MAY 2024 – FIRE & EMS LAW NEWSLETTER

[NEWSLETTER IS NOT PROVIDING LEGAL ADVICE.]

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- **2024: FIRE & EMS LAW – MONTHLY NEWSLETTERS**: monthly review of recent court decisions [send e-mail if wish to be added to our free listserv]: View on the Fire Science Fire & EMS Law Newsletter page
- **2024: FIRE & EMS LAW – RECENT CASE SUMMARIES / LEGAL LESSONS LEARNED**: Case summaries since 2018 from monthly newsletters, view at Scholar@UC
- **2024: FIRE & EMS LAW – CURRENT EVENTS**: View at Scholar@UC
- **TEXTBOOK:** Updating 18 chapters of my textbook (2018 to current). FIRE SERVICE LAW (SECOND EDITION), Jan. 2017: View at the Waveland Press, Inc. site

12 RECENT CASES – INCLUDING LANDMARK U.S. SUPREME COURT DECISION [CHAP. 7]

Chap. 1 – American Legal System, incl. Fire Codes, Investigations, Arson

File: Chap. 2, Safety

IN: SCUFFLE WITH MENTAL AT FIRE STATION – TRIED ESCAPE PD CRUISER – HABITUAL OFFENDER – 26 YRS

On April 29, 2024, in Warren A. Beals v. State of Indiana, the Court of Appeals of Indiana held (3 to 0) that the defendant was properly convicted by a jury and there is no basis for resentencing. On April 27, 2021, members of Marengo Volunteer FD heard yelling outside. When defendant poked finger at Fire Chief (and reserve PD) tried to grab his service weapon, firefighters pushed him to floor. When PD was transporting him to jail in front seat of patrol car without a cage, he tried to escape. The trial court sentenced Beals to six years for the Level 4 felony, attempted escape from PD causing bodily injury, plus a habitual offender sentencing enhancement of twenty years.

THE COURT HELD:

> "Police officers arrested Warren Beals after a scuffle at a fire station. On the way to jail, Beals opened the door to the police vehicle and attempted to get out, but the transporting officer restrained Beals until he could stop the car. A jury convicted Beals of Level 4 felony attempted escape causing bodily injury and Class A misdemeanor resisting law enforcement. The jury further determined Beals was a habitual offender.
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> Beals was thirty-two years old at sentencing. He has three prior felony convictions: Class C battery resulting in serious bodily injury; Class D battery resulting in bodily injury to a law enforcement officer; and Class D intimidation. He has four prior misdemeanor convictions: Class A cruelty to an animal; Class B strangulation; Class B reckless driving; and Class B public intoxication. Beals has been placed on probation six times and has violated the terms of probation three times. His lengthy criminal history, including repeated acts of violence, speaks poorly of his character. And Beals' history of probation violations weighs against a lengthy term of probation here.
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> Based on the foregoing, we do not conclude that Beals was unable to control his behavior when he tried to get out of the vehicle and then tried to walk away. Considering Beals' history of mental illness in context with his extensive violent criminal record and the nature of the offenses, he has failed to persuade us that his sentence is an outlier needing revision."

FACTS:

> "On the evening of April 27, 2021, several members of the Marengo Volunteer Fire Department were at the fire station, discussing a training exercise they had just completed. Among other attendees, Fire Chief Derick Goldman was present. He was also a paramedic and a reserve police officer with the Marengo Police Department. That night,

Goldman was not in his police uniform, but he wore his service weapon in a holster on his hip. His unmarked police vehicle was parked at the fire station.
The firefighters heard yelling outside. They went outside and saw a person later identified as Beals walking down the street, cursing loudly. Goldman called for police assistance, concerned that Beals was endangering himself by walking in the street. Beals approached the group, and one of the firefighters noted he was 'mumbling, carrying on, [and] talking to hisself [sic].' Tr. Vol. II, p. 40. Beals explained he was walk'ng to his grandparents' house after arguing with his girlfriend and further said he was "having a bad f*****g day.' *Id.* at 156.

