

LAW ON EXCESSIVE FORCE – FAILURE TO TRAIN – WARRANTLESS ENTRY & ARREST

Judge Lisa Coates
Stow Municipal Court



42 U.S.C. Section 1983 Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

Three main amendments where these actions arise

- **Fourth Amendment** – The right of people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated...
- **Eighth Amendment** – Right prohibiting cruel and unusual punishment
- **Fourteenth Amendment** – Due process rights

EXCESSIVE FORCE

GRAHAM v. CONNOR (1989), 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443

(LEADING CASE)

Graham filed suit under 42 USC 1983 alleging excessive force during a traffic stop in violation of the his 14th Amendment rights.

FACTS: Plaintiff asked a friend to drive him to a convenience store for orange juice as he was having the onset of an insulin reaction. He hurriedly went into and out of the store as there were too many people waiting in the checkout line. An officer sees the suspicious behavior in and out of the store and makes a traffic stop on the vehicle. Plaintiff gets out of the vehicle and begins to run around the vehicle and passes out. Graham advises the officers of his medical condition and the sugar reaction, but officers suspect he is drunk. They cuff him and push him to the hood of the cruiser. Once they discovered no criminal activity occurred at the convenience store they took him home. His injuries included a broken foot, cuts to his wrists, bruised forehead, injured shoulder and ringing in his ears.

HOLDING of the US Supreme Court: The four-factor, subjective test that the lower court used was rejected. First, you must identify the specific constitutional provision under which the claim arose (in this case the 4th Amendment) and then apply that standard. The 4th Amendment standard is objective reasonableness standard. Factors to look at are the severity of the crime, threat to the safety of others and actively resisting or attempting to evade arrest by flight.

The question for the trier of fact to consider: “Is whether the officer’s actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.”

What is a reasonable officer on the scene going to do?

Plaintiff no longer has to establish that the officer’s intent was malicious or sadistic. What would a reasonable officer do? Who decides what a “reasonable officer” would do?

***HAYES v. COUNTY OF SAN DIEGO*, 736 F.3d 1223 (9th Cir. 2013)**

Decedent's minor child sued for wrongful death.

FACTS: Police dispatched to home by neighbors hearing arguing. Girlfriend stated that they were arguing about him wanting to commit suicide but there was no physical altercation. Officers did not determine that there were prior suicide attempts, whether he had a weapon or was under the influence of drugs or alcohol. They entered the home under a welfare check. They asked the decedent to raise his hands. It revealed a knife in one of his hands. He did approach them and they shot. He was never ordered to stop. He never charged them.

HOLDING: Because there was no crime and not actively resisting or fleeing, was complying and not ordered to stop, jurors could decide that deadly force was not objectively reasonable. Mere fact that the suspect has a weapon does not justify deadly force. Further, the deputies' duty to act reasonably extends to pre-shooting conduct, i.e. finding out about the suspect's prior incidents, whether under the influence, present or prior contact with a weapon.

San Francisco v. Sheehan (2015) __ U.S. __, 135 S.Ct. 1765, 192 L.Ed.2d 856

- Facts: A person in a group home threatening to kill a social worker and officers. Officers enter and find the person with a knife. They exit. They re-enter and she approaches them with the knife and they shoot.
- The 9th Circuit held – that the ADA applied and no qualified immunity. The US Supreme Court overturned and found qualified immunity as there was a threat. The court did not address the ADA accommodation.

***ESCOBEDO v. MARTIN*, 702 F.3d 388 (7th Cir. 2012)**

(GOOD EXAMPLE)

Decedent's estate filed suit for excessive force, failure to train, warrantless entry, due process claim and wrongful death. Most of the claims were dismissed after summary judgment with the exception of excessive force for using tear gas and flash bangs and supervisor liability. The lower court dismissed further defendants during and after the trial and the jury found for all remaining defendants.

