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Unfavorable Outcome Affects Law Enforcement

Two Recent Appellate Decisions and What to Tell Your Officers

By James Acho, Douglas Curlew and Jennifer Richards

Two recent cases from the United States Court of Appeals for the Sixth Circuit have resulted in rulings against law enforcement agencies. The first case deals with whether officers were justified in failing to obtain a warrant and whether the use of tear gas was excessive force during an all-night standoff. The second case deals with whether tight handcuffs constituted excessive force. This article summarizes the decisions and includes advice on what law enforcement should do to avoid liability in similar situations.

***Carlson v. Fewins et. al.*, ____ F.3d ____ (6th Cir. 2015) (Docket No. 13-2643)**

This case arose out of an all-night police standoff between Craig Carlson and officers of Grand Traverse County. In the weeks leading up to the incident, officers conducted "welfare checks" after Carlson's family expressed concern that he would hurt himself as a result of his depression, recent job loss, and a domestic violence charge. On the evening of November 7, 2009, Carlson called 911 to request a visit from an officer to talk. His family members were afraid Carlson would hurt himself and believed he may have wanted to provoke a shootout with police. Sixty police officers responded to Carlson's house. Many officers could see Carlson in his house loading a long gun and pointing a pistol at his own head.

"His family members were afraid Carlson would hurt himself…"

Officers saw Carlson fire a shot into the woods, but the officers agreed that he was only shooting to draw attention. Carlson's sister reported that Carlson had 2,000 rounds of ammunition.

Officers remained around the house all night, but they did not get a warrant. Officers stated they did not obtain a warrant because they did not believe it was necessary. During a discussion with a police negotiator, Carlson stated that if officers used tear gas, it would be the start of the "war" and that he would kill everybody. After some time without communication, officers fired fourteen canisters of tear gas into this home. Later, officers fired a second round of tear gas. Officers also tossed a "throw phone" through his broken window to give him a chance to communicate. After some communication between officers and Carlson, an officer positioned himself so that he could see Carlson at the window and shot and killed him. A personal representative of the Estate of Craig Carlson brought suit alleging a violation of the Fourth Amendment.

Although the District Court determined that exigent circumstances justified the failure to obtain a warrant and that the use of tear gas was objectively reasonable and not an excessive use of force, the 6th Circuit Court of Appeals reversed this decision. The Court held that a jury could find that the warrantless actions of the police in this case violated the Fourth Amendment prohibition against "unreasonable" searches and seizures. The Court reasoned that officers did not claim they were in hot pursuit of Carlson or that he might destroy important evidence and that the misdemeanor of the reckless discharge of a weapon would not establish exigent circumstances justifying a warrantless entry. The Court further reasoned that because officers had time to get granola bar snacks, they had time to seek a judicial warrant. The Court also questioned the wisdom of the officers' decision to use tear gas after Carlson's statement that tear gas would start a war and that he was going to kill everybody. Ultimately, the Court held that a jury should decide whether the warrantless searches and seizures during the standoff were reasonable.

***Baynes v. Cleland*, 799 F.3d 600 (6th Cir. 2015)**

Alan Baynes was stopped by deputies after a motorist reported seeing him striking a female driver

while he was a passenger. Deputies instructed Baynes to exit the vehicle, handcuffed him, and placed him in the back of a patrol vehicle. A deputy stated that he checked the handcuffs to make sure that they were not too tight. Soon after, a deputy transported Baynes to the county jail. It is unclear how long it took to get to the jail, but even if the deputy traveled at twenty-five miles per hour, they would have reached the jail in less than twenty minutes. Baynes claimed that he told the deputies that the handcuffs were too tight and recalled asking a deputy to loosen the cuffs. Baynes claimed that the deputies refused to loosen the cuffs saying that the cuffs were not too tight and that Baynes would be able to get out of the cuffs if they were loosened. After Baynes was released from jail, he had neuropathy from the handcuffs and was prescribed wrist guards for his injuries. Baynes filed suit claiming that the deputies violated his Fourth and Fourteenth Amendment rights through the use of excessive force by handcuffing him too tightly.

...unduly tight handcuffing is a constitutional violation under the Fourth Amendment.

The District Court found that deputies were not liable for excessive force because the deputies were entitled to qualified immunity. The District Court relied on the facts that there was no evidence that the deputy failed to follow proper handcuffing procedures and that Baynes complained only once about the tightness of the handcuffs. The 6th Circuit Court of Appeals reversed this decision and determined that Baynes established a claim for excessive force and that the deputies were not entitled to qualified immunity. This decision was two-fold. First, the Court reasoned that Baynes presented enough evidence to create an issue of fact as to whether the officers used excessive force in his handcuffing. The Court noted that in order to prove a claim for excessive force in a handcuffing case, a plaintiff must prove (1) that he or she complained the handcuffs were too tight; (2) that the officer ignored the complaints; and (3) that the plaintiff experienced some physical injury as a result. In this case, the Court found Baynes' testimony that officers refused to loosen the handcuffs after he told the deputies the handcuffs were too tight, his medical records to be sufficient evidence to prove such a claim. Second, the Court found that the deputies were not entitled to qualified immunity because Baynes established that a constitutional violation occurred, and a reasonable officer would be on notice that excessively forceful or unduly tight handcuffing is a constitutional violation under the Fourth Amendment.

What Officers Should Take Away From These Cases

- In order to avoid the warrant situation faced by the Defendants in *Carlson v. Fewins*, it is recommended that police officers err on the side of caution and seek a judicial warrant if there is time and no immediate danger to the officers or the public.
- In order to avoid the handcuffing situation in *Baynes v Cleland*, it is recommended that police officers physically verify and conduct an affirmative check to be sure that the handcuffs are not too tight. In addition, officers must make sure they address any handcuffing complaints by detainees, no matter how minor it seems to the officer. If the officer addresses the complaint and adjusts the handcuffs under *Burchett v. Kiefer*, 310 F.3d 937, 945 (6th Cir. 2002), there would be no liability for any incidental injury during handcuffing. See also *Vance v. Wade*, 546 F.3d 774, 787 (6th Cir. 2008).

CMDA has successfully represented law enforcement for five decades. If you have any questions regarding these issues or would like CMDA to present to your law enforcement agency on litigation and liability avoidance, contact Jim Acho at (734) 261-2400. Also, be sure to attend CMDA's presentation on February 4, 2016 at the Michigan Association of Chiefs of Police Winter Conference in Grand Rapids. Ethan Vinson and Karen Daley will be the importance of state and local governments retaining their police powers to control drones within their borders.

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