Goldman recognized Beals from a prior encounter, as we detail below. Beals also recognized Goldman and asked him 'if that was his gun on his side.' *Id.* at 119. After further conversation, Beals asked to shake Goldman's hand. Goldman declined, asking Beals not to touch him.

At that point, according to Goldman, Beals poked him with a finger. Goldman again told Beals not to touch him. Beals then poked Goldman again, and Goldman pushed Beals away with both hands. Next, Beals grabbed Goldman's gun but could not remove it from its holster. Goldman and another firefighter grabbed Beals and pushed him up against a garage door. They intended to put Beals on the ground in a deliberate manner, but their legs became tangled, and they all fell. Beals sustained a cut to his forehead in the process. Once Beals was on the ground, a third firefighter grabbed Beals' legs. Beals struggled against being restrained.

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In any event, several police officers and medics arrived at the firehouse. Beals declined the medics' offer to take him to the hospital. The officers handcuffed Beals, restraining his hands behind his back, and put him in Deputy Justin Froman's vehicle. The vehicle did not have a secure (caged) back seat, so they put Beals in the front passenger seat and buckled him in. He appeared to have calmed down.

Deputy Froman drove away, intending to take Beals to the Crawford County Jail. But as they left Marengo traveling fifty-five to sixty miles per hour, Beals, who was still handcuffed, unbuckled his seatbelt, opened his door, and started to slide out. Deputy Froman grabbed Beals' arm with his right hand as he pressed on the brake. Beals struggled with him and slid onto the ground, on his knees, as the vehicle stopped. In the process, Beals dragged Deputy Froman over the vehicle's center console and laptop onto the passenger seat. The deputy felt pain in his right wrist and left hip.

Next, Deputy Froman put the vehicle in park and, while still holding onto Beals, ordered him to get back inside. Beals stood up and leaned against the passenger seat. He told the officer he 'wanted to die.' Tr. Vol. III, p. 82. When the deputy briefly released Beals to exit the vehicle, Beals attempted to flee, despite still being handcuffed. Deputy Froman pushed Beals onto the ground, causing him to fall into a ditch. The deputy drew his taser and ordered Beals to remain in the ditch.

Other officers arrived, having been summoned by Deputy Froman during the fracas, and helped to take Beals into custody. The officers put Beals in a police vehicle with a cage and secured his feet with shackles. Once Beals was delivered to the jail, Deputy Froman noticed further pain in the muscles of his right wrist, left shoulder blade, and left hip. The pain resolved after three days."

Legal Lesson Learned: Habitual offender laws can substantially increase a defendant's sentence.

File: Chap. 3, Homeland Security

MA: FIREBOMB – 5-GAL GAS CAN PLACED NEAR JEWISH CENTER – BLOOD ON CAN / WICK / CHRISTIAN PAMPHLET

On April 5, 2024, in United States of America v. John Michael Rathbun, the U.S. Court of Appeals for the 1st District (Boston) held (3 to 0) reject his appeal from jury convictions, after two separate trials arising out of the bomb's discovery. The defendant took the stand and testified – jury rejected his alibi.

THE COURT HELD:

"Contrary to Rathbun's protestations, the record shows that abundant evidence incriminated him, making the government's case against Rathbun quite strong. The government presented evidence, inter alia, about the fuel container itself and the recorded incriminating statements Rathbun made to his mother acknowledging his possession of it, Rathbun's cell phone location data on the date of the incident, Rathbun's DNA evidence from the fuel container and wick, and Rathbun's inculpatory admissions to investigators. The government also presented circumstantial evidence demonstrating Rathbun's access to the Steps to Peace with God tract and evidence that contradicted multiple statements Rathbun made during his interview with Agent McGonigle. Therefore, taking 'the strength . of the government's evidence of guilt' less the evidence of Rathbun's behavior at the Motel, we conclude that the admission of the evidence, even if error, was harmless."