FACTS: Decedent became suicidal and ingested cocaine. Called his sister then police to tell them that he was going to kill himself. Officers arrived on scene and based on what he told them they decided to bring in the Crisis Response Team to negotiate with the decedent. The response team tried to negotiate with the decedent to put down the gun and come out. This went on for hours. As time went on the decedent became more agitated and a decision was made to enter the apartment. Well prior to this decision, the tactical team devised a plan, began evacuation procedures and decided when this should occur due to his position on the seventh floor of a building near a daycare, hospital and heavy morning traffic. They gave him several opportunities to come out and he never did. They entered with tear gas and a flashbang. He was in a closed bedroom which was barricaded. They rammed the door, detonated another flashbang near his person and entered the room. He was found in a closet. The officer yelled he had the gun at his head. The officer ordered him to drop the gun and instead the decedent pointed it at the officer. The officer shot.

HOLDING of the Seventh Circuit Court of Appeals: Upheld the jury verdict and district court finding that the tactical response was reasonable in using tear gas and flashbangs and the plaintiff failed to show that reasonable officers would have acted differently under the circumstances. The plaintiff argued that decedent did not present an actual danger and had even said he did not want to harm anyone. But based on his weapon, location in a tall building and the surrounding area the police thought there was a potential threat. Therefore, after considering the danger the use of tear gas and flashbangs was reasonable.

In this case, the facts were critical to the outcome in that they established a threat, they started with less intrusive means i.e. negotiation , weighed options to tactically enter the apartment and why they chose those options.

ALI v. LOUISVILLE, 395 F.Supp.2d 527 (W.D. Kentucky 2005)

Decedent's estate filed suit as result of gunshot wounds inflicted on his brother by police.

FACTS: Homeless, mentally ill man living out of his vehicle. Police called because he is standing in the middle of street pretending to shoot cars. Upon police arrival, the decedent came at an officer with his cane. The officer went to his cruiser for his shotgun while decedent went back to his vehicle. Officers barricade the vehicle in, while ordering him out of the car. Facts are conflicting but they approach car and break a window. Not sure if pepper spray and/or pepper balls are deployed before or after an officer is again struck with a cane. Ultimately, bean bag rounds are fired at or around the same time a knife is brandished. Then there is observation of a gun which ultimately ends in use of deadly force. Gun ended up being a BB gun. Expert testified that they put themselves in danger by being near the vehicle and not behind cover.

HOLDING of US District Court for Western District of Kentucky: In weighing the reasonableness, look at particular facts and circumstances to include the Graham factors. Another factor is whether the person is mentally ill. "The officers' training and expert testimony demonstrates that persons with mental illness should be handled in a calm manner. When officers do not handle them in this manner and use any force, violence between the officers and the person with mental illness will escalate." The court analyzed the case in segments. The court ultimately held that as to deadly force the case was dismissed due to the actions of the decedent in getting and pointing the BB gun. But as to the non-deadly force, there was still a factual issue as to whether the amount of force based on the circumstances was reasonable.

You may ultimately have to make a decision to use force and each action you take will be considered against the reasonableness standard.

***GRIFFITH v. COBURN, et al.*, 473 F.3d 650 (6th Cir. 2007)**

1983 claim for excessive force for use of a “choke hold” during arrest and a claim of inadequate training against the department.

FACTS: Mother went to police to see about having her son hospitalized as he was acting strange. She was told he could not be involuntarily committed if he didn't seem to be a danger to himself or others. But he had a warrant so they offered to arrest him. The Plaintiff agreed and let officers into the home to get her son. When they confronted him, he passively ignored them and their questions. A struggle ensued. Stories differ as to how the situation progressed as the mother claimed the officer started the physical confrontation while the officers state the deceased “rushed” them. While the officers acknowledged a struggle, there was no mention of a neck restraint noted in the officers' reports. At the end, the son was handcuffed and face down on the ground. He was visibly having problems, but the officers stated he was just faking. They finally turned him over and slapped him in his face to get him to respond, which he did not. They initiated CPR without success and he was pronounced dead at the hospital. Cause of death was asphyxia associated with physical restraint due to an improper neck restraint. Later, during suit, one of the two officers claimed the deceased was going for his gun when he used the vascular neck restraint on him for two to three seconds in order to gain control. Benton Twp. had no written policy on the use of neck restraints. Both officers had received training at the academy and certification in “Pressure Point Control Tactics” that included neck restraints. It was taught that this was to be used only when lower forms of restraint would not be successful and designed to control high levels of resistance and was considered at the level of batons and tasers on the use of force continuum.

