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Civil Liability for the Use of Handcuffs: Part II – Use of Force Against Handcuffed Persons

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Introduction

The [first article](#) in this two part series discussed cases in which the use of handcuffs themselves were alleged to constitute an excessive use of force, either because their use was unjustified, or because they were applied in a manner that unnecessarily caused injury, in violation of the Fourth Amendment. This second article discusses cases in which claims were asserted concerning the use of force against individuals after they were already restrained through the use of handcuffs, as well as claims that an individual was unnecessarily kept restrained in handcuffs beyond the time when it was necessary and justified. At the conclusion of the article, there is a brief list of helpful resources.

Use of Force Against Handcuffed Persons

If handcuffs are a tool to use to subdue a suspect, render them less able to resist arrest, and assist in taking them into custody, does it follow that the use of force must end once they have been successfully handcuffed? A number of cases have shown that this is not necessarily the case.

All that the Fourth Amendment requires, under the standard set forth by The U.S. Supreme Court, in [Graham v. Conner](#), #87-6571, 490 U.S. 386 (1989), is that the force used be objectively “reasonable” under the particular circumstances encountered, and that is necessarily based on a very fact-specific inquiry.

In [Youngblood v. Wood](#), #01-3109, 41 Fed. Appx. 894 (Unpub. 7th Cir. 2002), for instance, a federal appeals court concluded that the mere fact that an arrestee was handcuffed did not mean that a police officer acted excessively in using any amount of force after that. The officer was justified in using more force than would ordinarily be necessary, the court reasoned, based on the arrestee's active resistance and the location of the incident in which the officer was alone at night on a "lonely stretch of country road."

In this case, a police officer pulled a truck over while working on an alcohol countermeasures taskforce during Memorial Day weekend, acting because the vehicle had no license plates. (The officer did not see a temporary registration tag on the back window until after the stop). The officer smelled alcohol emanating from the truck, but the driver refused to participate in a field sobriety test.

A background check on the driver revealed a prior arrest for possession of narcotics and unlawful use of a weapon. The officer sought to arrest the driver for transporting an open container of alcohol. After he placed the driver under arrest and handcuffed him, the officer leaned his head and shoulders into the truck to search it. The door of the truck then closed on the officer from behind, prompting an altercation between the officer and the arrestee, during which the arrestee suffered "some extensive bruising, especially in his chest area."

The arrestee sued the officer for alleged excessive use of force, and a jury returned a verdict for the officer.

On appeal, the plaintiff argued that because he "basically complied with the officer's request's throughout the encounter" and because the handcuffs immobilized his hands, that any amount of force was excessive in affecting his arrest. The appeals court rejected this argument.

It found that the jury could have reasonably believed the officer's version of the incident, which was that he was "alone at night on a lonely stretch of country road, confronted by a belligerent and larger man who had been arrested on a weapons charge in the past." Additionally, though the plaintiff was handcuffed when removed from his vehicle, he "continued to yell" at the officer, and then, when the officer placed himself in a vulnerable position by bending over and putting his head inside the vehicle, "the belligerent man" attempted to take advantage of the situation "by closing the door on the officer."

The jury could find that the force used by the officer was in response to this resistance and reasonable under the circumstances. Additionally, the court noted that once the officer had "regained control of the situation," he "ceased using force."

The facts, construed in support of the jury's verdict, showed that the arrestee was not "submitting quietly during his encounter with the officer," but rather actively interfering with the officer's performance of his duties. Even though the plaintiff claimed, and the officer agreed, that he was not "actively resisting at the exact moment of the arrest," the court found that this did not alter the result.

"Police officers deal with fluid situations, and we judge whether police acted reasonably in them according to the totality of the circumstances, not freeze-frames." Additionally, no prior case law supported the plaintiff's contention that "his handcuffed hands made it objectively unreasonable for any amount of force to be used to subdue him."

"Feet, too," the court concluded, "can be weapons."

