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Three Recent Court Decisions are a Good Reminder to Focus on the Details

By Matthew Heins, Law Enforcement Action Forum Coordinator

Several recent court decisions stand as reminders of the importance of proper training and policies for your organization. Details matter! This becomes glaringly obvious when an officer's actions are reviewed and dissected in a court of law, far away from the stress and confusion of an incident on the street.

Each of the three case presentations below is followed by a set of relevant prompts to help you evaluate your policies, procedures, and training to ensure they are compliant with best practices.

A little forethought and training will not only improve the quality and efficacy of your agency, but can also improve outcomes remarkably if an event results in a lawsuit.

Case #1: Lombardo v. St. Louis

United States Supreme Court Decision
Opinion Date: June 28, 2021

On December 8, 2015, St. Louis police officers arrested Nicholas Gilbert for trespassing. He was placed in a holding cell where he attempted suicide. Three officers then got Gilbert to a kneeling position over a concrete bench and handcuffed him with his hands behind his back. Gilbert continued to struggle with officers. Six officers shackled his legs and moved him to a prone position, face down on the floor. Three officers held him down at the shoulders, biceps, and legs, while one person placed pressure on his back and torso. Gilbert continued to struggle for 15 minutes stating, "It hurts. Stop." Eventually his breathing became abnormal and he stopped moving. Officers rendered first aid and transported Gilbert to the hospital where he was pronounced dead.

Gilbert's parents sued, alleging the officers had used excessive force. The District Court granted summary judgment in favor of the officers, concluding they were entitled to qualified immunity. The U. S. Court of Appeals for the Eighth Circuit affirmed, holding that the officers did not apply unconstitutionally excessive

force against Gilbert. The United States Supreme Court vacated the decision and remanded for further analysis. Following is the pertinent information the Supreme Court decision was based on.

> *In assessing a claim of excessive force, courts ask "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them." Graham v. Connor, 490 U. S. 386, 397 (1989). The inquiry "requires careful attention to the facts and circumstances of each particular case." Those circumstances include "the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting."*
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> *Although the Eighth Circuit cited the Kingsley factors, it is unclear whether the court thought the use of a prone restraint—no matter the kind, intensity, duration, or surrounding circumstances—is per se constitutional so long as an individual appears to resist officers' efforts to subdue him. The court cited Circuit precedent for the proposition that "the use of prone restraint is not objectively unreasonable when a detainee actively resists officer directives and efforts to subdue the detainee." The court went on to describe as "insignificant" facts that may distinguish that precedent and appear potentially important under Kingsley, including that Gilbert was already handcuffed and leg shackled when officers moved him to the prone position and that officers kept him in that position for 15 minutes.*
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> *Such details could matter when deciding whether to grant summary judgment on an excessive force claim. Here, for example, record evidence (viewed in the light most favorable to Gilbert's parents) shows that officers placed pressure on Gilbert's back even though St. Louis instructs its officers that pressing down on the back of a prone subject can cause suffocation. The evidentiary record also includes well-known police guidance recommending that officers get a subject off his stomach as soon as he is handcuffed because of that risk. The guidance further indicates that the struggles of a prone suspect may be due to oxygen deficiency, rather than a desire to disobey officers' commands. Such evidence, when considered alongside the duration of the restraint and the fact that Gilbert was handcuffed and leg shackled at the time, may be pertinent to the relationship between the need for the use of force and the amount of force used, the security problem at issue, and the threat—to both Gilbert and others—reasonably perceived by the officers. Having either failed to analyze such evidence or characterized it as insignificant, the court's opinion could be read to treat Gilbert's "ongoing resistance" as controlling as a matter of law. Such a per se rule would contravene the careful, context-specific analysis required by this Court's excessive force precedent.*
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> *We express no view as to whether the officers used un-constitutionally excessive force or, if they did, whether Gilbert's right to be free of such force in these circumstances was clearly established at the time of his death. We vacate the judgment of the Eighth Circuit and remand the case to give the court the opportunity to employ an inquiry that clearly attends to the facts and circumstances in answering those questions in the first instance.*

Elements to consider in your daily operations:

1) Are officers trained to adjust their response based on the level of force presented to them? Is scenario-based training conducted?