HOLDING of the Sixth Circuit Court of Appeals: Court found that based on the evidence of where the neck restraint was on the use of force continuum, the undisputed fact the deceased never had the gun, let alone threatened anyone with it and the officers were aware of the mental/emotional issue going on at the time, that there were significant disputes of material fact as to whether the choke hold was excessive force. It was remanded back to the trial court for further proceedings.

Follow your use of force continuum and use the least intrusive means reasonably available to effectuate your seizure especially when it involves a person with mental health issues.

CAIE v. WEST BLOOMFIELD TOWNSHIP, et al., 485 Fed.Appx. 92 (6th Cir. 2012)

USC 1983 action for excessive force for use of taser while attempting to secure plaintiff to transport him to a hospital for a mental health evaluation.

FACTS: Officers responded to a welfare check on the 19 year old plaintiff who was reportedly depressed, intoxicated and suicidal. He had attempted suicide several times in the past and was under a psychiatrist's care. That night, he had consumed large quantity of alcohol and snorted Paxil. He called his brother and told him he intended to drown himself in the middle of a lake. Family drove to the home and unsuccessfully tried to talk him down and take him to the hospital. They finally got him settled, but he escaped the residence and then they called the police. Police found plaintiff in the lake, fifteen feet from shore and chest deep in the water. He refused to leave and told the officers he wanted to die and for them to shoot him. He also talked about fighting the officers so they would have to shoot him. Plaintiff finally complied and came to shore but continued making the same type of comments. He would not agree to be voluntarily transported to the hospital. When he turned to run, they tackled him to the ground but he continued to resist. He was then tased once in drive stun mode in order to apply the handcuffs.

HOLDING of the Sixth Circuit Court of Appeals: Sixth Circuit has already determined that the use of a stun gun (taser) on a non-resistant person **IS unreasonable**. Trial court found that there was enough resistance to justify the use of some force. Plaintiff argued the force was not reasonable because they were not arresting him and, at the time the taser was used, he was no longer a threat to the officers. The Sixth Circuit found the use of force justified in this case as the plaintiff was under the influence, and his self-proclaimed desire to provoke the officers into using deadly force would lead a reasonable officer to believe that he was a threat to officer safety as well as his own. There was no constitutional violation and the use of force was not excessive.

Use of a taser only on a subject that is actively resisting. Be prepared to explain why you believed that the subject remained a threat to you, themselves, or others at the time the taser is used.

***ARMSTRONG v. VILLAGE OF PINEHURST*, 810 F.3d 892 (4th Cir. 2016)**

Decedent's estate filed a 1983 action for excessive force in violation of the 4th and 14th Amendment when seizing him.

FACTS: Sister convinced her brother suffering from mental illness to go to the hospital. He was off his medication and poking holes in his leg to let the air out. Though he went voluntarily, he later left. The doctor issued an involuntary commitment noting he was a danger to only himself. Officers were called to return him to the hospital. They initially were calm and got him out of the road, but he was still acting strangely. Once the commitment order was signed hospital security and officers surrounded him. He wrapped himself around a street sign. When he did not comply with officer orders he was tased 5 times within a 2 minute time span. However, that was not effective. They ultimately had to pry him off the pole. Once on the ground face down he became unresponsive and later died.