In [Polk v. Hopkins](#), #04-1130, 129 Fed. Appx. 285 (Unpub. 6th Cir. 2005), on the other hand, the court found that, while a police officer had adequate probable cause to arrest a motorist for reckless driving after observing her going 76 miles per hour in a 45 mile per hour zone, genuine issues as to whether he improperly used excessive force against her after she was handcuffed, jerking her up by the handcuffs in a manner severe enough to cause a disabling injury, barred summary judgment for him in her federal civil rights lawsuit.

The motorist was speeding to get to her sister's house, after receiving a phone call indicating that her mother was there and was possibly experiencing some kind of medical emergency. The officer observed her driving at a high rate of speed, and followed her to her sister's house.

Getting out of his car with his gun drawn, the officer allegedly began yelling at the motorist and telling her to get down on the ground. The motorist claimed that she attempted to tell the officer that she was dealing with a family medical emergency, that her sister came out of the house and began asking the officer "what was wrong with him," and a neighbor who was an acquaintance of the officer also came out of the house and engaged in some kind of verbal exchange with him.

The motorist allegedly did not get on the ground immediately, but held her hands up, supposedly to show general compliance, and, seeking to avoid getting down on the "wet and frosty" grass, turned and walked slowly away from the officer, looking for a place to get down on the ground.

As she dropped down to her knees, she claimed, the officer pushed or kicked her down to the ground. The officer handcuffed her behind her back, and told her to get up. She allegedly attempted to stand up on her own, but before she could

finish, the officer allegedly “jerked” her up by the handcuffs, and “actually pulled” her up to her feet, and then pushed her into his car.

The motorist subsequently expressed her belief that these actions were carried out with enough force to cause her severe and possibly permanent injury to her back, shoulder, and leg. The officer subsequently pulled her out of the car, and issued her a ticket for reckless driving. She was later acquitted on that charge. She claimed that her subsequent need to take disability leave stemmed from injuries suffered in the incident.

Analyzing whether the force used was excessive, the court noted that, under *Graham v. Connor*, the question was whether the officers’ actions are objectively reasonable in light of the “facts and circumstances confronting them, without regard to their underlying intent or motivation.”

Under the circumstances presented, the court concluded, there was a jury question as to whether the force used was reasonable, including those that allegedly took place after she was already lying flat on the ground and after she was handcuffed.

Once the motorist was flat on the ground, the court commented, and especially once she was handcuffed, “there was no evidence” that she presented a threat to the officer or to anyone else. Since there is “no governmental interest” in using unnecessary physical force on a suspect after she had “been neutralized,” the court concluded that the motorist’s right not to be subjected to excessive force after being handcuffed was clearly established at the time of the events in question.

Viewing the facts in the light most favorable to the motorist, the court found that, if her version of events were true, the officer’s actions would be objectively unreasonable. Since she had already been handcuffed, the court reasoned, any necessary search for weapons could easily have been conducted. After that time, “any use of serious physical force—especially force substantial enough to cause disabling injury—would be objectively unreasonable,” and no reasonable officer “could believe otherwise.” The officer was therefore not entitled to qualified immunity from liability.

In an earlier case, *McDowell v. Rogers*, No. 87-5730, 863 F.2d 1302 (6th Cir. 1988), a federal appeals court noted that when everyone agreed that an arrestee “was handcuffed and that he was not trying to escape or to hurt anyone,” that the “need for the application of force” was “thus nonexistent.”

Municipal or agency liability for the use of force by an officer against a handcuffed individual requires more than just a showing that the officer himself or

herself acted in an objectively unreasonable manner. In Ross v. City of Toppenish, No. 03-35234, 104 Fed. Appx. 26 (Unpub. 9th Cir. 2004), the court found that an arrestee's claim that officers used excessive force against him after handcuffing him could move forward, based on genuine issues of fact as to what happened, and whether officers were entitled to qualified immunity from liability. But the plaintiff failed to make any showing that an official policy or custom of the city or its police department led to his injuries. Claims for municipal liability, therefore, were properly rejected. (The arrestee's testimony in a deposition that he "might" have been yelling and waving his arms, and making a fist at the officers as he approached them, and his admission that he reached for one officer's gun belt and touched it, warranted summary judgment for the defendant officers on his claims that they also used excessive force against him prior to handcuffing him.).

