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Staff Use of Force—Part V: Cell Extractions

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Introduction

One recurring circumstance in which correctional personnel frequently face complex choices is that of the extraction of prisoners and detainees from their cells. Officers must be prepared to compel compliance when faced with resistance, including through the use of necessary force, while at the same time striving to protect themselves, other officers, and other prisoners, as well as the resisting prisoner, from injury.

Having well thought out procedures for such situations is essential, as is conducting training to prepare officers for a variety of scenarios, including those involving a mixture of compliant and non-compliant prisoners in the same cell, or multiple non-compliant prisoners. This article briefly examines court decisions focused on liability for the techniques and tactics used in the course of cell extraction. A section of the article touches on the use of electric weapons to compel compliance. At the conclusion of the article, there is a listing of useful on-line resources.

Cell Extractions in General

Situations arising in the context of cell extractions of prisoners may involve a multiple number of both officers and prisoners, and require quick decisions to respond to swiftly changing volatile circumstances. A number of court decisions have examined the outcome of such decisions in some detail.

In [Harper v. Albert](#), #00-2758, 400 F.3d 1052 (7th Cir. 2005), two prisoners in the Menard Correctional Facility in Illinois filed a federal civil rights lawsuit claiming that twelve prison guards and two supervisors, who are members of what is known as the

“Orange Crush” tactical team at the facility, violated their Eighth Amendment right to be free from cruel and unusual punishment when the guards allegedly battered them during a cell transfer procedure.

At the conclusion of the presentation of the prisoners' case to the jury, the trial judge granted judgment as a matter of law as to eight of the fourteen named defendants. The jury ruled in favor of the remaining defendants, finding that they had not used excessive force. A federal appeals court upheld the trial judge's ruling as to the judgment on the eight defendants. The jury's ruling on the remaining defendants was not challenged on appeal.

The case involved an incident occurring in one cellhouse where inmates started throwing cans, burning rags, light bulbs, bodily fluids and other liquids at officers, in apparent retaliation for the “strip out,” or complete search, of a cell on the block. The violence continued throughout the day, escalating to near-riot proportions and resulting in an injury to an officer.

When the two prisoners were informed that they would be removed from their cell and placed in segregation since the thrown can that injured the officer was allegedly thrown from their cell, one of them threw scalding water at the officers, hitting one of them.

Officers on the scene used mace and called for backup, specifically the prison's tactical unit, known by its nickname, the “Orange Crush,” because of the orange jumpsuits they wear while performing their duties. This team of corrections officers has undergone specialized training and is used to control unruly or violent inmates, including extracting violent or non-cooperative inmates from their cells and relocating them to other areas of the prison, such as the segregation unit.

This team of twelve tactical team members was assembled in full riot gear, and assigned to transport the two prisoners. They encountered shouting, whistling, hollering and taunts, as well as a barrage of fluid and other objects being thrown at them. Two supervisory lieutenants were present to direct the team. The two prisoners were ordered to “cuff up,” or to back up to the bars of the cell and place their hands behind their backs and through the bars so that officers could handcuff them.

The prisoners claimed that they were “brutally beaten” by the officers while being transported to the segregation unit, while the defendants claimed that the force used was necessary to safely convey and transfer the prisoners.

On the basis of the evidence presented at trial, the magistrate judge concluded that only five of the named defendants had actually been in physical contact with the plaintiffs, and that, therefore, the other eight defendants should be dismissed.

Each of the remaining defendants testified that at no time did they kick, hit, knee, or in any way injure the plaintiffs, and did not see any other officer engage in actions that were not necessary to safely restrain and transport the prisoners. A nurse testified that one prisoner had some swelling on his face and shoulders following the transfer and had received stitches for a laceration on his head, and that the other prisoner had bruising and some minor abrasions on his back.

The jury, after deliberating for less than 30 minutes, found in favor of the remaining defendants on both inmates' excessive force claims, answering special interrogatories that none of the force used was cruel and unusual punishment, while not covering the time period from when one of the prisoners was removed from a strip search room to his segregation cell. That plaintiff prisoner, however, failed to identify any particular officer who he claimed used excessive force against him during that time period.

Upholding the dismissal of the eight defendants, the appeals court noted that the plaintiffs failed to establish that any of them violated either of their rights, or even that each and every one of them ever touched the plaintiffs. They also failed to prove that the defendants who did touch them used excessive force against them. Accordingly, the appeals court rejected the argument that the case should have been presented to the jury against the eight dismissed defendants on a theory of joint and several liability. Based on the evidence presented it “would not have been possible for a reasonable jury to find that all” defendants used excessive force against both prisoners. Some of the defendants, indeed, were not even present during some of the time frames when the prisoners claimed excessive force was used.

