



ISSN 1935-0007

Cite as: 2012 (3) AELE Mo. L. J. 101
Civil Liability Law Section – March 2012

Disturbed/Suicidal Persons -- Part Two

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- This is the conclusion of a two-part article. Click [here](#) to read Part One.

❖ **After resistance ceases**

Even when conduct by the disturbed or suicidal person justifies the use of force, including deadly force, the justification for that force ends when the suspect's resistance clearly has ended and they are subdued. In [Waterman v. Batton](#), #02-1725, 294 F. Supp. 2d 709 (D. Md. 2003), the court ruled that officers were not entitled to qualified immunity in a lawsuit brought by the family of a mentally ill man they shot and killed while he was driving his vehicle towards a toll plaza. The plaintiffs claimed that the officers shot him multiple times at close range and continued firing after all officers were out of the way of his vehicle, intending to hurt or kill him.

If the plaintiffs' version of the events were to be believed, at the time of the shooting, the motorist was not steering the vehicle toward any officer and was then traveling at a slow rate of speed, accelerating only slightly by less than 4 miles per hour. At the time, therefore, he allegedly did not pose a serious threat to the safety of the officers or others,

so that it was clearly established that their use of deadly force to apprehend him would be unconstitutional.

In accord is the ruling in [*Bailey v. Kennedy*](#), #02-1761, 349 F.3d 731 (4th Cir. 2003), that the officers' alleged continued use of physical force after a man was subdued and restrained violated clearly established law and, if as plaintiff described, was excessive as used against a man who had committed no crime. Officers also lacked probable cause to restrain him for an involuntary mental evaluation solely on the basis of a neighbor's 911 call reporting that he was suicidal, without any verification through investigation.

In [*Federman v. County of Kern*](#), #01-16691, 2003 U.S. App. Lexis 7180 (Unpub. 9th Cir.), the court ruled that a sheriff and SWAT team members were not entitled to qualified immunity for the death of a man shot and killed in his home after he resisted being taken into custody for a psychiatric evaluation. If plaintiff's factual allegations were true, and decedent was in the process of surrendering when he was shot and killed, use of deadly force against him was clearly excessive. Warrantless entry into the home when the man had "not committed" any crimes and there was no immediate need to subdue him was "reckless" and an excessive use of force.

❖ **Restraining the suicidal or disturbed person**

Officers may be justified in restraining disturbed or suicidal persons in some instances for the purpose of either protecting them against self-harm or investigating whether they actually are suicidal or disturbed and in need to medical evaluation and assistance.

In [*Roberts v. Spielman*](#), #10-13820, 643 F.3d 899 (11th Cir. 2011), the court ruled that a deputy acted within his discretionary authority by briefly removing an allegedly suicidal woman from her home to speak with her and observe her to see if there were grounds for taking her into custody for evaluation. After doing so, he let her go, finding no such grounds. He was entitled to qualified immunity in her civil rights lawsuit, as his conduct did not violate the Fourth Amendment.

Officers in [*Mora v. City of Gaithersburg*](#), #06-2158, 519 F.3d 216 (4th Cir. 2008), did not violate a man's Fourth Amendment rights in handcuffing him, searching his van, luggage, and apartment, and taking him to a hospital, where he voluntarily was hospitalized for treatment. These actions occurred after they received information from a

hot line operator stating that the man had stated that he was suicidal, possessed weapons at his residence, and that he “could understand” why people would shoot others at work.

The officers spoke to a co-worker to determine that the threats should be taken seriously, and there were exigent circumstances justifying the warrantless actions taken to both determine the scope of the threat and to defuse it. Under these circumstances, seizing the man’s weapons was justified, and the continued retention of the weapons by police was not a due process violation when the man subsequently failed to follow available state law procedures to get his property returned.

Similarly, in [Simon v. Cook](#), #06-6514, 2008 U.S. App. Lexis 2381 (Unpub. 6th Cir.), *cert. denied*, 555 U.S. 945 (2008), a federal court ruled that a police officer did not act unreasonably in detaining a man and taking him to a state hospital for mental evaluation after he pointed a finger in the officer’s face during a conversation about his claim that government officials had been harassing him.

At the hospital, he was diagnosed with “psychotic disorder--not otherwise specified.” His statements indicating that he would follow police and try to “get to the bottom” of the purported attacks on him showed that there was a substantial risk that he would engage in dangerous and irrational behavior and that he was mentally ill. Nothing that the officer did was “shocking” to the conscience or violated his rights.

Protecting irrational persons against harming themselves until they can be evaluated by medical personnel does not violate their rights. In [Norris v. Engles](#), #06-3394, 494 F.3d 634 (8th Cir. 2007), the court held that an officer did not violate the rights of a woman with bipolar disorder by handcuffing her arms behind her back and using leg irons to cuff her to a grate in a cell after taking her into custody for protective reasons because she indicated that she might engage in self-mutilation.