In Buckley v. Haddock, No. 07-10988, 2008 WL 4140297, 2008 U.S. App. Lexis 19482 (Unpub. 11th Cir.), a federal appeals court upheld multiple uses of a Taser against a handcuffed motorist arrested on a highway who allegedly refused to comply with instructions to stand up and walk to a deputy's car.

In this case, a deputy made an arrest of a motorist during a traffic stop at night on a highway in a location where there was passing traffic. He contended that he had to use force, including multiple applications of a Taser, to accomplish the arrest, due to the motorist's resistance.

The arrestee, described in the court decision as "financially destitute and homeless," allegedly became "agitated" about getting a ticket, and, despite the deputy's repeated requests that he do so, refused to sign the traffic citation, which is required by Florida law. The deputy warned him twice that, if he did not sign, he would be arrested, and the motorist then said, "arrest me," and allowed himself to be handcuffed. He then got out of his car.

As the deputy walked towards his patrol car with the arrestee, the arrestee, a 23-year-old man who was 6 feet, 2 inches tall and weighed 180 pounds, allegedly dropped to the ground behind his car, crossed his legs, and continued sobbing, refusing to get up and walk. When the deputy warned him of the possibility of getting hit by a passing car on the highway, the arrestee allegedly said, "My life would be better if I was dead."

A federal appeals court overturned the trial court's denial of the deputy's motion for summary judgment on the basis of qualified immunity. The appeals court found that the deputy only used the Taser after first trying other approaches such as persuading the motorist to stop his resistance, attempting to lift him, and warning him repeatedly that the Taser would be used against him and then

providing him with time to comply. The motorist, at the time, was handcuffed, but refused to stand up and go to the deputy's car, according to the court.

The court reasoned that the presence of passing traffic created a possible hazard of injury, and that the Taser did not cause significant injuries such as burns requiring medical attention. Under the circumstances, the court concluded, the use of the Taser, which was used three times, was reasonable, and moderate non-lethal force. The court also noted that, while the arrestee was handcuffed at the time, his feet were not bound, and he was moving. The court stated that the

"Plaintiff resisted arrest. Given this circumstance in the context of all the other facts, Deputy Rackard's gradual use of force, culminating with his repeated (but limited) use of a taser, to move Plaintiff to the patrol car was not unconstitutionally excessive. In addition, even if Plaintiff could establish that some of the deputy's use of force violated the Fourth Amendment, the deputy still would be entitled to qualified immunity because the applicable law at the time did not clearly establish that the deputy's conduct -- given the circumstances -- was unconstitutional."

The court also stated that:

"We do not sit in judgment to determine whether an officer made the best or a good or even a bad decision in the manner of carrying out an arrest. ... "The government has an interest in arrests being completed efficiently and without waste of limited resources: police time and energy that may be needed elsewhere at any moment. ... We also reject the district court's rationale that had Deputy Rackard simply waited for back up, two officers could have lifted [Plaintiff] and carried him to the car without any application of force. A single officer in the deputy's situation confronting a non-compliant arrestee like Plaintiff need not -- as a matter of federal constitutional law -- wait idly for backup to arrive to complete an otherwise lawful arrest that the officer has started. ... That an officer has requested more police assistance does not make the use of force before reinforcements arrive unreasonable."

A strong dissent in the case stated that "I write to express my view that the Fourth Amendment forbids an officer from discharging repeated bursts of electricity into an already handcuffed misdemeanant—who is sitting still beside a rural road and unwilling to move—simply to goad him into standing up."

A [video](#) of the incident at issue in the case can be viewed on YouTube.