FACTS:

"On the morning of April 2, 2020, a suspicious item was spotted on Converse Street by a neighborhood resident near the entrance to the JGS. After receiving a 911 call about the peculiar package, law enforcement agents responded and discovered a five-gallon yellow fuel can containing both gasoline and a charred paper wick. In their examination of the item, they observed what appeared (and was later confirmed) to be blood on both the fuel container and wick. Follow-up investigation revealed that the paper wick was made of pages from a religious tract, published by the Billy Graham Evangelistic Association (the 'BGEA'), entitled Steps to Peace With God. Rathbun became a suspect in the planting of the device when the Massachusetts state lab identified the blood on the device as belonging to him."

Legal Lesson Learned: DNA evidence is very persuasive to a jury.

Note: The jury rejected the defendant's alibi.

"Footnote 24: When opting to testify, in his own defense, Rathbun eventually acknowledged that he had earlier and likely found the yellow canister used to make the bomb at a job 'cleanout' in Chicopee, Massachusetts. At that job site, he had cut his hand on a metal shard, which explains the presence of his blood on the container. He contended that he (and an acquaintance) had illegally dumped the cleanout debris at a dumpster on Converse Street some days before the bomb was found. As for the bloody tract, he theorized that blood from his cut must have somehow transferred to a pamphlet he speculates his mother must have had in her car's cup holder, and that the pamphlet must have gotten jettisoned to the dumpster along with the fuel canister and other random debris. Continuing, he postulates some random third person -- someone very careful not to leave fingerprints, but crafty enough to leave incriminating blood evidence -- must have come along and fished the canister and the pamphlet out of the dumpster and used it to craft the destructive firebomb at the heart of this prosecution. As we said, this alternative explanation was seemingly a non-starter for the jury."

Chap. 4 – Incident Command, incl. Training, Drones, Communications

Chap. 5 – Emergency Vehicle Operations

Chap. 6 – Employment Litigation, incl. Work Comp., Age, Vet Rights

File: Chap. 7, Sexual Harassment

FL: DELAY REINSTATING FEMALE RECRUIT - TRIAL COURT $150 / DAY FINE FD SET ASIDE - $750K JURY VERDICT 2021

On April 24, 2024, in Palm Beach County v. Sharon Wilson, the District Court of Appeal of Florida, Fourth District, held that trial court improperly imposed a $150 / day fine on the FD for any delay in reinstating her to the next training academy. Wilson was hired in April 2015 and fractured her wrist in recruit school; written up for violations and resigned. In Dec. 2021 Jury awarded her $750,000 and Court ordered her reinstated. The Court of Appeals held that trial court judge violated FD's due process rights when the judge proposed sanctioning the County if the County failed to reinstate Wilson by the specified reinstatement date. The trial court stated, "if I just ordered [Wilson] to be reinstated, you know what, [the County] could just sit on [its] hands and wait years and years and years to reinstate her. So, there has to be a monetary

sanction, so to speak, for [the County] to act in a timely manner on the Court's directives that [the County] hire[s] her."

COURT HELD:

> "As discussed below, we reverse the trial court's premature and speculative imposition of a daily fine…. The County argues that the trial court denied the County due process when, during the hearing on Wilson's motion, it sua sponte proposed a monetary sanction if the County failed to timely reinstate Wilson. We agree with the County."

FACTS:

> "Wilson sued the County for discrimination that she endured while employed as a firefighter/paramedic recruit in the County's fire academy program. After the jury found in Wilson's favor on her sex discrimination claim, Wilson subsequently sought to be reinstated to her former position in the fire academy program.
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> The trial court granted Wilson's request for reinstatement, but its order did not specify when reinstatement was to take effect. However, as discussed on the record, the County's next available fire academy class was scheduled to begin in roughly six months, which would allow Wilson to complete the physical training requirements in the meantime. The trial court acknowledged that Wilson would need to be current on her certifications and be re-trained given the nature of the job in ensuring public safety."
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> [From Dec. 8, 2021 article.] "Jury awards former Palm Beach County Fire Rescue academy employee nearly $750K following lawsuit." [County] paying for the sins of the prior fire rescue administration,' attorney says…. "Garcia [her attorney] argued to the jury that there was a boys' club at the academy where women were subject to open discrimination. Wilson was hired in April 2015 and placed in the Fire Rescue Recruit Academy as a probationary firefighter. She fractured her wrist and then started getting written up for made-up violations, according to her lawsuit. She was eventually forced to resign under threat."

