



Law Enforcement Action Forum Newsletter



Risk Reduction Strategies and Best Practices

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By Matt Heins, Law Enforcement Action Forum Coordinator

PERSPECTIVES ON LEADERSHIP

To Lead Your Department Forward, Question Your Assumptions

Leaders must have a clear vision for their organization from a high-level perspective – and a clear-eyed understanding of how it is actually functioning in comparison. Law enforcement leaders must examine their operations critically and ask, “Are we doing what we should be doing? Are we fulfilling our legal and ethical obligations to taxpayers and the community we serve?”

Day-to-day demands can distract focus and make it hard to carve out time for such self-evaluation. When surface appearances or general impressions seem fine, it can be tempting to prioritize other things. However, for a more accurate picture that will help you lead your department toward its goals and avoid pitfalls, you must look more closely and question your assumptions.

For instance: When was the last time you and your boss discussed their expectations for the department? Are your visions and goals in alignment? Do you understand the expected outcomes, down to the minutest detail? In what manner and how often will you communicate your progress? To whom will you report it - just your boss? Appointed or elected officials? This discussion is necessary not only at the start of your tenure, but throughout your time as Chief. If you and your boss have different assumptions and goals, conflict will follow. When you are in accord, it can provide a clear path for the organization.

Do you understand what the public expects of your department and what concerns they want police to focus on? Have you asked? How do you solicit input and keep lines of communication open? How do you

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provide information to the community? How do you know if you are fulfilling their expectations? Making assumptions or having the attitude, “we know what is best for them,” can quickly get an organization off track. It can also derail a Chief’s career.

Do you know what is going on inside the department? With policies in place and supervisors to monitor employees, you may expect the department to operate smoothly and according to plan, but reality can be quite different. This is especially true if you’ve become disconnected from the organization. As a Chief, your outreach efforts can enhance the department’s standing in the greater community. Being involved in activities outside the department can also help develop your career and expand your horizons. However, it is vital to balance work outside and inside the department. Remember – your first obligation is to the department and the community. If you are gone too much, you will lose touch with staff and operations. This is when boundaries are pushed, a slight bending of the policies begins, and attitudes may become more laissez-faire.

As Chief, you set the tone and direction. You lead the ship and determine its culture. This requires constant effort. What you say and do is essential, and people pay attention to your every word or action. If you are perceived as not committed or caring, this will permeate the organization and employees will adopt a similar attitude.

LESSONS LEARNED: Questionable Conduct of Memphis Police Officers

The death of Tyre Nichols after a January 2023 traffic stop in Memphis, TN, has brought further scrutiny to law enforcement use of force. Some of those involved have been charged criminally and some have been decertified by the state oversight agency. Their special unit has been disbanded. While many facts are still to be discovered, there are lessons to be learned from what is currently known about the incident.

Culture: As expressed by Barry Reynolds in a 2020 Police1.com article, “Policies don’t drive behavior, culture does.” Leaders must engage in an ongoing, deliberate effort to introduce and sustain an ethical culture in their agencies. Clear performance expectations should be established and employees must held accountable if they do not perform. If poor behavior or failures to comply with policy are not addressed promptly and consistently, the conduct becomes ingrained in the organization, resulting in a caustic culture.

Supervision: Supervisors must receive training on how to supervise and their legal obligation to the organization. Expectations must be that they will enforce policy, hold officers accountable, and keep leadership informed of potential problems. Supervisors must be present on the street to step in when officers’ conduct does not align with organizational standards and ethics. Continued supervisor training is a must.

Recruiting: The hiring process should include a current job description, complete background questionnaire, thorough background investigation, interview process, physical and psychological exam, and a drug screen. If a candidate falls short of your standards do not hire them. All new hires should go through a stringent field training program. Address all problems before training or the probationary period is complete.

Training: Develop an annual training curriculum for all employees. Seek input from your legal advisors and employees when developing the plan. Ensure all employees attend each training. Document all training. Address deficiencies that are observed.