In [Arce v. Blackwell](#), No. 06-17302, 2008 U.S. App. Lexis 20162

(Unpub. 9th Cir.), the court found that officers were on notice, based on prior cases finding "compression asphyxia," that keeping a person who was in a state of "excited delirium" restrained with his or her chest to the ground while applying pressure to the back and ignoring pleas that the subject could not breathe constituted excessive force under the Fourth Amendment. They were therefore not entitled to qualified immunity in a lawsuit alleging that they caused a man's death by restraint or positional asphyxiation by keeping him prone and handcuffed while in an agitated state, suffocating him under their weight.

In [Champion v. Outlook Nashville, Inc.](#), No. 03-5068, 380 F.3d 893 (6th Cir. 2004), a federal appeals court upheld a \$900,000 jury award to the family of an adult non-verbal autistic man who died after officers seeking to restrain him allegedly continued to use pepper spray and to lay on top of his body after he was handcuffed, hobbled, and laying on his stomach on the ground, no longer resisting. Continued use of such force at that point, the court ruled, violated clearly established law, and the jury's award was not excessive.

Similarly, in [Drummond v. City of Anaheim](#), No. 02-55320, 343 F. 3d 1052 (9th Cir. 2003), the court ruled that officers' alleged actions of pressing their weight onto the neck and torso of a mentally ill detainee as he lay handcuffed on the ground and begged for air, if true, constituted an excessive use of force for which the officers were not entitled to qualified immunity.

See also [Sallenger v. Oakes](#), #05-3470, 473 F.3d 731 (7th Cir. 2007), ruling that a reasonable officer would know that administering closed-fist punches and flashlight blows to the head, after an arrestee was handcuffed, and continuing to strike him after he had stopped resisting arrest -- and failing to place him in the proper position after hobbling him -- was excessive force. The officers were therefore not entitled to qualified immunity.

What about the use of force when a suspect is apparently submitting to being handcuffed? In [Crosby v. Monroe County](#), No. 03-13716, 394 F.3d 1328 (11th Cir. 2004), a federal appeals court found that a deputy acted in an objectively reasonable manner in putting his foot on an arrestee's face when he raised his head as he lay on the ground being handcuffed after disobeying orders to immediately drop his shotgun. The arrestee was "not docile," and subsequently was found to possess another gun on his person.

The incident commenced when officers responding to reports of gunshots fired toward a home heard a shot from the direction of another home in the area, and then saw a man carrying a shotgun and heard the sound of him ejecting a shell. He did not immediately comply with the officers' order to drop the gun. Subsequently, he placed the shotgun inside the garage door, and then he laid on the ground as the officers instructed him to do.

Two of the officers got on top of him and put their knees in his back and began to handcuff him. When he raised his head and asked why he was being arrested, a deputy sheriff placed his foot on the side of the arrestee's face and neck and applied pressure. The arrestee jerked one hand away from the officers attempting to handcuff him, shoved the foot off his face, and cursed at the deputy.

After he was handcuffed and arrested, a search revealed that he was carrying a .38 handgun. He complained that he was handcuffed too tightly. A few weeks after the arrest, he was diagnosed with congestive heart failure.

A federal trial court granted summary judgment on the basis of qualified immunity for the defendant deputy in the arrestee's excessive force and unlawful arrest lawsuit.

Upholding this result, a federal appeals court found that there was arguable probable cause for the arrest given the observation of the arrestee ejecting a shell after hearing a shot. The deputy could have believed that the arrestee had fired multiple shots in the direction of his neighbor's house, creating a substantial risk of harm to another person.

On the excessive force claim, the appeals court stated that except for the fact that at one point the deputy put his foot on the arrestee's face, "this would be an easy case." It also noted, however:

In making an excessive force inquiry, we are not to view the matter as judges from the comfort and safety of our chambers, fearful of nothing more threatening than the occasional paper cut as we read a cold record accounting of what turned out to be the facts. We must see the situation through the eyes of the officer on the scene who is hampered by incomplete information and forced to make a split-second decision between action and inaction in circumstances where inaction could prove fatal.