Legal Lesson Learned: Monetary sanction on employer cannot be imposed without evidence of breach of a court order.

File: Chap. 7, Sexual Harassment

VA: "OPENLY BISEXUAL" EMT – NEG. JOB REFERENCES - VP AMBUL. CO. TOLD OTHERS "ODD DUCK" – CASE PROCEED

On April 18, 2024, in Natalie Lundberg v, Delta Response Team, LLC and Thomas Walton, United States District Court Judge Robert S. Ballo, U.S. District Court for Western District of Virginia (Charlottesville Division) held that defense motion to dismiss claims is denied regarding her claim of "sexual orientation discrimination / disparate treatment theory." Lundberg interviewed with both the City of Lynchburg Fire Department and Bedford County Fire and Rescue and accepted a conditional offer of employment from Bedford on February 16, 2022.

Both FDs withdrew their interest after speaking with Walton. The Court dismissed other claims, including the claim for intentional infliction of emotional distress.

COURT HELD:

> "Lundberg states a plausible claim for sexual orientation discrimination against Delta Response based on her allegations of disparate treatment in the workplace. Lundberg alleges discrimination based on her sexual orientation when Walton provided a negative job reference, which for purposes of the motion to dismiss, I consider an adverse employment action. Absent direct evidence[12], the elements of a *prima facie* case of disparate treatment under Title VII are (1) membership in a protected class; (2) satisfactory job performance; (3) an adverse employment action; and (4) similarly situated employees outside the protected class who received more favorable treatment. *Tabb v. Bd. Of Educ. Of Durham Pub. Scs*. 29 F.4th 148, 157 (4th Cir. 2022); *Coleman*, 626 F.3d at 190. Disparate treatment requires proof of discriminatory motive 'although [that motive] can in some situations be inferred from the mere fact of differences in treatment.' *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 335 n.15 (1977)."

FACTS:

> "Lundberg began her employment with Delta Response in 2017 as an Emergency Medical Technician. She received excellent performance evaluations and was promoted to Captain in August 2021. Am. Compl. ¶¶ 11, 16, 17, Dkt. 2. Delta Response provides emergency and nonemergency services in Virginia.
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> Beginning in November 2021, Lundberg, with Walton's knowledge, applied for positions at other local Fire and EMS agencies. *Id.* ¶ 38-39. Lundberg interviewed with both the City of Lynchburg Fire Department and Bedford County Fire and Rescue and accepted a conditional offer of employment from Bedford on February 16, 2022. Bedford County later rescinded its offer after speaking with Walton as her reference. Similarly, the City of Lynchburg informed Lundberg it "would no longer proceed with her interview process" after speaking with Walton. *Id.*¶¶ 41, 43-47, 50-51. Lundberg filed Freedom of Information Act ('FOIA') requests with Bedford and Lynchburg connected to her application and interview processes. *Id.* ¶ 53. Through these, she discovered that when Bedford and Lynchburg contacted Walton as a reference, he 'disclosed, unprompted, that Lundberg is openly Bisexual . . . questioned Lundberg's 'lifestyle choices' and called her an 'odd duck' and did not recommend her as an employee. *Id.* ¶¶ 53-55.
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> On March 10, 2022, Lundberg contacted Human Resources about Walton's conduct. She also complained to Walton directly the same day and again on April 4, 2022. *Id.*¶ 57-60. Walton did not deny he made the statements to Bedford and Lynchburg, but instead stated to Lundberg generally, '[w]ell if they didn't hire you for that, would you still want to work with them' and indicated if he had known that his statement would curtail her employment opportunity, he 'never would have said it.' *Id.* ¶ 58-60. 'As a result of the conversation [with Walton], Lundberg resigned as Captain" and requested a part-time position. *Id.* ¶ 61. Lundberg alleges that after complaining to Walton, '[Delta Response]

> retaliated against [her] by treating her differently than it customarily treats its heterosexual employees.' *Id.* ¶ 62-65."

