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**AELE Seminars:**

**Public Safety Discipline and Internal Investigations**

Sept. 28-Oct. 1, 2020– Virtual

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**Law Enforcement  
Liability Reporter**

A civil liability law publication for Law Enforcement  
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### **MONTHLY CASE DIGEST**

- Some of the case digests do not have a link to the full opinion.
- Most Federal District Court opinions can be accessed via [PACER](#). Registration required. Opinions are usually free; other documents are 10¢ per page.
- Access to cases linked to [www.findlaw.com](http://www.findlaw.com) may require registration, which is free.

### **Assault and Battery: Physical**

A woman sued one officer for using excessive force against her and a second for failing to intervene. The force was used during her arrest arising from an encounter with her ex-boyfriend and a group of teenagers. A federal appeals court upheld the denial of summary judgment to the first officer because a reasonable jury could find that the plaintiff was not physically resisting arrest before she was brought to the ground, and that the officer used unreasonable force on an individual who was not resisting arrest and who was secured in such a manner that she posed no threat to public safety. At the time of the incident, it was clearly established that it is impermissible to use significant force against a restrained suspect who was not actively resisting. But the appeals court found that the second officer was entitled to summary judgment on the claim that he failed to intervene against the use of force. There were no facts to suggest he had a realistic opportunity to intervene that he then disregarded. Additionally, there was no clearly established law that would require him to abandon his crowd control duties at the time and intervene to stop the first officer's use of force. [Lennox v. Miller](#), #19-1675, 2020 U.S. App. Lexis 23893 (2nd Cir.).

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## Electronic Control Weapons: Dart Mode

\*\*\*Editor's Case Alert\*\*\*

Plainclothes police officers approached an African-American motorist's parked SUV with weapons drawn. Because he mistakenly thought that he was being robbed, the motorist then tried to back up. The officers then flashed their badges, and he stopped the vehicle. When the officers opened the driver's door, he had no weapon. The officers simultaneously deployed a Taser in the dart mode and pepper-sprayed him at point-blank range, while he stayed seated. He had difficulty getting out of the SUV because of a colostomy bag stapled to his abdomen. He was currently recovering from an operation. The encounter caused bleeding. He was arrested "arising from a drug investigation," although officers found no drugs on him. The arrestee was detained for more than nine hours and subjected to an intrusive body scan after the officers knew of his medical condition. No drug-related charges were ever brought against him.

A federal appeals court overturned qualified immunity for the officers. Even if they had no knowledge of the motorist's medical condition, the other facts, construed in the plaintiff's favor, could support a reasonable juror's finding that he did not actively resist. Officers may not use a Taser or pepper spray against a motorist not under arrest merely for failure to follow orders when the officer has no reasonable fear for his safety. The officers were properly granted qualified immunity on the plaintiff's failure to intervene claim because no reasonable juror could find that each officer had the opportunity and means to prevent the other officer from using pepper spray or a Taser; The officers were, however, improperly granted qualified immunity on the plaintiff's false arrest claim because a reasonable jury could find that he did not engage in an affirmative act that gave rise to probable cause that he was obstructing official business. With respect to a municipal liability claim, the evidence included a Chris Rock video, played during the city's use-of-force training, in which the comedian talks about police misconduct. There was an offensive cartoon in the city's police-training manual, showing an officer in riot gear beating a prone, unarmed civilian with a club, with the caption "protecting and serving the poop out of you." The plaintiff presented sufficient evidence of inadequate municipal policy of the use of force to allow the claim against the city to go forward. [\*Wright v. City of Euclid\*](#), #19-3452, 962 F.3d 852 (6th Cir. 2020).

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## **Failure to Disclose Evidence**

During proceedings against a man charged with sexual assault, a state court suppressed evidence seized under a search warrant and ruled that the police failed to preserve potentially exculpatory evidence. Charges were then dismissed. The man then brought a federal civil rights claim against the Las Vegas Metro Police Department, officers, a crime scene investigator, and the nurse who performed a sexual assault exam on the alleged victim. He argued that the officers staged an incriminating crime scene photo by moving his sleeping medications from the hotel bathroom drawer into a mint container by his clothes in the bedroom, falsely stated in a warrant application that the alleged victim's sexual assault exam revealed sexual assault when it only revealed sexual intercourse, threatened him for asserting his constitutional rights, and made racially derogatory remarks. The trial court granted the defendants summary judgment, reasoning that the plaintiff was barred from relitigating the state justice of the peace's ruling at a preliminary hearing that there was probable cause to believe that he had committed a crime. A federal appeals court overturned this holding, finding that the trial court erred by concluding that the probable cause determination precluded the plaintiff from asserting in his lawsuit that the defendants lacked probable cause to arrest and detain him. His allegations that the defendants fabricated evidence or undertook other wrongful conduct in bad faith created a triable issue of material fact concerning probable cause. [\*Scafidi v. Las Vegas Metropolitan Police Dept.\*](#), #18-16229, 2020 U.S. App. Lexis 23088 (9th Cir.).

