

Handcuffing Can Be Excessive Force!

By Gene King, Law Enforcement Action Forum Coordinator



Police use handcuffs and other restraint devices when a subject needs to be restrained or controlled. Handcuffs are considered an officer safety device because it is safer to control a subject if they do not have free use of their hands and arms. Handcuffs are uncomfortable, especially when cuffed behind the back. Being handcuffed behind one's back affects a subject's ability to maneuver on their feet. It is an unnatural position for the arms to be in and, even though properly applied, the cuffs are going to apply pressure to the wrist area as they restrain the movement of a subject. Improperly applied handcuffs can cause more pain and even injury. There can be a number of physical conditions that may cause problems and preclude a subject from being handcuffed behind their back. This edition of the LEAF Newsletter will discuss two recent Sixth Circuit Court of Appeals cases that set the bar for officers' responsibility when they apply handcuffs and restraints including the consequences if they do not do so properly.

It Is Important To Know The Baseline

The Sixth Circuit Court of Appeals, as far back as 1993, in *Walton v. City of Southfield*, 995 F.2d 1331, 1342 (6th Cir.1993), ruled that excessively forceful handcuffing violated the Fourth Amendment prohibition against excessive force. Today, every officer should know that excessive force complaints involving excessively tight or forceful handcuffing will be evaluated based on the objectively reasonable standard found in *Graham v Connor*.

Audrey Forbush, Law Enforcement Action Forum's Legal Advisor from Plunkett Cooney PC commented that not long ago the Sixth Circuit Court of Appeals once again pointedly reaffirmed their position on handcuffing in *Baynes v. Cleland*, 799 F.3d 600, 613-14 (6th Cir. 2015). In *Baynes* the court held (again) that excessively forceful or unduly tight handcuffing is a constitutional violation under the Fourth Amendment and that freedom from excessively forceful or unduly tight handcuffing is a clearly established right for purposes of qualified immunity.

It Is Clearly Established

Forbush said in *Baynes* the court clearly stated, so anyone could understand and there should be no doubt, being free from unduly tight handcuffing is a clearly established right. The court specifically said;

“The extent of case law in this Circuit suffices to put a reasonable officer on notice that excessively forceful or unduly tight handcuffing is a constitutional violation under the Fourth Amendment. The cases in this Circuit place it beyond peradventure that such a right exists; thus, the law is sufficiently clear for the purpose of the clearly established prong of the qualified immunity analysis. These cases define the right that is clearly established not at a high level of generality or on the basis of a broad historical proposition, but rather, in a particularized context: excessively forceful or unduly tight handcuffing, a type of excessive force, is a type of Fourth Amendment violation, which, in turn, is a constitutional violation. This level of particularity in defining the constitutional right easily meets the standards set out by the Supreme Court, which requires that the contours of a right to be sufficiently clear under preexisting law.”

In *Baynes*, officers received a report of a vehicle traveling on a highway where the male passenger was seen repeatedly striking the female driver. The report included a good description of the vehicle including a license plate number. Officers happened to be near the highway and were able to locate and stop a vehicle that matched the description. The male subject was removed from the vehicle, handcuffed, searched and placed in the rear of the patrol vehicle. The subject did not resist and cooperated with the officers. After an investigation it was determined that the male subject would be arrested and transported to the jail which was about twenty minutes away.

During the time in the police vehicle and while being transported to the jail, the subject complained that the handcuffs were too tight and hurting his wrists. The subject said he was told by the transporting officer that the handcuffs were not too tight and if they were loosened, the subject could then remove them causing an officer safety concern. The subject also contends that he told the officer transporting him and the booking officer that he had breathing, memory and constipation problems and needed his medications to remain healthy.

At the jail, the subject contends that even though there was pain, the handcuffs were not removed until he was placed in a cell. After release from jail and having his criminal case dismissed because of failure of the victim to appear, the subject filed suit in federal court claiming the officers, jailer and the department had violated his civil rights by using excessive force during and after his arrest along with other claims related to his medical care.

The Federal District Court of the Sixth Circuit granted all the defendants summary judgment on the excessive force claim saying that there was no evidence suggesting that the officer did not follow proper handcuffing procedures when he handcuffed the plaintiff; that the plaintiff complained only once about the tightness of his handcuffs and thus “the absence of any egregious, abusive or malicious conduct supports the reasonableness of the officer’s conduct”; and once at the jail, the plaintiff was turned over to the booking officer so they had no control over him.

The plaintiff appealed to the Sixth Circuit Court of Appeals. Forbush said the court reviewed the excessive force claim by applying the objectively reasonable standard found in *Graham v Connor*. In cases where there is a claim of excessive force by way of unduly tight or excessively forceful handcuffing, the plaintiff must also offer sufficient evidence to create a genuine issue of material fact to satisfy the test established by the Sixth Circuit in *Morrison v. Bd. of Trs. of Green Twp.*, 583 F.3d 394, 399 (6th Cir.2009) for such a claim to survive a summary judgment motion:

- (1) he or she complained the handcuffs were too tight;
- (2) the officer ignored those complaints; and
- (3) the plaintiff experienced “some physical injury” resulting from the handcuffing.