2) Are officers trained to keep restrained subjects off their stomachs as soon as the opportunity presents itself?

3) Are officers trained in various techniques to secure a restrained subject instead of the prone position, even if the subject provides mild resistance?

4) Are officers trained to provide medical treatment immediately after any level of force is applied to the suspect? This may be as simple as monitoring the person or as complicated as treating a gunshot wound.

5) Are all use of force applications reviewed and compared to the Use of Force policy to ensure employees are following policy?

6) Is training supplied on how to best utilize camera/microphone recordings to provide a clear picture of the officer's perceptions and explain what actions they take?

7) Is training documented, including course outlines and evaluations of employee performance?

Case #2: Hughey v. Easlick

United States Court of Appeals for the Sixth Circuit
Opinion Date: June 28, 2021

Dawn Hughey was stopped for speeding. She had a warrant for her arrest and was taken into custody without incident. She expressed suicidal thoughts so the officer took her to the hospital. Hughey alleges the officer twisted her arm behind her back as he handcuffed her and did not check for tightness, that her shoulder hurt "almost immediately," and that after the officer removed the handcuffs at the hospital, a nurse observed "rings around her wrists." No part of the handcuffing is visible in the dashcam footage. Dawn Hughey sued for excessive force and deliberate indifference under 42 U.S.C. 1983. The District Court granted the officer summary judgment.

The Sixth Circuit reversed, determining that Dawn Hughey created a genuine dispute of material fact about whether the officer violated her clearly established constitutional right to be free from excessive force. Her allegations are enough to satisfy the "handcuffing test" at summary judgment. The dashcam audio does not foreclose the possibility that Hughey repeatedly complained about pain. A plethora of excessive-force handcuffing cases put the officer on notice that the way he yanked Dawn Hughey's arm, placed overly tight handcuffs, and ignored her complaints violated her right to be free from excessive force.

Following is the Sixth Circuit Court's analysis of the appeal.

> *We have also articulated a three-part test for ascertaining whether "unduly tight or excessively forceful handcuffing" constitutes excessive force. Morrison v. Bd. of Trustees of Green Twp., 583 F.3d 394, 401 (6th Cir. 2009). At the summary judgment stage, a plaintiff must create a genuine dispute of material fact that "(1) [they] complained the handcuffs were too tight; (2) the officer ignored those complaints; and (3) the plaintiff experienced 'some physical injury' resulting from the handcuffing." Conceptually, the handcuffing test is a subset of the general Fourth Amendment excessive-force framework.*
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> *We apply the three-prong handcuffing test to one specific act: a law-enforcement official's allegedly placing too-tight handcuffs on a person's wrists. If a plaintiff creates a genuine dispute of material fact that they complained that their handcuffs were too tight, the officer ignored those complaints, and the plaintiff experienced "some physical injury" from the physical contact between cuffs and wrists, summary judgment is unwarranted. If a plaintiff's sole allegation is that the cuffs around their wrists were too tight, we need apply only the handcuffing test and our analysis terminates there. But if a plaintiff alleges that excessive force otherwise occurred— even if related to the handcuffing process—we apply the general Fourth Amendment framework to all allegations underlying the excessive force claim. If the plaintiff creates a genuine dispute of material fact about whether the officer acted unreasonably, summary judgment is likewise inappropriate.*
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> *Our abundant caselaw on this subject establishes that satisfying the "injury" prong is not demanding. We held in Courtright, for instance, that allegations of "pain" due to handcuffing were enough to survive the motion-to-dismiss stage. And in Morrison, we concluded, at summary judgment, that "allegations of bruising and wrist marks create a genuine issue of material fact with regard to the injury prong."*
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> *Because lingering ring marks are of the same ilk as bruising, swelling, and numbness—each indicative of an overly tight cuff that grates on one's skin and causes pain—Hughey's allegations that the handcuffs caused her pain and marked her wrists get her over the genuine dispute-of-material-fact line. Not all marks are alike, and a factfinder—not an appellate court at the summary judgment stage—should decide whether a cuff ring resembles a bruise or a mere watchband impression.*
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> *As we pointed out in McGrew, we clearly established that handcuffing that results in wrist marks is unconstitutional no later than 2009, when we issued Morrison. At bottom, "this Court [has] directly and unequivocally determined, time and time again, that unduly tight or excessively forceful handcuffing is a clearly established violation of the Fourth Amendment."*