From such a perspective, the court ruled, a reasonable officer could have believed that the force applied was reasonably necessary. Multiple shots had been fired, and the arrestee had initially failed to obey orders to drop the shotgun. While he did subsequently obey orders to lie face down on the pavement, he was "not docile," but instead raised his head and asked why he was being arrested. It was then that the deputy applied his foot. When the arrestee jerked his hand away from the handcuffing attempt and shoved the deputy's foot off his face, the officers subsequently got him handcuffed, but the deputy did not put his foot back on the arrestee's face or otherwise respond to his cursing. At no time did the deputy or any other officer kick or punch the arrestee.

Further, the arrestee did not "cry out in pain," and other than being "indignant" about having a foot on his face, the arrestee did not say then--"and so far as the

record reveals he has not testified since--that it was painful." At the time, for all the officers knew, he had other weapons concealed on his person, and as it turned out, he actually did have another gun. Raising his head to ask why he was being arrested could have been an attempt on his part to distract the deputy and a "prelude to actual resistance."

Under these circumstances, and the risks of apprehending the suspect, an officer in the deputy's position could reasonably conclude that it was "imperative" to keep the arrestee completely flat and immobile until he was successfully handcuffed. Indeed, the fact that he was then able to wrestle his hand loose and push the deputy's foot away indicated that he had "not been subdued."

There was no evidence--"as distinguished from bare allegations"--that the foot on the arrestee's face caused him any physical injury, so the force complained of, "while undignified in its placement," was not severe in amount.

The appeals court also found no evidence that the arrestee was in need of medical care at the time, much less that the deputy was aware of such a need and refused to obtain care for him. Indeed, the arrestee himself did not request medical care until several days after his release from jail.

In one case, [Seaman v. Karr](#), #27935-5-II, 59 P.3d 701 (Wash. App. 2002), handcuffed individuals based their federal civil rights claim largely on the length of time that they were kept in handcuffs, allegedly long after it was arguably necessary. The court ruled that the officers were not entitled to qualified immunity on a claim that they kept two apartment occupants handcuffed for two hours while their apartment was being searched under a warrant. The complaint alleged that they were kept handcuffed long after the officers had reason to believe that they were not connected with persons sought in connection with a shooting, which was the point of the search.

Resources

The following are some useful resources on the general topic covered by this series of articles.

- [Handcuffs](#). Wikipedia on-line encyclopedia.
- Florida Highway Patrol Policy Manual Sec. 11.05 "[Restraining and Transporting Prisoners](#)." (Includes discussion of handcuffing procedures and rules).
- Bakersfield. California Police Department, General Order "[Restraints](#)."

- Lincoln, Nebraska Police Department [General Order on Handcuffs and Restraints](#). 1-1-2006.
- “[Scaphoid Fracture Due to Rigid Handcuffs](#),” by L. Ball, N.A. Ferran, and C.R. Barton, Journal of Hand Surgery (European Volume), Vol. 33, No. 4, 484-487 (August 1, 2008).
- [How Products Are Made: Handcuffs](#).
- Focal Neurological Complications of Handcuff Application, 46 (5) Journal of Forensic Sciences (Sep. 2001).
- A Prospective Study of Handcuff Neuropathies, 23 (6) Muscle & Nerve (Wiley) 933-938 (2000). [Abstract](#). (Includes discussion of the medical condition compression neuropathy, which can result from the misapplication of handcuffs).
- Handcuff Neuropathies, 41 Neurology 145 (1991).
- “[Liability Constraints on Human Restraints](#),” by Michael A. Brave and John G. Peters, Jr., 60 (3) The Police Chief 28-35 (Mar. 1993).
- [Injuries Caused by Handcuffs](#), 297 (6641) British Medical Journal 111-112 (1988).
- Handcuff Neuropathy Revisited, 12 (3) Muscle & Nerve (Wiley) 219-220 (1988).

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