The Appeals Court ruled that in *Baynes* there was sufficient evidence based on testimony from the plaintiff and the officers that complaints were made about the tightness. The officer’s comment that the cuffs were loose enough because if they were any looser the plaintiff could slide them off was cited as an example of the officer being dismissive of the plaintiff’s claims of pain and suffering. The plaintiff also testified that he could not feel his fingers because of the tightness of the handcuffs, and that he still experiences periodic numbness in his fingers. He also produced medical records indicating that shortly after his release from jail he was treated for wrist injuries and diagnosed with “bilateral radial sensory neuropathy from handcuffs.”

Forbush noted that the 6th Circuit returned to their precedent cases to make their point. Those precedents establish that the evidence in *Baynes* was sufficient for the plaintiff to survive summary judgment: “As we have consistently held, the Fourth Amendment prohibits unduly tight or excessively forceful handcuffing in the course of an arrest”. (*Morrison v. Bd. of Trs. of Green Twp* citing *Lyons v. City of Xenia*, 417 F.3d 565, 575-76 (6th Cir. 2005)).

What About Pre-Existing Injury?

By now you should have no doubt the Fourth Amendment prohibits unduly tight or excessively forceful handcuffing in the Sixth Circuit. Does this mean a subject who claims they have a pre-existing medical injury, that may cause pain or injury if handcuffed in a traditional manner, can trigger Fourth Amendment protections? Forbush opines that after *Courtright v. Battle Creek* 839 F.3d 513 (6thCir 2016), the answer is yes.

In *Courtright*, the police received a phone call that Courtright had come out of a hotel room with a gun and threatened to shoot another hotel resident’s dog. Officers responded to the scene and spoke to Courtright who denied leaving the room with a gun or threatening to shoot any animal. Additionally, Courtright told the officers that at the time of the incident he was at a friend’s home and not at the hotel. Officers arrested Courtright for felonious assault. In the course of handcuffing, Courtright alleged the officers forcefully grabbed Courtright’s arms and pulled them behind his back . Courtright maintains he had told the officers about prior rotator cuff injuries and shoulder surgeries that stopped him from placing his hands behind his back. After he was handcuffed, Courtright repeatedly complained of pain but the officers did nothing to ease the pain. After a night, Courtright was released when the prosecutor declined to issue a warrant.

Courtright sued alleging excessive force, false arrest, false imprisonment and civil rights violations among other claims. There were many issues in this case that bear discussing but for LEAF purposes, the focus will be on the handcuffing.

On the excessive force claim, Forbush said the court cited *Baynes*, which has been extensively discussed above, outlining the court’s position on excessively forceful or unduly tight handcuffing being a constitutional violation under the Fourth Amendment and that freedom from excessively forceful or unduly tight handcuffing is a clearly established right for purposes of qualified immunity.

In *Courtright*, Forbush reported, the court said, “To plead successfully a claim of excessively forceful handcuffing, the plaintiff must allege physical injury from the handcuffing.” Citing *Morrison v. Bd. of Trs. of Green Twp.*, 583 F.3d 394, 399 (6th Cir.2009) the court went on to say, “The extent of the physical injury suffered by the plaintiff need not be severe in order to sustain the excessive-force claim.” In *Morrison*,

Forbush continued, the court found that allegations of bruising, wrist marks, and attendant pain suffered by the plaintiff while she was handcuffed were sufficient to allow the plaintiff's excessive-force claim to proceed past summary judgment.

Forbush said that while the defense filed a motion to dismiss the claim based on qualified immunity, the law requires the facts of the case to be reviewed in the light most favorable to the plaintiff. Courtright in his pleadings asserted that he suffered from prior rotator-cuff injuries and shoulder surgeries, that he could not put his hands behind his back because of his medical condition, and that he suffered from pain after he was handcuffed behind his back. According to Forbush, for purposes of the motion, the court must assume as true that Courtright's testimony that he was handcuffed in a manner that aggravated his prior medical injuries, that he suffered pain from that handcuffing, and that he thus was physically injured by the handcuffing. The court also said Courtright's failure to allege that he continued to suffer injury after his handcuffs were removed did not preclude the survival of his excessive force claim.

On the excessive force claim, Forbush noted, the court ruled Courtright did suffer physical injury: he suffered pain because of the manner in which he was handcuffed and the factual allegations in the complaint state a plausible excessive force claim. She said that, as outlined in *Baynes*, the court ruled that it is a clearly established right in the Sixth Circuit to be free from excessively forceful or unduly tight handcuffing. The appeals court affirmed the district court's order denying the defense motion to dismiss the claim based on qualified immunity.

Forbush said the court was clear that the Sixth Circuit considers failure to consider reports of preexisting injuries when handcuffing and pain or injury is caused, a claim of excessive force is plausible.