## **False Arrest/Imprisonment: No Warrant**

A federal appeals court upheld summary judgment against the plaintiff on his claims against the county, the sheriff, and two deputy sheriffs. It ruled that a deputy had probable cause to make the warrantless arrest of plaintiff when, prior to the arrest, he was told by his dispatcher that the plaintiff had tried to stab the victim, that the victim gave both oral and written statements about the incident, and that other evidence corroborated the victim's statements. The sheriff and the second deputy were entitled to qualified immunity on the Fourth Amendment false arrest claim, the officers were entitled to qualified immunity on the plaintiff's Fourteenth Amendment substantive due process claim for failure to investigate, the plaintiff's section 1983 civil conspiracy claim because the plaintiff failed to establish that he was deprived of a constitutional right or privilege, and in the absence of a constitutional violation, the plaintiff's municipal liability claim also failed. At most, the plaintiff presented evidence that the officers failed to strictly follow procedure, to ascertain

the identities of potential additional witnesses, and to explore possible inconsistencies. But none of these purported inadequacies in the investigation amounted to conscience-shocking behavior. [\*Kingsley v. Lawrence County\*](#), #19-1524, 964 F.3d 690 (8th Cir. 2020).

### **False Arrest/Imprisonment: Warrant**

A man was arrested and prosecuted for murder after he shot and killed two men. A jury acquitted him of the charges, finding that he acted in self-defense after viewing evidence which included video surveillance footage of the incident. He filed a federal civil rights lawsuit against a police detective and the city, based on the detective's failure to mention the video surveillance footage in her warrant affidavit for his arrest. He argued that if the court issuing the arrest warrant had been made aware of the video footage, it would not have found probable cause supporting the warrant. A federal appeals court upheld qualified immunity for the detective, ruling that there had been no constitutional violation because, while the jury relied on the video to support the acquittal, the video footage would not have negated probable cause for his arrest, and, even if the detective's omission ran afoul of the Fourth Amendment, she was nonetheless entitled to summary judgment because the law on this issue was not clearly established, entitling her to qualified immunity. [\*Kapinski v. City of Albuquerque\*](#), #19-2149, 964 F.3d 900 (10th Cir. 2020).

### **Firearms Related: Accidental Use**

An officer shot a motorist in the shoulder while trying to restrain him at the conclusion of a high-speed chase. There was opinion evidence in the civil rights lawsuit, however, that the weapons discharge was accidental. A federal appeals court ruled that there was no fact dispute that the officer unintentionally kept his firearm in his hand as he sought to restrain the motorist. Therefore, the plaintiff failed to show a violation of any Fourth Amendment rights and the officer was entitled to qualified immunity. [\*Bryant v. Gillem\*](#), #19-11284, 965 F.3d 387 (5th Cir. 2020).

### **Firearms Related: Intentional Use**

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A deputy sheriff shot and killed a male motorist who was fleeing in his truck from a

roadside stop. His estate sued the deputy, alleging excessive use of force. A federal appeals court upheld the rejection of qualified immunity for the deputy, ruling that it was clearly established that the deputy's use of deadly force to stop the fleeing vehicle was objectively unreasonable if the facts were as the plaintiff alleged. A reasonable jury could find that there was no immediate danger to the officer when he shot the decedent, and the law was clearly established that the use of deadly force in this situation was unreasonable. A reasonable officer would have known that there was no immediate danger to the officer where the officer, who was alone with the decedent on a dirt road, had moved out of the way of the decedent's car when it started moving in his direction, and the officer did not fire his weapon until the decedent's vehicle had passed him. [\*Reavis v. Frost\*](#), #19-7042, 2020 U.S. App. Lexis 23731 (10th Cir.).

