



FORCE SCIENCE[®] NEWS

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Court rules on LEO's legal duty to bring delusional subjects to medical care

I. Court rules on LEOs' legal duty to bring delusional subjects to medical care

A U.S. Court of Appeals has ruled that LEOs have no obligation to transport delusional subjects to a hospital instead of to jail in the absence of evidence of special medical risks.

A three-judge panel in the 6th appellate circuit last month reversed a lower court that had denied qualified immunity and summary judgment to officers and jailers in the in-custody death of an off-his-meds suspect with bipolar disorder.

"[T]here was no violation of a clearly established constitutional right," the panel ruled, "and the officers did not act with the recklessness that would permit them to be liable...." The court's jurisdiction covers Ohio, Michigan, Kentucky, and Tennessee.



DELUSIONS. The case involved a federal civil rights suit and state claims brought by the dead man's mother, who was with him when he was arrested for disturbing the peace at a big-box hardware store in Bedford Heights, OH. She'd brought him there to collect his last paycheck after he'd been fired for skipping work. When a delay developed, the subject began "kicking and throwing paint cans" and "talking a lot of gibberish."

Officers responding to a 911 call patted him down and discovered a container of pills in his pocket. The subject and his mother both stated that these were for his bipolar condition and that he had "not taken his medication for days or weeks."

According to an officer's later testimony, the suspect was "rambling and ranting and raving about every possible topic." Among other things, he claimed that he sold "\$5,000 gloves" to local stores, that he had a "million-dollar cell phone," that he made "lots of money" with internet businesses, that he was a state trooper, and that his father was "the son of Satan."

His bizarre and agitated monologue continued after an officer delivered him to jail. Correctional officers removed his handcuffs and belt and segregated him in an interview room to chill out so he could be booked.

During some eight hours' detention, he did calm down "from time to time"—enough to be fed (despite having a spoon, he "ate with his hands and spilled food all over himself") and to answer some "medical screening" questions (he denied having any "psychiatric issue").

Then during one of the lulls in his "unusual behavior," a correctional officer let him out of the room without handcuffs so he could make a phone call to arrange bail.

"Without warning," the appellate panel noted, the suspect threw the officer "to the floor and began choking him." Another officer jumped on the man's back and he "started choking her too." Cops rushed into the jail and pulled him into a restraint chair.

At that point, an administrator "noticed something wrong." Someone took the subject's pulse: weak. Resuscitation attempts failed. He was sped by emergency rescue squad to the hospital, where he was pronounced dead. An autopsy showed that he "died as a result of a sudden cardiac event during a physical altercation in association with bipolar disease."

JUDICIAL THINKING. A subsequent civil suit by the suspect's mother alleged that officers and their agency were liable for the fatality because of their "negligence," "deliberate indifference," and "lack of adequate training." A federal district judge denied defense motions to dismiss the case on grounds of qualified immunity. The Appeals Court panel determined that to be a reversible error.

The Court acknowledged that a detainee has a constitutional right to "medical treatment for a serious medical need. But given the particulars of this case, the panel explained, there is no precedent that "clearly required [the officers at the initial scene] to do more than what they did—collect [the subject's] pills, note his aggressive behavior and [that he] was bipolar and off his medications, and inform the jailers...."

“In short, no clearly established law, here or anywhere else from what we’ve seen, required the arresting officers to drive [the suspect] to a hospital rather than the jail under these circumstances.”

At the jail, the appellate judges stated, nothing “alerted the [correctional] officers that mental instability of this sort required immediate medical attention.... [The subject] did not demonstrate any suicidal tendencies...and he did not have any apparent risk of seizures.... For that matter there was nothing to suggest he was at risk of the heart attack that ended up killing him.”

Like the cops in the field, the jailers were not obligated “to do more than what they did: They kept him in seclusion for everyone’s safety, waited until he was calm to feed him and book him, asked him about any psychiatric diagnoses during the medical screening....

“From the arrest to the initial detention to the booking to the attack, each officer treated [the subject] respectfully and carefully in light of his behavior and mental condition.... None had reason to believe he was suffering more than a typical arrestee [or that] he was so delusional that he would act out dangerously, much less die of a heart attack....”

In conclusion, the panel noted, “Police officers face tough judgment calls about what to do with the mentally ill. Arrestees do not normally arrive at jail toting their medical records. Psychiatric problems do not always manifest themselves with clarity. And not even clear psychiatric problems always reveal their potential for serious harm—as here a heart attack.