Prevention Of Excessive Force

Given the ruling in *Baynes* and *Courtright*, every reasonable officer should know that the freedom from excessively forceful or unduly tight handcuffing is a clearly established Right in the Sixth Circuit.

In addition: "This court has held . . . that a police officer who fails to act to prevent the use of excessive force by another officer may still be held liable where (1) the officer observed or had reason to know that excessive force would be or was being used, and (2) the officer had both the opportunity and the means to prevent the harm from occurring." *Floyd v. City of Detroit*, 518 F.3d 398, 406 (6th Cir. 2008). The court certified "... officers cannot be held liable under this theory if they do not have a realistic opportunity to intervene and prevent harm. *Ontha v. Rutherford Cnty., Tenn.*, 222 F. App'x 498, 507 (6th Cir. 2007).

These cases become critical when officers encounter a subject who tells the officers they cannot follow commands due to injury or disability. Officers need to, while considering officer safety, use alternative tactics to take the subject under control. If an officer insists and forcibly imposes their demand, the consequences can be an excessive force claim in violation of the Fourth Amendment. With the *Baynes* and *Courtright* rulings, officers must react with flexible tactics that take into consideration the physical limitations of the subject being taken into custody. Officers assisting in these incidents need to be diligent and intercede to slow down the incident, giving time for alternative solutions to achieve a safe end.

The reasonableness of an officer's actions in these situations is going to be evaluated under a totality of the circumstances approach as outlined in *Graham*. This involves facts specific to the actions of the subject and the threat they pose or actual resistance they present. If an officer is present when excessive force is used, the "I didn't do it" defense does not work if the evaluation outlined in *Floyd* can be met. This is where an officer's report needs to paint the picture for the court to evaluate the step-by-step actions of the subject and the reasonable tactics used by the officers to overcome them.

For a full discussion of an officer's duty to intercede, see the October 2015, LEAF Newsletter titled *Officers Must Intercede, When They Can, If Other Officers Behave Badly!* in the archive where you found the current edition at: http://www.mml.org/insurance/shared/risk_resources/leaf_newsletters.html

Pay Attention If A Subject Says They Have Physical Limitations And Always Check To See If The Cuffs Are The Appropriate Tightness

Forbush commented that these cases, like the others the court highlighted, establish that it is a best practice to listen to what a suspect is saying in response to commands and not just keep yelling at them. With the aging population and public health concerns prevalent in society, it is important to pay attention to the age and physical condition of a subject when handcuffing. Other tactically sound techniques for taking a subject into custody should be considered.

If it is feasible, Forbush commented, subjects should be required to state a medical reason they cannot follow the officers instructions or be handcuffed behind their back. Officers must take the information, coupled with their observations of the subject's actions and determine a course of action. This is an example where trainers can coach officers on thinking outside the box to reach a safe outcome. Additionally, it should be a habit to double-lock handcuffs and ask the subject being restrained if the cuffs are too tight or hurting them.

It is even better, if during the custody and cuffing process, officers can record on video questions/statements about claimed physical disabilities or impairments including the subject's response. Officers can still restrain a subject behind the back but may have to link a couple of pairs of handcuffs or use alternative devices. The courts have made it clear, officers have to pay attention and be able to adjust to the need for alternative tactics or procedures. Situational awareness and sound tactics to preserve officer safety remains paramount but must be balanced with good judgment and active thinking.

If the danger of an incident requires a subject to be immediately cuffed and removed from an area of risk, it is imperative that, as soon as it is reasonable and safe, the handcuffs should be evaluated for positioning, tightness and insure they are double-locked, especially if a subject is complaining of pain, tightness or numbness. Again, Forbush recommends capturing the process on video including any resistance presented by the subject during the evaluation process or while any adjustment is made. All cuffing activity including steps taken in response to reporting of physical impairments or limitations should be documented in the officer's arrest report. Any actions taken in response to reports of pain are important to also be recorded and included in the officer's report.

Command and Trainers

Department policy language should be evaluated to ensure officers are required to promptly act if a subject complains of pain or excessively tight handcuffs and if necessary, seek medical attention. The policy should also be audited to determine if officers are given more than one option when handcuffing and that the policy is flexible enough to allow officers to use alternative solutions when faced with these types of challenges.

It is important for defensive tactics/force instructors to pay particular attention to the issues involving handcuffing. This critical task receives very little attention in training and is often overlooked as a risk area. Handcuffing is the point an officer is most vulnerable and subject control is paramount. Trainers need to give officers the tactical techniques they should consider when performing this repetitive job task. They should know and be proficient in more than one technique of restraint and other alternative methods that can be used if the common behind the back handcuffing is not an option or has too many risks. Policy and training language should be evaluated to ensure officers are not forced into a single method approach.

Forbush remarked that the U.S. Supreme Court has ruled that employees need training in areas that they can regularly be expected to perform job tasks. Handcuffing is considered a frequently reoccurring law enforcement job task. It is an industry standard expectation that law enforcement officers will take subjects into custody and restrain their free movement. Forbush said that pretty much says it all!

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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 readers are encouraged to consult with their attorneys for specific legal advice.

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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