Elements to consider in your daily operations:

1) Are officers trained on how to apply handcuffs and check for tightness? Isrefresher training provided?

2) Are officers trained on how to respond when they receive a complaint of tight handcuffs?

3) Are officers trained to document complaints of tight handcuffs in a written report and provide details on actions taken to rectify the situation?

4) Is training supplied on how to best utilize camera/microphone recordings to provide a clear picture of the officer handcuffing a person?

5) Are officers trained to capture complaints of tight handcuffs on body mics or cameras, and what actions should be taken to address the issue? Is the person's response to the officer's actions recorded?

6) Does policy require that photographs be taken of areas of injuries or alleged injures, regardless of whether there are any visible signs?

7) Does policy require medical treatment when complaints of injury due to tight handcuffs are received?

LEAF Legal Advisor, Audrey Forbush of Plunkett Cooney, reports that most excessive force cases being litigated now include simple allegations that the handcuffs were too tight along with a multitude of other complaints. Documenting the complaint, or lack thereof, is important and helpful in defending these suits. For instance, if the cuffs are checked for tightness and double-locked, a quick note in the report is appropriate. Further, if the detainee is noncompliant after being taken into custody, noting that the cuffs couldn't be checked due to the behavior of the detainee or making a comment on the Body Worn Camera ("if you would calm down, I can check your cuffs") is extremely helpful in defending these types of cases.

Case #3: Lange v. California

United States Supreme Court Decision
Opinion Date: June 23, 2021

California Highway Patrol attempted to stop Arthur Lange for playing loud music and honking his horn. Lange drove a short distance to his house and entered his garage. The officer followed Lange into his garage and eventually put him through sobriety tests. Lange was arrested for drunk driving. Test results later revealed his blood alcohol level to be three times the legal limit.

Lange was charged with misdemeanor drunk driving. Lange moved to suppress the evidence obtained after the officer entered his garage, arguing the warrantless entry violated the Fourth Amendment. Lange's motion was denied, and the California Court of Appeals also affirmed. The United States Supreme Court vacated the decision and remanded the case back to the lower court, holding that

under the Fourth Amendment, pursuit of a fleeing misdemeanor suspect does not always, that is categorically, justify a warrantless entry into a home. Following is a summary of the US Supreme Court's decision.