HOLDING: Qualified immunity analysis – violation of a constitutional right and whether that right was clearly established at time of violation. Found violation of a constitutional right – there was no crime, no immediate threat to others, not actively resisting or fleeing. Knew he was mentally ill – factor officers should consider when deciding to use force. Use of force may exacerbate the situation. Taser is a serious use of force and may not be effective on those with mental illness. But found qualified immunity because in 2011 the violation was not clear. **NOW it is “seizing an out-numbered mentally ill individual who is a danger only to himself, police officers choose to deploy a taser in the face of stationary and non-violent resistance to being handcuffed, those officers use unreasonably excessive force.”**

***ALDABA v. PICKENS*, 777 F.3d 1148 (10th Cir. 2015)**

Suit for excessive force

FACTS: Person went to hospital for illness that resulted in a condition that affected his mental state. He became aggressive and had bizarre behavior. He refused a sedative. Police were notified to assist. They tried to calm him and ordered him to the floor, but he refused. So they proceeded to use a conducted electrical weapon (CEW) on him on two occasions so they could restrain to sedate him. The patient went limp and stopped breathing.

HOLDING: Denied granting qualified immunity. Added some **additional factors beyond Graham** when no crime involved: 1) governmental interest in protecting the individual from harming himself, 2) mental health, 3) whether officers knew or should have known that the person had special characteristics making him more susceptible to harm from this particular use of force. When faced with a mentally ill individual a reasonable officer should make a greater effort to take control of the situation by less intrusive means, conflict resolution and de-escalation not confrontation and Tasers. (Hence CIT)

- ***Estate of Corey Hill v. Miracle***, 2017 U.S. App Lexis 5993, 2017 WL 1228553 (6th Cir.)
- Facts: Non-criminal, medical emergency (extremely low blood sugar) and deputy used Taser when combative in giving him medical treatment which he needed to save his life.
- Court held: Qualified immunity to the deputy for use of his Taser. He acted in an objectively reasonable manner to save a life
- Graham factors do not fit in a medical situation. Apply different test:
- 1. Was 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)?
- If answer to 1 & 2 are YES and question 3 is NO then entitled to qualified immunity.

Kisela v. Hughes, ___ U.S. ___, 138 S.Ct. 1148, 200 L.Ed.2d 449 (2018)

- United States Supreme Court applying a 2 part test:
- 1. Do the facts make out a constitutional violation?
- 2. If a violation, then was that right clearly established at the time of the violation?
- If not then entitled to qualified immunity – there must be “clearly established” existing precedent to the police officer on notice of a constitutional violation.
- Facts: Officer shot woman with a history of mental illness after she refused to drop a kitchen knife after two commands.
- The U.S. Supreme Court held that the use of excessive force is an area of law in which the results depend very much on the facts of each case and a police officer is entitled to qualified immunity unless any reasonable official in the police officer’s shoes would have clearly understood that the use of force was unlawful.
- Police officer is still entitled to qualified immunity even if in retrospect, the officer was mistaken about the severity of the perceived threat. (Officer saw another person close to the woman and thought she could hurt that person, in fact it was her roommate and the roommate indicated that she was no threat). Officer did not know that at the time of the shooting.

Hedgpeth v. Rahim, 893 F.3d 802 (D.C. Cir. 2018)

- Facts: Intoxicated, non-complaint person at a bar. No crime, refused to show identification and place hands behind back. Officer did a takedown maneuver which caused severe head injury when struck head on window pane.
- Court found qualified immunity for the officer as not an obvious case in which a competent officer would know that the takedown maneuver in those circumstances would violate the 4th Amendment

Stevens-Rucker v. City of Columbus, 739 Fed.Appx. 834 (6th Cir. 2018)

- Facts: Two police officers shot a decorated war veteran possessing a knife because they believed he posed a threat to himself and others.
- Court held:
- As to officer 1 – qualified immunity even though a fence was between the officer and the veteran as he believed he was approaching him with the knife.
- As to officer 2 – he fired 6 shots. The lower court held qualified immunity for only 4 of the 6 shots. 6th Circuit found qualified immunity for all 6 shots (2 shots chasing him through the apartment complex, 2 in breezeway with knife 10-15 feet away, 2 shots after he fell to the ground) Not enough time between the 4 shots to reassess threat

DELIBERATE INDIFFERENCE

PIROLOZZI v. STANBRO et al., 556 F.Supp.2d 783 (N.D. Ohio 2008)

Decedent's brother, suing for excessive force, failure to provide timely medical care, failure to supervise, and failure to train.