The appeals court further rejected the plaintiffs' attempt to raise the argument that, although not all of the defendants used excessive force, the remainder of them were nonetheless liable for failure to intervene. And it found that even if such an argument were allowed, the jury's verdict on the issue of the force actually used foreclosed liability on that basis.

“In order for there to be a failure to intervene, it logically follows that there must exist an underlying constitutional violation.”

In this case, the plaintiffs failed to establish an underlying constitutional violation that would allow them to prevail on a failure to intervene claim. As for the time period not covered by the jury's answers to the special interrogatories, the plaintiff prisoner “failed to identify any particular officer who harmed him as he was being transferred from the strip-search area to the segregation unit,” preventing a finding of excessive force, and also barring “bystander” liability for failure to intervene.

In [Muhammad v. McCarrell](#), #07-2235, 536 F.3d 934 (8th Cir. 2008), a federal appeals court upheld a jury verdict for the defendant corrections officers in a lawsuit brought by a

prisoner allegedly injured by them when they used force to extract him from his cell.

The plaintiff prisoner admitted that he had a weapon in his pocket at the time of the incident, and the evidence showed that he had been belligerent and uncooperative, and that the prisoner had created a disturbance in his cell block, taunted an officer, and that pepper spray and a 15 OC Stinger grenade used against the prisoner, as well as tear gas, had little effect and failed to subdue him. The officers then shot a 37MM Ferret OC powder round, designed to break through a barricade, at the cell wall, but he still allegedly refused to comply.

They then dispensed a 28b Stinger 37 MM 60 Cal. rubber-ball round into the cell, and again failed to subdue the prisoner. Another Ferret OC powder round fired into the cell then went through a mattress that the prisoner used to barricade his cell door, and hit him in the groin area, finally subduing him. While a variety of techniques and equipment was used, the court upheld the jury's determination that the force employed was justified under the circumstances.

Similarly, in [Young v. Ogle](#), #05-35581, 171 Fed. Appx. 651 (Unpub. 9th Cir. 2006), the court found that a prisoner failed to show that correctional officers used excessive force in placing him in and later extracting him from a holding cell. Specifically, he failed to show that the officers instead of using force in a good faith effort to maintain or restore discipline, used it maliciously to cause him harm. Merely making conclusory" statements that the force was excessive did not suffice to impose liability.

On the other hand, in [Iko v. Shreve](#), #07-7569, 535 F.3d 225 (4th Cir. 2008), the court found that the plaintiffs in a wrongful death lawsuit concerning the death of an inmate after he was forcibly removed from his cell by seven correctional officers alleged sufficient facts which, if true, would show that the officers violated the prisoner's clearly established Eighth Amendment rights. Accordingly, the defendants were properly denied qualified immunity on those claims. Additionally, when summary judgment was denied on certain claims based on the existence of disputed issues of material fact, there was no jurisdiction to hear an appeal of those denials.

The appeals court noted that, although it was not a standard part of the cell-extraction procedure at the facility, the use of a spit mask could be authorized for an inmate with a history of spitting or biting.

The trial court had explained that the type of spit mask used here was a hood that covers the wearer's face and head, fastened by tying two straps under the armpits and through two loops in the back. A thin cloth, similar to the type used in doctors' surgical masks, covers the wearer's nose and mouth. A mesh material covers the wearer's eyes and back of his head.

Instructions accompanying the spit mask read, “WARNING: IMPROPER USE OF THE SPIT NET MAY CAUSE INJURY OR DEATH. . . Wearer must be under constant visual supervision and should NEVER be left unattended. DO NOT USE on anyone that is . . . having difficulty breathing.”

During the cell extraction, the officers used several bursts of pepper spray against the prisoner, who was not complying with orders to come to the door to be handcuffed. He then came to the door with his wrists and hands in front of him and his palms face down, and inserted them through the slot where the pepper spray was being used. Officers told him to turn around, place his hands behind his back and through a cell door slot. He instead lay down on the cell floor and another burst of pepper spray was used before officers entered the cell, handcuffed his arms and shackled his legs, as well as placing the spit mask over his head.