RECENT COURT DECISIONS

***United States v. Loines* US Court of Appeals for the Sixth Circuit 2023**

Detectives investigating drug trafficking observed the suspect leaving a house, driving a red Nissan Ultima to sell drugs to an informant, and returning to the same house. After days of surveillance, investigators determined that the suspect lived at the house and executed a search warrant. A detective observed the Nissan, looked through its window, and allegedly observed a cigar wrapper, a piece of paper in the center console, and a small plastic bag he identified as “a bag of dope.” The suspect volunteered that the car keys belonging to the Nissan were his. The car was towed for an inventory search. Officers took a picture of the car’s center console, showing a small plastic bag underneath a cigar wrapper with a lottery ticket beside it. Officers searched the vehicle and found a firearm, two bags of suspected narcotics, and a scale. Police did not obtain a warrant to search the automobile.

The suspect was charged with drug crimes and a firearm offense. The move to suppress the evidence seized from the vehicle was unsuccessful. The Sixth Circuit reversed, stating the “bag of dope” was not in plain view, there was no probable cause to search the vehicle, and the government did not satisfy the automobile exception to the warrant requirement.

***Puskas v. Delaware County, Ohio* US Court of Appeals for the Sixth Circuit 2023**

Around 11:14 a.m. on June 6, 2018, Deanna Puskas called 911 from her home in Delaware County, Ohio, frantically claiming that her husband, Brian Puskas, was threatening her and that she feared for her life. She told the 911 dispatcher that when Puskas came home from work, he was “not normal,” was tearing up the house, and was “threatening [her] with guns and knives.” Deanna stated that Puskas had “never acted like this before” and explained that he had high blood pressure and depression and was on “new medication from the doctor” for “inflammatories.” Deanna also indicated that there were lots of guns and knives in the house and that Puskas “threatened to turn her into an ashtray.” He cut open a window screen after she locked him out, and he was tossing items across the front yard. During the call, Deanna stated, “I know what he’s going to do, he’s going to kill me” and that Puskas had “tremendous guns” in their house.

Several officers from the Delaware County Sheriff’s Office and the Sunbury Police Department responded to the incident that dispatch “described as a domestic disturbance involving firearms and knives.”

Deputy Zachary Swick was the first to arrive at 11:25 a.m. As he drove up, he observed stuff scattered across the lawn and Puskas holding a rifle. Puskas put the rifle down before Swick got out of the cruiser. Swick told Puskas multiple times to put his hands up and to get on the ground. Puskas walked toward the house instead. He stopped near a tree close to the front door, picked up a bag, and pulled out a shotgun. Swick fled for cover.

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From the safety of his vehicle, Swick reported to dispatch that Puskas had a shotgun and that there were other weapons in the yard. Puskas then dropped the shotgun.

Officer Keith Brown from the Sunbury Police Department arrived at 11:30 a.m. and, with Swick, attempted to verbally connect with Puskas, using phrases such as, “I understand you’re having a rough day, why don’t we talk about it?” Sgt. Robert Curren, arrived at 11:32 a.m. and asked dispatch to send a negotiator.

More officers arrived, including Defendants Sergeant Robert Spring and Deputy Troy Gibson. Gibson, a canine officer for the Sheriff’s Office, brought his canine partner, Cash, along. Relevant here is Delaware County Sheriff’s Office Canine Policy, which states that “[the] canine officer shall, if possible, verbally warn the suspect(s) that if they do not stop, the canine will be released.”

Gibson joined the other officers in trying to persuade Puskas to engage with them. Gibson repeatedly asked Puskas to “come to the sound of my voice” and stated, “come out to us and you won’t get hurt.” Gibson was also preparing Cash “for an apprehension,” repeatedly giving Cash the bite command.