> *The Court's Fourth Amendment precedents counsel in favor of a case-by-case assessment of exigency when deciding whether a suspected misdemeanant's flight justifies a warrantless home entry. The Fourth Amendment ordinarily requires that a law enforcement officer obtain a judicial warrant before entering a home without permission. But an officer may make a warrantless entry when "the exigencies of the situation," considered in a case-specific way, create "a compelling need for official action and no time to secure a warrant." The Court has found that such exigencies may exist when an officer must act to prevent imminent injury, the destruction of evidence, or a suspect's escape.*
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> *The amicus contends that a suspect's flight always supplies the exigency needed to justify a warrantless home entry and that the Court endorsed such a categorical approach in United States v. Santana.*
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> *Court disagrees. In upholding a warrantless entry made during a "hot pursuit" of a felony suspect, the Court stated that Santana's "act of retreating into her house" could "not defeat an arrest" that had "been set in motion in a public place." Even assuming that Santana treated fleeing-felon cases categorically, that statement still does not establish a flat rule permitting warrantless home entry whenever a police officer pursues a fleeing misdemeanant. Santana did not resolve the issue of misdemeanor pursuit; as the Court noted in a later case, "the law regarding warrantless entry in hot pursuit of a fleeing misdemeanant is not clearly established" one way or the other.*
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> *Misdemeanors run the gamut of seriousness, and they may be minor. States tend to apply the misdemeanor label to less violent and less dangerous crimes. The Court has held that when a minor offense (and no flight) is involved, police officers do not usually face the kind of emergency that can justify a warrantless home entry. Add a suspect's flight and the calculus changes—but not enough to justify a categorical rule. In many cases, flight creates a need for police to act swiftly. But no evidence suggests that every case of misdemeanor flight creates such a need.*
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> *The Court's Fourth Amendment precedents thus point toward assessing case by case the exigencies arising from misdemeanants' flight. When the totality of circumstances shows an emergency—a need to act before it is possible to get a warrant—the police may act without waiting. Those circumstances include the flight itself. But pursuit of a misdemeanant does not trigger a categorical rule allowing a warrantless home entry.*
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> *The common law in place at the Constitution's founding similarly does not support a categorical rule allowing warrantless home entry whenever a misdemeanant flees.*

Elements to consider in your daily operations:

1) Are officers trained on what exigent circumstances are (and aren't)? Is there scenario-based training that provides officers various circumstances necessitating decision-making?

2) Does your policy allow warrantless home entry for a misdemeanor offense? Are there limitations? If so, are they stated clearly so officers can quickly remember them?

3) Are officers trained in the ability to clearly articulate, in a written report, their rationale for a warrantless home entry?

4) Do supervisors understand when a warrantless home entry can occur?

5) Are officers obligated to confirm with a supervisor before conducting a warrantless entry?

6) Is training provided on how to best utilize camera/microphone recordings to provide a clear picture of the officer's actions?

7) Is a review process in place to review all warrantless entries?

Forbush notes that mid-line supervisors should ask a few simple questions when reviewing and approving warrantless entry incident reports: "Why were we in the house/building?" "Did we have consent?" "If not, what were the exigent circumstances?" "Why couldn't we have waited for a warrant?" If these answers are not contained in the report, more investigation is necessary.

Conclusion

An annual review of polices, a detailed training schedule with proper documentation, and diligent supervision of line level police officers are all keys to good risk management and essential to high quality law enforcement. However, because police departments and staff are very busy, many spend their days dealing with issues of the moment as they present themselves, while placing other seemingly "less urgent" tasks, such as training, on the back burner.

Yet the court cases presented above make clear the importance – the urgency – of ensuring that your policies are current and your officers carry them out properly in the field. It is imperative that you make the time to evaluate and monitor these elements of your department's operations. The adage "learn from others' mistakes" certainly applies here.

These cases are not unusual or out of the ordinary. They originate from situations that any officer could encounter, in any town, involving any law enforcement agency. Don't set your officers up for failure. Don't wait until they are sitting in a court of law, being asked to defend their actions, to realize there are deficits in your department's training, policies, or documentation. Implement any necessary improvements now to be sure your officers have the tools they need to perform their job in a safe and legal manner.

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.

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 control needs and suggestions.

Are you an MML Insurance Program Member? Are you a Law Enforcement Executive?

If so, visit the MML's online Law Enforcement Risk Control Manual to access model policies and procedures developed by the LEAF Committee.

Go to: http://www.mml-leaf.org/lerc.php

Click on the green "Member Login" box in the left-hand panel.

At the Login screen, enter your username and password.

If you don't have a username and password, click "Request Access" and complete the online form.

The 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 Law Enforcement Risk Control Manual. 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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Liability & Property Pool and Workers' Compensation Fund
1675 Green Road, Ann Arbor, MI 48105 ph - 800-653-2483
Contact: Matthew Heins, matthew.heins@meadowbrook.com
ph - 800-482-2726 ext. 8040