“Perhaps those truths counsel in favor of more policies and training designed to minimize tragic injuries and deaths.... And perhaps police would be wise to err on the side of calling a doctor in cases like this one.” But that said, no constitutional or state law violations warranted money damages against the officers or their agency, the Court declared.

The case, Anita Arrington-Bey v. City of Bedford Heights, can be accessed in full by clicking [here](#). For a thorough explanation of guidelines from the US Supreme Court on when lower courts should grant qualified immunity, see this new article from the Americans for Effective Law Enforcement Monthly Law Journal. Click [here](#) to read it.

Our thanks to Atty. Michael Brave of LAAW International, LLC, for alerting us to the Ohio case.

II. In-Box: A caution about averages, amen to respectful policing

Our readers write:

Shot timing: An average is not a 1-size-fits-all figure

In a police shooting case I’m currently working on as an expert witness, the officer fired 11 shots at a fleeing suspect who, the officer says, turned to look back at him and pointed a gun at him while running away.

I think it is always important for a jury to understand over what time span a shooting took place. The longer the duration of an officer’s firing, the easier for the plaintiff’s attorney to argue that the officer should have noticed the suspect was no longer a threat, and stopped shooting.

In this case, the officer was using a double-action-only 9mm Sig P226 pistol, with a trigger pull I weighed at 10 1/2 to 10 3/4 pounds. At the range, I electronically timed him firing a series of 11 shots, then a second series of 10 shots (he mistakenly didn't fire the 11th shot the second time).

His "split times" (shot-to-shot times) were very fast, averaging 0.124 seconds on the first series of shots and 0.1277 seconds on the second series. The split times ranged from a low of 0.10 seconds to a high of 0.16 seconds.

Based on this, all his 11 shots during the incident could have been fired in about a second and a quarter from his first shot to his last, not including, of course, his "reaction time" from his perception of the deadly threat to his firing the first shot.

It is unusual for me to find an officer who can fire multiple shots as fast as this officer. With police service pistols, and especially with DAO pistols with trigger pulls such as this one, I more often see split times of about 0.20 to 0.25 seconds, with an occasional split time in the range of 0.18 or so.

This should remind us that when we use "average" times for human performance—which there is often a good reason, or indeed a necessity, for doing—we should be cognizant of the fact that any particular individual's performance may deviate from those times.

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Respect helps, even if undeserved

In Force Science News #325 [11/29/16] about officer imagery, mindset, and attitude toward the public I found a useful parallel to a marriage relationship book called *Love & Respect: The Love She Most Desires; The Respect He Desperately Needs*.

The author points out that men value respect and when a man is disrespected the barriers go up, resulting in defensiveness or aggression. Whether the respect is earned or deserved is irrelevant in terms of how disrespect devolves the situation.

I have seen this effect time and time again in dealing with subjects at work. I have seen tough guy punks who are ready to throw blows open up and cooperate when treated with respect they may not even deserve. I have also seen cooperative individuals become combative when another officer treats them in a disrespectful or condescending manner. Cops often act the same way when a member of the public is rude to us.

There are times we have to be tough but there are times when that tough guy attitude gets in our own way.

Sgt. Matthew Uchida
Honolulu (HI) PD
Wooster, OH

Permission granted
May I have permission to reprint [FSN #331 on communication strategies] and use it in my Verbal Judo class?

John Fallon
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Lima, OH

III. Could a homicide you're investigating be a serial killer's work?

The Murder Accountability Project (MAP) is an unusual data-mining operation that can help homicide investigators surface unsuspected serial killings.

Check it out at: <http://murderdata.org>.

MAP is the nonprofit brainchild of Thomas Hargrove, a retired investigative journalist and admitted data geek who developed an algorithm that allows computer searches of hundreds of thousands of homicide records nationwide to identify telltale commonalities that may link cases and help solve them.

In an ongoing accumulation, MAP has assembled case details on nearly 640,000 homicides dating back to 1980, including over 23,000 cases that had not been reported to the FBI. According to a recent article in Bloomberg Businessweek magazine, "This is the most complete list of case-level details of U.S. murders available anywhere."

Using statistical analysis software, available free online, an investigator (or anyone else) can search MAP's open-source files by geography, sex, age group, and murder method for matches that may suggest promising and often surprising leads to unsolved cases.

How-to guidance, plus more details of MAP's background and law enforcement-related supporters, are available on the organization's website.

Working with a fire protection expert, Hargrove has also developed an algorithm that can mine fire reports to identify undetected and unreported arsons.

According to MAP's website, Hargrove is available to answer questions from police at: thomashargrove@verizon.net or by phone at (571) 606-5999.

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