FACTS: The decedent observed by witnesses naked in his upstairs apartment breaking windows with his arms. Police later discovered that the decedent had smeared blood in nearly every room of his apartment. The decedent then naked and covered in dried blood and feces left his home screaming. He began to step in front of and jump onto passing vehicles. Police were dispatched to the scene. When police arrived, the decedent charged at an officer ignoring police commands. They tried pepper spray to no avail. The decedent (a much bigger guy than the officer) forced the officer back into his cruiser and bit and hit the officer. Another officer used a taser on the decedent. The decedent screamed and repeatedly yelled "I love you" then tried to grab the officer's gun from the holster. The other officer and a firefighter grabbed the decedent's legs and pulled him out of the vehicle. They got him handcuffed and to a prone position on the ground. The decedent continued to yell, resist and get up. He was wrestled back to the ground. Then an officer began punching decedent in the head and neck region. When back up arrived each held an extremity and the officer continued to punch the decedent even though he was no longer moving. He was further kicked and tased. At the time he left the scene, he was unresponsive with a weak pulse. He later died at the hospital. Coroner concluded the causes of death were excited delirium and multiple blunt and sharp force injuries to his head, trunk and extremities, hypovolemia and positional asphyxia.

HOLDING of the US District Court for the Northern District of Ohio: As to the excessive force claim and the Fourth Amendment prohibition of unreasonable seizures, limits the amount of force to only the degree of force necessary to affect an arrest. This is decided under the reasonableness standard and considers the factors such as severity of the crime, threat to others, and whether the suspect was actively resisting or escaping. **To determine whether an officer loses that immunity, one must look at 3 factors: constitutional violation, right that was violated was a clearly established right which a reasonable person should have known, and plaintiff can establish sufficient facts and evidence that the official was objectively unreasonable.** The court held that the plaintiff could establish those factors crossing the line from subduing to assaulting. A jury could easily determine that such behavior was objectively unreasonable. As to timely medical assistance, the EMS, ambulance and firefighters were present at the scene when the unconstitutional acts occurred. There was no deliberate indifference to the medical needs of the decedent. No evidence as to failure to supervise but evidence for **failure to train**. To establish this, the **plaintiff must show the training program was inadequate, inadequacy is caused by the city's deliberate indifference (need for training is so obvious that the inadequacy is likely to result in violation of constitutional rights) and the inadequacy closely related or actually caused the injury.** In this case, the court held that the claim that the city failed to train on positional asphyxia could go to a jury.

CANTON v. HARRIS (1989), 489 U.S. 378, 109 S.Ct. 1197, 103 L.Ed2d 412

Plaintiff filed suit seeking to hold the city liable under 42 USC 1983 for violating her 14th Amendment rights.

FACTS: Plaintiff was arrested. She was placed in a patrol wagon to the police station. She was found on the floor of the wagon. During processing, she fell on the floor on a couple of occasions. Police left her on the floor so that she would not fall again. She was asked if she needed medical attention, but no medical attention was ever summoned. She was released and taken to the hospital by family suffering from emotional ailments that had her hospitalized for a week.

HOLDING of the United States Supreme Court: Inadequate police training may serve as the basis for 1983 liability only when the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact. In this case, supervisors decided who received medical treatment without training as to how to assess that.

You have adequate training (CIT) available a city could be held liable if such training is offered and the city makes a deliberate choice not to have officers trained. Leaves the city open to liability especially with the rising number of dealings with people with mental health issues.

***CUTLIP v. CITY OF TOLEDO et al.*, 488 Fed.Appx. 107 (6th Cir. 2012)**

1983 suit against the City of Toledo for deliberate indifference to the safety of its citizens for its failure to properly train and supervise its police force in how to deal with barricaded suspects who are suicidal and mentally ill.