Puskas was meandering around the yard picking various items off the ground. Gibson told Puskas “don’t pick anything up.” Puskas ignored Gibson’s commands and continued to meander and picked up a t-shirt. When told to drop the shirt, Puskas threw it toward the officers and began to back away and turned toward the house. Gibson said, “You’re gonna get bit.” Spring said, “You’re gonna get bit if you don’t.... (inaudible).” Puskas ran toward the house. Gibson released Cash.

Body camera footage establishes that Cash initially targeted the t-shirt, not Puskas. Gibson refocused Cash on Puskas and followed Cash as Cash followed Puskas. Swick and Spring followed behind Gibson and Cash. All had their guns drawn. Puskas pivoted away from the house and darted behind the tree near the front door. Gibson moved to the other side of the tree. Cash still did not bite or apprehend Puskas. Puskas then reached down and picked up a black pistol case. Puskas pulled out a silver revolver and the officers shot him. Puskas was transported to the hospital. He died there.

Deanna, as administrator of Puskas’s estate, sued Swick, Gibson, Spring, and Lt. Robert Buttler under 42 U.S.C. § 1983, alleging that they used excessive force when they (1) deployed Cash and (2) shot Puskas. Deanna alleged that Delaware County was liable under *Monell v. Department of Social Services*, for its lethal force and canine policies, and its failure to train or supervise the canine units. The court granted summary judgment to the Individual Defendants, concluding that the officers did not use excessive force in either instance. The court granted summary judgment on the *Monell* county policy claim as well.

6th Circuit Court of Appeals affirmed.

LEGAL INSIGHTS

Use of Force and Persons With Mental Illness or in Medical or Emotional Distress

Law enforcement officers are often asked to confront persons who are emotionally disturbed, have a medical emergency and/or mental illness, or present a threat but aren't directly involved in a crime. Courts have realized the typical *Graham* factors need to be modified in such instances and officers should be aware. In *Hill v Miracle*, a 2017 6th Circuit opinion, it was noted:

Where a situation does not fit within the *Graham* test because the person in question has not committed a crime, is not resisting arrest, and is not directly threatening the officer, the court should ask:

- 1) Was the person experiencing a medical emergency that rendered him incapable of making a rational decision under circumstances that posed an immediate threat of serious harm to himself or others?
- 2) Was some degree of force reasonably necessary to ameliorate the immediate threat?
- 3) Was the force used more than reasonably necessary under the circumstances (i.e., was it excessive)?

By Audrey Forbush

Plunkett Cooney



MIOSHA MOMENT

Construction Safety & Health Standard Part 9: Excavation, Trenching and Shoring

Five Important Safety Rules

- 1) Must slope, bench, shore, or use a trench box if deeper than 5'. You may need to slope at less than 5' if a hazard exists.
- 2) A Qualified Person must decide the proper slope for the trench and inspect it.
- 3) Inspections must be an ongoing process. If the excavation needs to have the proper slope or otherwise is dangerous, wait to enter until you make it safe.
- 4) Keep spoils pile at least 2' back from the trench edge.
- 5) Put a ladder in trenches deeper than 4'.

MIOSHA Consultation, Education & Training Division

The Consultation Education and Training (CET) Division offers free, statewide safety and health assistance to employers and employees. Call: 517-284-7720.

Do you have questions about
any material in this newsletter?

Do you have a suggestion for topics
to be covered in future editions?

Call or email Matt Heins at
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LEAF MEMBER SPOTLIGHT

Josh Glass
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THE LAW ENFORCEMENT ACTION FORUM (LEAF)

LEAF includes police chiefs, sheriffs, and public safety directors from law enforcement agencies of all sizes and all over Michigan.

LEAF members meet regularly to discuss relevant public policy matters and assist in developing model policies for the MML *Law Enforcement Risk Control Manual*.

The *Manual* is available free of charge to law enforcement executives of MML Liability & Property Pool and Workers' Compensation Fund member communities.

For access to the manual of model policies, complete the request form at:
<http://www.mml-leaf.org/request-access.php>
(Note: If you move to a different law enforcement agency, you must reapply.)

A service of the Michigan Municipal League
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