After he was taken to a medical room to be examined by a nurse, he collapsed forward. The nurse allegedly provided no treatment to him, and did not physically touch him. The officers allegedly did not remove the spit mask or decontaminate him or his clothing, “which was saturated with pepper spray.” Instead, he was taken to another cell, where he was placed face down on the floor, and officers continued to restrain him “by kneeling and otherwise exerting downward pressure on various parts of his body, including his head, neck, shoulders, stomach, waist and legs” while waiting for nylon “flex cuffs” to arrive to replace the metal handcuffs. The new cuffs were put on, and the officers left the cell, leaving the prisoner face down, with his arms restrained behind his back, and the spit mask still on. He subsequently died, with a medical examiner determining that he died of asphyxia (the asphyxia was caused by chemical irritation of the airways by pepper spray, facial mask placement, compressional and positional mechanisms).”

The appeals court ruled that, if the facts were as alleged, a fact finder could find that excessive amounts of pepper spray were used under the circumstances, violating the prisoner’s right not to be subject to excessive force, and that the officers acted with deliberate indifference in failing to provide the prisoner with medical care after he was pepper sprayed, especially after his collapse.

In [Serna v. Colorado Dep't of Corr.](#), #04-1241, 455 F.3d 1146 (10th Cir. 2006), holding that the Director of Colorado prisons, in authorizing use of a special operations team to remove a prisoner from his cell to search for a loaded gun, was not liable for the officers' alleged excessive use of force, causing injuries to his jaw and testicles. No evidence showed that he either authorized or knew of any excessive force, or had any duty to personally supervise the team. The plaintiff prisoner claimed that the SORT team used excessive force and “crushed” his jaw and testicles despite his full compliance with their orders, stepping on his hand, kneeling on his back, pushing his face into the floor, and dragging him, face down, by his feet for about 30-40 feet. The prisoner claimed that the officers thought he was the target inmate, rather than merely his cellmate, and that once

they realized their mistake, treated him less harshly.

There was no evidence that the Director ordered the team to apply excessive force, that he directly supervised their on-site conduct from 50 miles away, or that he participated in the planning or execution of the operation. The prisoner also failed to show that the Director knew or should have known that he was, in activating the team, creating a situation causing a substantial risk of constitutional harm, but acted with deliberate indifference to it. There was also no showing of a pattern or practice of constitutional abuses by his subordinates on prior occasions. The evidence only showed that the Director, “as a high-level supervisor,” authorized the use of the team to respond to a dangerous situation at a warden's request. There was nothing to show that he wanted to harm the plaintiff prisoner or to ignore harm done by his subordinates.

Also of interest is Colon v. Mack, #93 Civ. 2674, 983 F. Supp. 494 (S.D.N.Y. 1997), finding that officers used only necessary force in restraining prisoner who lit a fire in his cell and charged at them when they attempted to enter cell. The trial judge in this case entered judgment as a matter of law after the jury also returned a verdict for the defendant officers. The court believed that this was necessary because it erroneously gave instructions to the jury that might have given them the impression that the prisoner had to show, in order to recover damages, that he was a citizen of the U.S. The federal civil rights statute in question actually allows recovery by “any citizen of the United States or other person within the jurisdiction thereof.” Colon v. Mack, #93 Civ. 2674, 983 F. Supp. 496 (S.D.N.Y. 1997).

Use of Electronic Weapons During Cell Extractions

Compelling compliance with orders necessary for institutional security and safety will justify the use of physical force during cell extractions, including Tasers, stun guns, and other electronic control devices, while courts have also rejected instances of alleged excessive or improper use.

In Skrnich v. Thornton, #00-15959, 280 F.3d 1295 (11th Cir. 2002), a prisoner's allegation that officers beat him while extracting him from his cell after he was incapacitated by an electronic shock was found to state a claim for violation of his Eighth Amendment rights. The court held that the officers were not entitled to qualified immunity, as the prisoner's version of the incident, if true, would violate clearly established law.

According to the prisoner's version of the incident, after the shock was administered, he was knocked into the wall and fell to the floor. Then offering no resistance, the officers are claimed to have kicked him repeatedly in the back, ribs, and side.

The prisoner further claimed that one of the officers struck him with his fists, and that he

was lifted onto his knees three times after falling, and the beating continued each time. Two of the officers allegedly watched and did nothing to stop the beating, and then one of them purportedly verbally threatened the prisoner and actively participated in the assault by knocking him to the ground several times.

A federal appeals court upheld the denial of qualified immunity to the officers, ruling that the prisoner's claims, if true, stated a claim for violation of clearly established law, so that the officers' conduct, if as the prisoner alleged, would not entitle them to a qualified immunity defense.