FACTS: Cutlip displayed some erratic , paranoid behavior and ingested Adderall. He called 911 and claimed there were police outside of his home with a federal search warrant. He told the dispatcher he had a gun in the house, it was not meant for police, there were children inside the home as he himself was a police officer. He also claimed that officers had slipped into his house and demobilized his service weapon. When officers arrived at the scene, they were told by family members about the behavior and the Adderall. When officers asked to speak to him, he ran and grabbed his shotgun and put it to his head. When they could not convince him to put it down, they called a negotiator. The negotiator got him to put the gun on his lap with the safety. During this time, other officers were attempting to remove family from the house and determining what the issues were with Cutlip. They learned of his diabetes and gave him a candy bar and a drink. When Cutlip asked to speak to his father, it was approved as long as he put the gun down, he refused, got more upset and released the safety, put the gun back up to his head stating “it’s time”. The negotiator now believed his suicide attempt was imminent and made several requests for SWAT to move in knowing it could lead to him killing himself. They attempted to distract him on their entry with a flash bang when he didn’t have the gun pointed directly at himself. They also loaded the SWAT point man’s weapon with bean bags. As soon as the first man entered the doorway, Cutlip pulled the trigger, killing himself instantly.

HOLDING of the Sixth Circuit Court of Appeals: Officers and municipalities are only liable for injuries “they directly cause.” Exceptions are custody and state created danger.

In this matter, the Court found the custody exception did not apply as Cutlip was not arrested, incarcerated, institutionalized or put under a similar restraint at the time he had killed himself. While he was “seized”, he was not “in custody”. Physical restraint of the suspect is required for the “custody” element to apply.

The Sixth Circuit had never found liability under the state created danger exception where the victim committed suicide – almost all reject liability as the municipality did not create the danger. Only the 10th Circuit seems to have held that suicide falls within this exception. In order to meet this exception, it must be shown that the police “knowingly and unreasonably” chose a course of conduct that entailed a substantially greater total risk than the available alternatives.

The Sixth Circuit found that there was no deliberate indifference in this case. All they did was respond to the 911 call and attempt to talk to him – this was not an affirmative act that increased the likelihood he would kill himself. To do so would discourage officers from responding to requests for assistance. The facts showed that officers believed that a forced entry was the best chance of saving his life. They made every modification they could to lessen the risk of harm to Cutlip.

Warrantless Entry

Exigent Circumstances-Emergency Aid

BUCHANAN v. STATE OF MAINE et al., 469 F.3d 158 ((1st Cir. 2006)

Estate filed suit on the basis of warrantless entry only – no claim that deputies were unjustified in the shooting.

FACTS: Mentally ill person with prior mental health hospitalization and treatment followed regularly by a caseworker. Caseworker had noticed that the person was getting angrier and not taking his medication. The neighbor called his caseworker to report that he was growling and glaring at her and had tried to light her woodpile on fire. The caseworker told her to call police. She called police and reported the same thing with the concern that he might light her barn on fire. Another deputy told them that this person had mental health issues. Due to the person living down a long driveway that was not cleared, officers walked to the home and made contact with the person. He opened the window and began yelling at officers saying he worked for the police, they were not going to throw him into a Nazi Jewish oven, he worked with the feds and had a right to sell guns. He ultimately tells the police go back to the road or he was going to kill them. Then he threw liquid on the deputy – which the deputy indicated smelled like alcohol. One deputy was trying to advise his supervisor of the situation and to get in contact with the caseworker which he never did. Then there was a loud smash. The deputy then observed the person at his basement door with his hand bleeding. He opened the door and began screaming at the deputies again. Then he spit on the deputy three times. The deputy followed him into the house and up the stairs. The person then came to the top of the stairs with a knife and began stabbing the deputy. The other deputy then shot the person.

HOLDING of the First Circuit Court of Appeals: That warrantless entry is reasonable if can demonstrate exigent circumstances of imminent threat to life or safety of the public. One cannot make a warrantless entry simply because an officer thinks the person is mentally ill. But there was exigent circumstances in this case of imminent threat to self or others – setting a fire, threat to kill the deputies, throwing liquid, spitting shows harm to others.