Officers were entitled to summary judgment for using deadly force to shoot and kill a male motorist following a high-speed chase. The appeals court ruled that the officers' use of deadly force was objectively reasonable in this "dynamic and urgent" situation, where they were faced with the immediate threat of significant physical harm. The court explained that the severity of the motorists' crime of actively resisting arrest, leading officers on a dangerous high-speed chase at night, and refusing to stop his van at the command of officers even after coming to the end of a street weighed in favor of the use of force. He constituted an immediate threat to the safety of the officers when he ignored commands to stop the van and drove near, toward, and among the officers on foot; and his driving endangered the officers and left them with only seconds to consider less severe alternatives. A reasonable officer in the position of the individual defendant officers would have probable cause to believe that the decedent posed an immediate threat to the safety of one or more of the other officers or himself. Furthermore, even if the officers' use of deadly force was unreasonable, the officers did not violate a clearly established right. Claims of failure to adequately train and state law claims were also rejected. [\*Monzon v. City of Murrieta\*](#), #19-55164, 2020 U.S. App. Lexis 22859 (9th Cir.).

## **Immigrants and Immigration Issues**

A federal appeals court upheld in part and vacated in part a trial court's grant of summary judgment entering declaratory relief for the plaintiffs and permanently enjoining the U.S. Department of Justice (DOJ) on a nationwide basis from imposing certain conditions for providing funding for state and local criminal justice programs through the Edward Byrne Memorial Justice Assistance Grants. The plaintiffs, so-called "sanctuary" jurisdictions, which have enacted laws that limit their employees' authority to assist in the enforcement of federal immigration laws, filed suit to prevent the DOJ from denying funding of Byrne grants for failure to comply with new Access, Notice, and Certification Conditions. Consistent with its decision in [\*City of Los Angeles v. Barr\*](#), #18-56292, 941 F.3d 931 (9th Cir. 2019), the appeals court upheld the injunction barring the DOJ from using the Access and Notice Conditions as Byrne funding requirements for any California state entity or political subdivision. In *City of Los Angeles*, the court ruled that the DOJ lacked statutory authority to impose the Access and Notice Conditions on Byrne funds in reviewing a preliminary injunction obtained by the City of Los Angeles. The court also upheld the injunction barring the DOJ from denying or withholding Byrne funds on account of the Certification Condition based on the plaintiffs' alleged non-compliance with 8 U.S.C. 1373. With regard to the geographical reach of the relief granted by the trial court, the appeals court held that the district court abused its discretion in issuing an injunction that extended nationwide. [\*City and County of San Francisco v. Barr\*](#), #18-17308, 965 F.3d 753 (9th Cir. 2020).

### **Search and Seizure: Body Cavity**

"A series of coincidences and mistaken beliefs led to the arrest of Laramie Hinkle for possessing a stolen trailer that was not even stolen. And things got worse from there." Following an investigation which showed he was innocent, he sued, alleging that his arrest was unlawful, as was a press release issued about it, and the body-cavity strip search by the sheriff's office that arrested him. While a federal appeals court sympathized with the arrestee, it found the deputy sheriff had probable cause for the arrest, that the deputy arrested the plaintiff based on that probable cause, and that the trial court did not err in dismissing his claim that the sheriff issued the press release to retaliate against him. However, the court also ruled that the body-cavity strip search was unreasonable under the Fourth Amendment because this "unlawful search" was based on the County's "indiscriminate" strip-search policy of body-cavity strip searching all detainees before

deciding whether particular detainees would be housed in the jail's general population. [\*Hinkle v. Beckham County Board\*](#), #18-6202, 962 F.3d 1204 (10th Cir. 2020).

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### **Resources**

**School Resource Officers:** [Effects of school resource officers on school crime and responses to school crime](#), by Denise C. Gottfredson, et al., *Criminology and Public Policy* (July 2020) (free access until Sept. 15, available for purchase after that date).

**Training:** [National Survey on Officer Safety Training: Executive Brief](#), National Police Foundation (2020).

**Undercover Work:** [Undercover Chatting with Child Sex Offenders](#) by Matthew J. Fowler, Kristen A. Lybert, Jessica N. Owen., and Jennifer M. Waterfield, *FBI Law Enforcement Bulletin* (August 6, 2020).

**Use of Force:** [Preventing Civil Unrest: Transitioning from Prisoner to Patient](#), by John G. Peters, Jr., Ph.D., *Police and Security News* (July/August 2020).

**Use of Force:** [Law Enforcement Use-of-Force “Standards,” Degrees of Certainties, and Scientific Reliabilities](#), by Michael Brave, *For the Defense* (June 2020).



**Reference:**

- Abbreviations of Law Reports, laws and agencies used in our publications
- AELE's list of recently-noted civil liability law resources.

**Cross References**

Assault and Battery: Pepper Spray – See also, Electronic Control Weapons  
False Arrest/Imprisonment – See also, Electronic Control Weapons  
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