly to exchange information and ideas relating to law enforcement issues and, specifically, to address risk reduction efforts that affect losses from employee accidents and incidents resulting from officers' participation in high-risk police activities.

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