The officer’s actions did not shock the conscience since she was only restrained after she threatened her own safety and had shown that having her hands cuffed behind her back was an inadequate form of restraint. The restraints were only applied until the woman could be taken to a medical facility.

Disturbed persons’ conduct and statements may constitute circumstances excusing such normal formalities as knocking and announcing before entering a residence pursuant to a warrant. In [Linbrugger v. Abercia](#), #02-221300, 363 F.3d 537 (5th Cir. 2004), deputies

servicing a judicial warrant for involuntary mental health confinement of a disturbed man who had threatened to kill his sister did not act unreasonably in entering his apartment without knocking and announcing their purpose.

The use of force to restrain, of course, may cause injury, often inadvertently. In [*Sallenger v. City of Springfield*](#), #08-3769, 630 F.3d 499 (7th Cir. 2010), police officers struggled with a screaming uncontrollable man suffering from bipolar disorder and schizophrenia running around his house naked. Following a violent struggle, they eventually subdued and restrained him in a “hobble”—a cord that is looped around a suspect’s lower legs and then connected to a strap that is attached to handcuffs. A few minutes after he was hobbled, he stopped breathing.

The officers removed the hobble, attempted CPR, and called for an ambulance, but he never regained consciousness, and died. A federal civil rights lawsuit by his estate claimed that officers inadequately responded to his medical needs during his arrest, and that the city failed to properly train the officers on the use of the hobble.

Affirming summary judgment for the defendants, a federal appeals court ruled that the officers began CPR and called paramedics as soon as they realized the man was not breathing, satisfying a Fourth Amendment reasonableness standard, and that the officers did not violate the man’s Fourth Amendment rights by the manner in which they used the hobble, so the city could not be held liable for failing to properly train them.

Officers cannot always prevent a person determined to kill himself from doing so. Officers have no general duty to provide protection to suicidal persons, particularly when they are not in custody.

In [*Coscia v. Town of Pembroke, MA*](#), #10-1714, 659 F.3d 37 (1st Cir. 2011), the court found that police could not be held liable for the successful suicide of a detainee who killed himself fourteen hours after they released him, despite having heard his threats at the police station, following his one-car accident, to kill himself.

The court ruled that there had been no due process violation, in the absence of “a risk of harm created or intensified by state action.” His release from police custody placed him in no worse a position than he would have been in had the officers not acted at all.

❖ Some suggestions

Officers need to be aware of and trained to react swiftly and wisely to some of the situations that they will confront when encountering suicidal or otherwise disturbed persons. There are a number of things which should be emphasized:

1. Officers must remember that they are responding to a call in which the subject has either attempted to commit suicide or has reportedly expressed an intention to commit suicide. In many cases, the subject will be armed or threaten to use a weapon as a means of committing the act of suicide. The well intentioned officer who desires to initiate a dialogue, should never do so by utilizing bad tactics. There have been actual cases in which officers, who watch too much television, have taken their gunbelts off to show that they do not intend to harm the subject, who is armed with a firearm or edged weapon. This could create a tactical incident in which other officers feel compelled to use deadly force to protect their comrade.
2. Suicidal subjects may decide against killing themselves and decide to force the officer to shoot him/her in an act of Suicide by Cop (SbC). Officers should be attentive to phrases like “kill me” or “shoot me” as they may be precursors to an act of SbC.
3. Officers need to be aware of and trained to react swiftly and wisely to some of the situations that they will confront when encountering suicidal or otherwise disturbed persons. There are a number of things which should be emphasized: Most acts of suicide have been planned for weeks or days and are not spontaneous acts. Some suicidal or disturbed persons often are may not thinking rationally, and may be deciding on a course of action based on delusions or fears that are not immediately apparent to an investigator. Attempts at communication are essential. The fact that the subject has not completed the act of suicide when the officers have arrived may present an opportunity to intervene and disrupt the act of suicide. Negotiation tactics include personalizing the conversation as person to person, not officer to subject. Officers may want to introduce themselves and ask the suicidal or disturbed person what name they prefer to be addressed by.
4. Officers responding to a report by a neighbor or family member suggesting that a person may be suicidal or disturbed should take it seriously, but conduct their own

investigation to the extent possible to confirm the information. People sometimes may file such reports for a variety of reasons, and they may be false. Most people who attempt to commit suicide express their intention to do so seven-ten days before their attempt. Voicemails, social internet sites and or e-mails to friends may be resources that can be accessed as part of your investigation. Information that the subject has recently given away personal possessions may also be indicators that the subject is planning a suicidal act.

