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**AELE Seminars:**  
**Jail & Prisoner Legal Issues**

January 25-28, 2021

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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: Handcuffs**

A Utah county sheriff's deputy first met a man when he stopped him for speeding on his motorcycle. A few days later, he received a report from a local convenience store/gas station that \$20 was missing from the store's register, and that they suspected someone matching the motorcyclist's description took the money. When the deputy asked him about the missing money, the motorcyclist denied taking it. The deputy then explained that he still needed to complete a report, which would require some information from the motorcyclist, the information usually contained on an ID or driver's license. When he declined to give the deputy his ID before consulting with an attorney, the deputy then arrested him, and handcuffed him behind his back, placing him in the front seat of a patrol car.

The arrestee complained that the handcuffs were too tight, but when the deputy tried to loosen them, the handcuffs malfunctioned and the deputy could not loosen or remove them. Using tools from his garage, the deputy was eventually able to pry the handcuffs off his wrists after twenty minutes of work, causing him significant pain and injury in the process. Charges were later dropped. He claimed that the deputy violated the Fourth Amendment when he arrested him without probable cause, used excessive force in doing so, and then initiated a malicious prosecution against him. A federal appeals court upheld the denial of

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qualified immunity to the deputy. The officer was not entitled to qualified immunity on the false arrest claim because there was no probable cause to arrest under Utah law when the arrestee refused to give the officer his driver's license or some other form of identification as this provision only made it a crime to refuse to provide a name to a police officer under certain circumstances, and the officer requested much more than the arrestee's name. The officer was also not entitled to qualified immunity for the excessive force claim because the arrestee did not pose an immediate threat to the officer's safety and the arrestee sustained lasting physical injury from the too-tight handcuffs. [\*Mglej v. Garfield County\*](#), #19-4015, 2020 U.S. App. Lexis 28453 (10th Cir.).

## **Dogs**

A man was at his home with his daughter, young grandson, and their pet dog, a seven-year-old rottweiler/labrador retriever mix. He opened the door to let the dog outside, unaware that several state troopers were swarming his property to serve an arrest warrant on an armed robbery suspect believed to be living there. One of the troopers saw the dog coming towards him "already mid-leap, within an arm's reach." The dog "was showing teeth, and growling in an aggressive manner." He "backpedaled to create distance," and the dog circled around him, "attempt[ing] to attack." He believed that he heard a snarl, and he fired a shot. The dog started to come after him again, and he fired a second shot and then a third. The dog yelped, and died within minutes.

The family sued the trooper, claiming unlawful seizure under the Fourth Amendment and intentional infliction of emotional distress. A federal appeals court upheld summary judgment in favor of the defendant trooper. The use of deadly force against a household pet is reasonable, the court stated, if the pet poses an imminent threat to the officer's safety, viewed from the perspective of an objectively reasonable officer. Unrebutted testimony established that the dog aggressively charged at the trooper, growled, and showed his teeth, as though about to attack. [\*Bletz v. Corrie\*](#), #19-1957, 2020 U.S. App. Lexis 28463 (3d Cir.).

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

An officer who mistakenly arrested a man under a warrant concerning drug transactions instead of his half-brother who has the same name was entitled to qualified immunity. The officer who obtained the warrant relied on a wiretap to identify a potential drug deal, then surveilled that exchange, traced phones and license plates back to a particular name, and eventually arrested a man by that name. The court rejected defendant's claim under [\*Franks\*](#)

[v. Delaware](#), #77-5176, 438 U.S. 154 (1978), because the defendant had not shown that the officer acted recklessly. Rather, everything in the record suggests that the officer made an honest mistake. There was no clearly established precedent giving the officers fair notice that the arrest of the wrong person pursuant to an arrest warrant violated the Fourth Amendment. [Nerio v. Evans](#), #19-50793, 2020 U.S. App. Lexis 28796 (5th Cir.).

## **False Arrest/Imprisonment: Unlawful Detention**

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

Police officers and the city which employed them were entitled to summary judgment in a lawsuit arising from the officers entering a woman's home without a warrant, seizing her, and taking her to a hospital for a mental health evaluation. The officers acted reasonably when entering the home. The warrantless search entry was justified by responding to potentially dangerous circumstances concerning the arrestee's health as a citizen had called and asked them to check on the arrestee due to concerns about her mental health, and the arrestee herself had called the police numerous times that same evening, but had refused to talk to the police when they arrived. Furthermore, once inside the home, the officers did not expand the scope of their search. The officers were also entitled qualified immunity on the unreasonable seizure claim, because the probable cause standard was not clearly established and, as a result, a reasonable officer could have believed the decision to arrest plaintiff for an emergency mental health evaluation was lawful. However, the court now explicitly stated that only probable cause that a person poses an emergent danger—that is, one calling for prompt action—to herself or others can tip the scales of the Fourth Amendment's reasonableness balancing test in favor of the government when it arrests an individual for a mental health evaluation because only probable cause constitutes a sufficient “governmental interest” to outweigh a person's “interest in freedom.” [Graham v. Barnette](#), #19-2512, 970 F.3d 1075 (8th Cir. 2020).