Legal Lesson Learned: If an employee requests a job reference, consider declining the request if this would not all be positive. Some employers direct Managers to not give job references, positive or negative.

Note: See Ohio Revised Code Section 4113.71 | Immunity of employer as to job performance information disclosures.

> (B) An employer who is requested by an employee or a prospective employer of an employee to disclose to a prospective employer of that employee information pertaining to the job performance of that employee for the employer and who discloses the requested information to the prospective employer is not liable in damages in a civil action to that employee, the prospective employer, or any other person for any harm sustained as a proximate result of making the disclosure or of any information disclosed, unless the plaintiff in a civil action establishes, either or both of the following:
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> (1) By a preponderance of the evidence that the employer disclosed particular information with the knowledge that it was false, with the deliberate intent to mislead the prospective employer or another person, in bad faith, or with malicious purpose;
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> (2) By a preponderance of the evidence that the disclosure of particular information by the employer constitutes an unlawful discriminatory practice described in section 4112.02, 4112.021, or 4112.022 of the Revised Code.

File: Chap. 7, Sexual Harassment

U.S. SUP. CT. – LANDMARK CASE: JOB TRANSFER / SEXUAL HAR. – FEMALE SGT. MUST ONLY SHOW "SOME HARM"

On April 17, 2024, in Jatonya Clayborn Muldrow v. City of St. Louis, Missouri, et al., the United States Supreme Court held (9 to 0) that trial court should not have granted summary judgment to the city, and 8th Circuit Court of Appeals had applied too tough a standard for employees claiming job transfer was because of sexual harassment ("materially significant disadvantage"). Sergeant Jatonya Clayborn Muldrow maintains that her employer, the St. Louis Police Department, transferred her from one job to another because she is a woman. Sergeant Muldrow was in Intelligence Division, worked M-F, vehicle, FBI cases, and her new male boss moved her out (back to street patrol) because wanted male sergeant. Under new standard, she must only that that the job transfer brought about some harm with respect to an identifiable term or condition of employment, but that harm need not be significant.

COURT HELD (opinion by Justice Elena Kagan):

> "The courts below rejected the claim on the ground that the transfer did not cause Muldrow a 'significant' employment disadvantage. Other courts have used similar

standards in addressing Title VII suits arising from job transfers. Today, we disapprove that approach. Although an employee must show some harm from a forced transfer to prevail in a Title VII suit, she need not show that the injury satisfies a significance test. Title VII's text nowhere establishes that high bar.

The District Court, viewing the matter differently, granted the City summary judgment. Under Circuit precedent, the court explained, Muldrow needed to show that her transfer effected a 'significant' change in working conditions producing 'material employment disadvantage.' 2020 WL 5505113, *8–*9. And Muldrow, the court held, could not meet that heightened-injury standard. '[S]he experienced no change in salary or rank.' Id., at *9. Her loss of 'the networking [opportunities] available in Intelligence was immaterial because she had not provided evidence that it had harmed her 'career prospects.' Id., at *8. And given her continued 'supervisory role,' she had not 'suffered a significant alteration to her work responsibilities."