The court also noted that it is not constitutionally permissible for officers to administer a beating as a punishment for a prisoner's past misconduct. The plaintiff prisoner was on "close management status" at the time of the incident due to his history of disciplinary problems, including a conviction for aggravated assault with a deadly weapon when he had repeatedly stabbed a prison guard. The officers used the shock to incapacitate the prisoner because he refused to vacate his cell so that it could be searched. These facts would not excuse the actions that the prisoner claimed followed.

In [Drummer v. Luttrell](#), #99-2887, 75 F. Supp. 2d 796 (W.D. Tenn. 1999), affirmed, 234 F.3d 1268; 2000 U.S. App. Lexis 35191 (Unpub. 6th Cir. 2000), the court stated that prison personnel may use physical force, including Taser devices, to compel inmates to obey them in a case that involved a female inmate's refusal to submit, during a strip search, to orders to squat and cough, and to turn around and be handcuffed. Similarly, in [Parker v. Asher](#), #cv-N-88-218, 701 F. Supp. 192 (D.Nev. 1988), the court rejected an argument that electronic control devices are necessarily unconstitutional, finding that their use is fine when used for the purpose of enforcing compliance with an order to move to a different prison wing, which "had a reasonable security purpose. The legitimate intended result of a shooting is incapacitation of a dangerous person," rather than the unnecessary, malicious, or sadistic infliction of pain.

Other cases of interest include:

* [Price v. Busbee](#), #5:04-CV-313, 2006 U.S. Dist. Lexis 8159, 2006 WL 435670 (M.D. Ga. 2006), summary judgment granted, 2006 U.S. Dist. Lexis 87441, in which a court granted summary judgment to an officer who used a threat of use of a Taser device to calm down a disruptive pre-trial detainee in a jail holding cell. The officer took a Taser device and shone the red beam against the detainee's chest, after which he calmed down. Finding that the threat of use of the Taser was carried out in a good faith manner to restore discipline, the court found that the threat did not violate the detainee's constitutional rights.

* [Jolivet v. Cook](#), #94-4069, 48 F.3d 1232, 1995 U.S. App. Lexis 3950 (10th Cir. 1995) in which a federal appeals court upheld a trial court's determination that officers in a correctional facility used Tasers properly in a good faith attempt to maintain and restore

discipline when the plaintiff inmate refused to comply with orders to submit to being handcuffed when he was being moved from his cell.

* [Walker v. Sumner](#), #92-15297, 8 F.3d 33 (Table) (9th Cir. 1993) full unreported opinion at 1993 U.S. App. Lexis 26517, upholding the threat to use a Taser for the goal of compelling compliance with a search being conducted for a reasonable security purpose. The prisoner in that case was refusing to submit to an AIDS test, which was found to be reasonable and for legitimate purposes. The court noted that Nevada's Department of Prison authorities believe the Taser is the preferred method for controlling prisoners because it is the “least confrontational” when compared to the use of physical restraint, billy clubs, mace, or stun guns. By disabling the inmate, it prevents further violence. The court held that use of the Taser gun is not per se unconstitutional.

* [Caldwell v. Moore](#), #91-5852, 968 F.2d 595 (1992), upholding the use of a stun gun against a disruptive prisoner to restore discipline and order. In that case, the court found that the mere fact that there was no specific policy regulating the officers' use of stun guns did not, by itself, make their use unconstitutional, and the officers could reasonably conclude that the use of such devices could avoid the need to apply greater force. The court also noted that the prisoner did not receive any injuries serious enough to need immediate medical care, and there was no evidence at all that the defendants acted for an improper purpose or with a “culpable” state of mind, such as intent to injure him.

* [Michenfelder v. Sumner](#), #86-1549, 860 F.2d 328 (9th Cir. 1988), in which a federal appeals court rejected an argument that the use of an electronic control device constituted cruel and unusual punishment in the context of an alleged policy of allowing officers to use such devices against inmates who resist submission to strip searches.

Resources

The following are a few useful resources related to the topic of this article. The inclusion of an item does not indicate endorsement of particular views expressed, and any policies or procedures presented are for informational purposes only.

- [Civil Liability for Use of Tasers, stunguns, and other electronic control devices, Part III: Use Against Detainees and Disabled or Disturbed Persons](#). 2007 (5) AELE Mo. L. J. 101 (May, 2007).
- [The Use of Dogs for Cell Extractions in U.S. Prisons](#), Human Rights Watch (2006)
- Minnesota Department of Corrections [Instruction on Cell Extraction – Multiple Occupancy](#) (3/6/07).

- [Cell Extraction Lesson Plan](#), Prince William-Manassas Regional Adult Detention Center. Manassas, Va.
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