A woman filed a federal civil rights and Virginia state law lawsuit against two county police officers and a mental health examiner, claiming that they unlawfully seized and detained her for a mental health evaluation in violation of the Fourth Amendment and falsely imprisoned her in violation of Virginia state law. She also sued her employer and three of its employees, claiming that they conspired with the county defendants to unlawfully seize her and falsely imprison her, also in violation of section 1983 and Virginia state law. A federal appeals court upheld the trial court's summary judgment on the federal civil rights claims. The county defendants had probable cause to detain her for an

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emergency mental health evaluation as posing a potential danger to herself or others. Even assuming that they did not have probable cause to detain her, they were entitled to qualified immunity because the unlawfulness of their conduct was not clearly established at the time. Even if the plaintiff had properly raised her challenge, the court also approved the dismissal of the state law conspiracy claims against the county defendants where the officers had the required legal justification to detain plaintiff for the evaluation, and they followed the legal process provided by Virginia law for doing so. The court also upheld the dismissal of the plaintiff's section 1983 claim and state law claims against the private defendants where the plaintiff's allegations that the officers conspired with the private defendants to illegally seize her and remove her from the workplace for a psychological evaluation was comprised of nothing more than "conclusory assertions and rank speculation." In fact, the evaluation determined that there was probable cause to believe that the plaintiff was suffering from Post-Traumatic Stress Disorder ("PTSD"), and possibly a delusional disorder, following her prior service in the Middle East, and that she posed a genuine danger to herself and others. [\*Barrett v. PAE Government Services, Inc.\*](#), #19-1394, 2020 U.S. App. Lexis 29259 (4th Cir.).

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

After two police officers shot and killed a man in his home, a trial court granted summary judgment in favor of the city and officers on all claims arising from the incident except the use of deadly force and "associated state-law claims." A federal appeals court reversed the trial court's denial of qualified immunity on the deadly force claim. Regardless of whether the decedent's movement toward the officers was voluntary, in light of the close proximity between the officers and decedent's location in the closet of the home, his failure to comply with an officer's commands to drop a knife, and his stabbing of a police dog in the face with the knife meant that he posed a threat of serious physical harm to the officers. Under these circumstances, the court could not say that the officers' use of deadly force, even if "just over the line of reasonableness," violated a clearly established right. The court also reversed the district court's denial of official immunity on the state-law claims related to the use of deadly force where a reasonable fact finder could not conclude that the officers' conduct in this case was willful or malicious. Further, because the officers' discretionary decisions were entitled to official immunity, the city was entitled to vicarious official immunity on the state law claims. [\*Birkeland v. Jorgenson\*](#), #19-2086, 971 F.3d 787 (8th Cir. 2020).

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A federal appeals court held that police officers were entitled to qualified immunity for shooting and killing a motorist who ran towards bystanders with a knife despite the officers' repeated orders that he drop it after he left his vehicle. There was at least one pedestrian visible on the body-camera footage, and a steady flow of vehicles through the parking lot meant that citizens might quickly approach or step out of their vehicles. Under these circumstances, a reasonable officer would have believed the law permitted shooting the motorist. The motorist had been sitting in the driver's seat of his car, waving the knife in front of him, and the officers had told him both to drop the weapon and exit the vehicle. [\*Kong v. City of Burnsville\*](#), #19-1101, 960 F.3d 985 (8th Cir. 2020).

### **Malicious Prosecution**

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

A man was convicted of double murder and sentenced to life in prison. Nineteen years later, the convictions were vacated. The county court issued a certificate of innocence, and the man filed suit for wrongful conviction against seven Chicago police officers and two prosecutors, alleging several constitutional claims under 42 U.S.C. 1983 and state-law claims for malicious prosecution and civil conspiracy. Chicago, also a defendant, stipulated to liability if any of its officers were found responsible for violating the plaintiff's rights. A jury exonerated the prosecutors and one officer, but found six officers liable for using allegedly fabricated evidence and awarded more than \$13 million in compensatory damages plus punitive damages.