5. It is essential to secure the scene, try to get as many other people as possible to move away, and place yourself in a location that best, under the circumstances, facilitates communication with the suicidal or disturbed persons and protects your own safety.
6. Attempt to reassure the suicidal or disturbed person that you are there to help them, and are willing to listen to their problem or grievance. Remind them that nothing has happened that puts them in the position of having no choice but to go forward on a suicidal threat. It may help to comply with requests which do not further jeopardize the safety of others, such as a request for a cigarette, food, —stop shining those bright lights in my face etc. The introduction of third parties (“Let me talk to my mother”; let me talk to my wife”) should be reviewed prior to introducing them into the conversation as they may be the “cause” of the problem. Suicidal subjects may want to blame them before committing an act of suicide in the attempt to pile more guilt on the third party. Additionally, third parties may make promises that law enforcement may not be able to keep.
7. Officers should have the objective of protecting the suicidal or disturbed person, but not at the expense of other members of the public if the suspect appears ready to threaten harm to them. The criterion for the constitutional use of force is objective reasonableness. The issue is not necessarily whether the suspect subjectively intends to injure a family member, neighbor, friend, or officer, but whether his actions objectively appear to threaten harm.

A disturbed or suicidal person may not, in some instances, be criminally responsible for such threats or actions, depending on their mental state. The justification for the use of force, however, still exists if it is reasonably necessary to protect the officer or others.

8. Officers should, to the extent possible, be equipped with and trained to use, a variety of instrumentalities of force, including non-lethal and less lethal ones. While there should be no hesitation about the use of deadly force when reasonably necessary to save lives or prevent great bodily harm, officers should have other alternatives which can be adequate in many instances, such as beanbag weapons, electronic control weapons, pepper spray, tear gas, and restraints.
 9. Officers should remember that being suicidal or disturbed does not, in itself, constitute a crime, and that, in some instances, it may not be absolutely essential to immediately take the person into custody, if there is not a clearly imminent threat of injury to a third party or to the suspect themselves.
- Note: These suggestions were reviewed and amended by Capt. Rick Wall, LAPD (Ret). In 2003 he was appointed the Manager of the LAPD's Mental Illness Project, that was tasked with identifying, developing, and implementing "best practices" for law enforcement responses to persons suffering from mental illnesses. In 2007 he testified before the Congressional Committee on Judiciary on issues related to law enforcement responses to the mentally ill.

❖ Resources

The following are some useful resources related to the subject of this article.

- AELE: [Suicide by Cop Resources webpage](#).
- [American Association of Suicidology](#).
- [American Foundation for Suicide Prevention](#).
- [National Institute of Mental Health: Suicide Statistics and Prevention](#).
- [Suicide](#). Wikipedia article.
- [Suicide](#) links at the Open Directory Project.
- [Public Protection: Disturbed/Suicidal Persons](#). Case summaries from AELE's Law Enforcement Liability Reporter.

❖ Prior Relevant Monthly Law Journal Articles

- [Civil Liability for Prisoner Suicide](#), 2007 (2) AELE Mo. L.J. 301 (Feb. 2007).
- [Public Protection: Arrestees](#), 2011 (2) AELE Mo. L. J. 101
- [Public Protection: Informants](#), 2009 (5) AELE Mo. L. J. 101.
- [Public Protection: Injured Crime and Accident Victims](#), 2009 (8) AELE Mo. L. J. 101.
- [Public Protection: Witnesses](#), 2009 (4) AELE Mo. L. J. 101.

- [Suicide and Public Safety Officers: Disciplinary, Medical and Compensation Issues](#), 2007 (5) AELE Mo. L. J. 201 (May 2007).
- [Suicide by Cop](#), 2007 (8) AELE Mo. L.J. 101 (August 2008)...

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- “[Preventing Law Enforcement Officer Suicide: A Compilation of Resources and Best Practices](#),” CD-ROM format (Mar. 2009).
- “[Duty to All–Duty to No One: Examining the Public-Duty Doctrine and Its Exception](#),” by Karen Kruger, 74 (5) The Police Chief (May 2007).
- “[Use of Force in Dealing with the Mentally Ill and Emotionally Disturbed](#),” by Jack Ryan, PATC Legal & Liability Risk Management Institute (May 2006).
- “[People with Mental Illness](#),” Guide No.40 by Gary Cordner, Center for Problem-Oriented Policing (2006).
- “[Police Response to an Ongoing Suicide Call](#),” by Bruce A. Rodgers, PhD (January 2006).
- “[Brief Reports: Assessment of Police Calls for Suicidal Behavior in a Concentrated Urban Setting](#),” by Flora I. Matheson, Ph.D., Maria I. Creatore, M.Sc., Piotr Gozdyra, M.A., Rahim Moineddin, Ph.D., Sean B. Rourke, Ph.D., and Richard H. Glazier, M.D., M.P.H., Psychiatric Services, Dec 2005; 56 (12); 1606-1609.
- “[Suicide by Cop: Defining a Devastating Dilemma](#),” by A. Pinizzotto, E. Davis, and C. Miller, 74 (2) FBI Law Enforcement Bulletin 8-20 (Feb. 2005).
- IACP Model Policy, Encounters with the Developmentally Disabled (March 2004).
- IACP Training Key 327, Detention of the Mentally Disturbed.
- IACP Training Key 488, Dealing with the Mentally Ill.
- “[Training the Police to Handle Suicide](#),” by Milton Kelly, Chief Psychologist, South Australia Police Department.

AELE Monthly Law Journal

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