Emergency Involuntary Commitment & Warrantless Arrest

IN RE MILLER (1992), 63 Ohio St.3d 99

Appeal from the probate court's finding that appellant was mentally ill and subject to hospitalization.

FACTS: Police were summoned by appellant's family after he refused to get help voluntarily. Police transported appellant to the hospital where he was involuntarily committed to the psychiatric ward. No hearing was held prior to the hospitalization. Civil commitment proceedings were then initiated.

HOLDING of the Ohio Supreme Court: "When a person faces commitment to a mental hospital against his or her will, the individual's right against involuntary confinement depriving him or her of liberty must be balanced against the state's interest in committing those who are mentally ill." Due process protection is set out in ORC 5122. Emergency hospitalization guidelines are set forth in ORC 5122.10. Emergency commitment is initiated by a person being taken into custody without a prior hearing. The written statement under 5122.10 serves as a type of affidavit, to ensure that at least a minimal level of probable cause exists to hospitalize the person involuntarily. In this case, no such written statement existed. Therefore, the officers failed to comply with ORC 5122.10.

Compare that pink slip to a search warrant to be signed by a judge. Would a judge sign what you are filling out on that pink slip? Details...what family or witnesses observed, what you observed, person's behavior – not generalization but facts. In fact, the doctor failed to do that in this case for the non-emergency commitment.

***SIMON v. COOK et al.*, 261 Fed.Appx. 873 (6th Cir. 2008)**

Plaintiff filed a 1983 suit claiming violation of his due process rights and his constitutional right to be free from unlawful searches and seizures. He also claimed that the underlying state law was unconstitutional.

FACTS: Plaintiff called the police to report harassment. An officer was dispatched to the scene to make a report. The officer discovered on his way that this person/location was considered a “signal 10” alert. So the officer called for backup. Upon arrival, they met the plaintiff on his porch and he began to tell the officers about the harassment. The plaintiff disclosed to the officers that he thought he was being watched and that the coroner was following him. Further, the harassment was politically motivated. That state police were involved as well the then local congressman. He made comments like being attacked while using his phone. The coroner was following him so that they could put him in a body bag. He told officers that he had contacted the FBI and other authorities from a phone booth and that he was attacked by three black men. Also that someone put a tailpipe of a car up to the phone booth to poison him. Officers questioned him about his mental health status and he replied negatively. Up to this point, he looked appropriate and was calm. However, he then threatened to start following police officers. He then began screaming, yelling and pointing his finger at an officer’s face. He was in such proximity that he would have hit the officer’s face if the officer would not have moved. The officer then handcuffed the plaintiff and took him to the hospital. Kentucky law permits a warrantless arrest of an individual who appears mentally ill but the officer must provide written documentation why he was taking him into custody. The officer prepared a complaint documenting the incident and why he believed the plaintiff to be a danger to himself or others.

HOLDING of the Sixth Circuit Court of Appeals: The officer did not violate the plaintiff’s constitutional rights. There was probable cause to detain the plaintiff for a mental health evaluation therefore there was no constitutional violation. The court also stated that there only need be a probability of dangerous behavior not an actual showing of such behavior.

That pink slip needs to fully interpret the incident – what you have obtained from others, your observations, and your specific concern about being a danger to self or others. The time you take on this end will be advantageous to you in the future and the healthcare facility making the evaluation.

OVERVIEW: WHAT TO CONSIDER

What to Consider:

- One consideration to make is the difference between the dangerous/violent/with a weapon person versus the nonviolent/without a weapon person
- Weigh factors the danger or threat, crime versus no crime, resisting or fleeing
- If you can take time to end in a peaceful manner – countered by supervisors and overtime constraints
- Each action you take will be considered – if you can start calmly, start with the least intrusive means, weigh your alternatives and build from there
- When filling out a pink slip or your reports – **details, details, details**...Establish probable cause. Especially in cases where there is an injury, death, handcuff complaint, use of taser, pepper spray, etc... Document the danger/threat. Detail the exigent circumstances with particularity for a warrantless entry