A federal appeals court upheld this result, rejecting an argument that the trial judge should have dismissed the case as a sanction for the plaintiff's "acknowledged perjury" during discovery. The judge's ruling was a reasonable exercise of his discretion. The plaintiff's lies concerned "peripheral matters" and were fully exposed during a rigorous attack on his credibility that emphasized his criminal history and gang affiliation. The admission of the certificate of innocence was not unfairly prejudicial, even in combination with closing argument statements by the plaintiff's lawyer. The jury instructions, which failed to explain that the plaintiff had the burden to prove that the fabricated evidence was used against him at his criminal trial and was material, contained a harmless error. [\*Patrick v. City of Chicago\*](#), #18-2759, 2020 U.S. App. Lexis 28380 (7th Cir.).

A federal appeals court overturned the dismissal of a malicious prosecution lawsuit

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against a police officer. To succeed on such a claim, a plaintiff must prove that the defendant violated his Fourth Amendment right to be free from seizures pursuant to legal process and that the criminal proceedings against the plaintiff terminated in his favor. In this case, the plaintiff had compromised with the district attorney to secure the dismissal of the criminal charges. The appeals court disagreed with defendant officer's argument that the plaintiff did not receive a favorable termination. Even though the court considered the dismissal order in the criminal cast, the court must construe the order in the light most favorable to plaintiff and resolve all reasonable inferences in his favor. When placed in that light, the court concluded that the order does not eliminate every reasonable inference that plaintiff received a favorable termination. In this case, the court could reasonably infer that the plaintiff did not admit to felony murder during the hearing. [\*Luke v. Gulley\*](#), #20-11076, 2020 U.S. App. Lexis 29236 (11th Cir.).

### **Public Protection: Hostages**

Three women were taken hostage by three armed bank robbers and used as human shields to facilitate the robbers' escape. Forced into a vehicle owned by one of the hostages, the women and the robbers were chased at high speed by law enforcement officers. The robbers shot one woman and pushed her out of the car. The chase then continued for over an hour, at speeds over 100 miles per hour, including exchanges of gunfire with a robber firing an AK-47 out of the back of the vehicle and two police officers. One hostage decided that her best hope of surviving was to open a rear side door of the vehicle and throw herself from the vehicle. She thought that if she did not do this, she would be killed by gunfire when the chase ended.

Minutes after she jumped, the chase ended, and police fired several hundred rounds into the vehicle, killing two of the robbers and the remaining hostage. The hostage who jumped sustained serious injuries during her escape and sued two officers as well as the city and its police department, seeking damages for assault and battery, intentional infliction of emotional distress (IIED), and general negligence. The trial court granted summary judgment for the defendants. An intermediate California appeals court upheld this result. While it found that the trial court abused its discretion in ruling on an evidentiary matter and also misapplied the Government Claims Act to improperly limit the scope of the plaintiff's claims, taking into account the improperly excluded evidence and properly viewing the factual basis of her claims against the officer defendants and the city, the court ruled each defendant was entitled to judgment as a matter of law. The officers' use of

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deadly force was reasonable as a matter of law. [\*Koussaya v. City of Stockton\*](#), #C089159, 2020 Cal. App. Lexis 884.

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**Resources**

**Drugs:** [Effects of Marijuana Legalization on Law Enforcement and Crime: Final Report](#), by Mary K. Stohr, Dale W. Willits, David A. Makin, Craig Hemmens, Nicholas P. Lovrich, Duane L. Stanton Sr., and Mikala Meize, Document 255060. July 2020, U.S. Department of Justice, Office of Justice Programs' National Criminal Justice Reference Service,

**Suicide:** [Suicidal Behavior in Preteens](#), by Tony Salvatore, FBI Law Enforcement Bulletin (October 13, 2020).

**Use of Force:** University of Chicago Law School - Global Human Rights Clinic, "[Deadly Discretion: The Failure of Police Use of Force Policies to Meet Fundamental International Human Rights Law and Standards](#)" (2020). Global Human Rights Clinic. 14.

**Use of Force:** [Police Use of Force: Overview and Considerations for Congress](#), Congressional Research Service (July 10, 2020).

**Use of Force:** Latasha M. James, Comment, [Excessive Force: A Feasible Proximate Cause Approach](#), 54 U. RICH. L. REV. 605 (2020).

**Use of Force:** [Preventing The Next George Floyd Tragedy: Review Standards For Police Shootings And Excessive Force](#). by Bruce Brumberg, Forbes (June 8, 2020).

**Use of Force:** [Lethal force laws reexamined after police killings; is reasonableness standard too easy?](#) by Debra Cassens Weiss, ABA Journal (June 19, 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: Physical – See also, Assault and Battery: Handcuffs  
False Arrest/Imprisonment: No Warrant – See also, Assault and Battery: Handcuffs  
Firearms Related: Intentional Use – See also, Dogs  
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