FACTS:

"From 2008 through 2017, Sergeant Muldrow worked as a plainclothes officer in the St. Louis Police Department's specialized Intelligence Division. During her tenure there, she investigated public corruption and human trafficking cases, oversaw the Gang Unit, and served as head of the Gun Crimes Unit. By virtue of her Division position, Muldrow was also deputized as a Task Force Officer with the Federal Bureau of Investigation—a status granting her, among other things, FBI credentials, an unmarked take-home vehicle, and the authority to pursue investigations outside St. Louis. In 2017, the outgoing commander of the Intelligence Division told her newly appointed successor that Muldrow was a 'workhorse'—still more, that 'if there was one sergeant he could count on in the Division,' it was Muldrow. 2020 WL 5505113, *1 (ED Mo., Sept. 11, 2020).

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But the new Intelligence Division commander, Captain Michael Deeba, instead asked the Department to transfer Muldrow out of the unit. Deeba wanted to replace Muldrow—whom he sometimes called "Mrs." rather than the customary "Sergeant"—with a male police officer. See id., at *1–*2. That officer, Deeba later testified, seemed a better fit for the Division's "very dangerous" work. Id., at *2; App. 139. The Department approved the transfer against Muldrow's wishes. It reassigned her to a uniformed job in the Department's Fifth District.

While Muldrow's rank and pay remained the same in the new position, her responsibilities, perks, and schedule did not. Instead of working with high-ranking officials on the departmental priorities lodged in the Intelligence Division, Muldrow now supervised the day-to-day activities of neighborhood patrol officers. Her new duties included approving their arrests, reviewing their reports, and handling other administrative matters; she also did some patrol work herself. Because she no longer served in the Intelligence Division, she lost her FBI status and the car that came with it. And the change of jobs made Muldrow's workweek less regular. She had worked a traditional Monday-through-Friday week in the Intelligence Division. Now she was

placed on a ‘rotating schedule’ that often involved weekend shifts. 2020 WL 5505113, *2”

Legal Lesson Learned: This is a “landmark” decision; the new “some harm” standard will be widely applied not only in job transfer cases but also a wide variety of other employment decisions.

Note: Justice Michael Kavanaugh in his concurring decision focused on impact of this decision

“All of that said, the Court’s new some-harm requirement appears to be a relatively low bar. Importantly, the Court emphasizes that ‘some harm’ is less than significant harm, serious harm, or substantial harm. Ante, at 6. Therefore, anyone who has been transferred because of race, color, religion, sex, or national origin should easily be able to show some additional harm—whether in money, time, satisfaction, schedule, convenience, commuting costs or time, prestige, status, career prospects, interest level, perks, professional relationships, networking opportunities, effects on family obligations, or the like.”

Chap. 8 – Race / National Origin Discrimination

Chap. 9 – Americans With Disabilities Act

Chap. 10 – Family Medical Leave Act

Chap. 11 – Fair Labor Standards Act

Chap. 12 – Drug-Free Workplace, inc. Recovery

File: Chap. 13, EMS

OH: COLUMBUS PD - NO FIRST AID AFTER SHOOTING SUICIDE MAN 5 TIMES / NO IMMUN. - WHITLE CASTLE CASE

On April 29, 2024, in Ken Heeter, as Administrator of the estate of Bill G. Heeter, et al. v. Kenneth Bowers, individually and in his capacity as an employee of the City of Columbus, Ohio; Columbus Police Department, the U.S. Court of Appeals for the 6th Circuit (Cincinnati), held (2 to 1) that trial court judge properly denied officer's motion for summary judgment who shot the man five times with M-16 service rifle; jury will decide if officer used excessive force, and whether he should have rendered basic first aid. The City of Columbus was dismissed from case based on municipal immunity.

> The Court referenced the infamous case where Cincinnati PD on Nov. 30, 2003 responded at FD request to White Castle where 350-pound Nataniel Jones was acting erratically. The violent struggle resulting in his death was recorded and video shown nationwide by many news outlets. The Fire Engine that had arrived first left the scene and returned to quarters.
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> "Officers Pike and Slade sprayed chemical irritant in Jones's face while he was prone in handcuffs and while officers Pike, Osterman, Abrams, Reese, Slade, and Jay Johnstone used their combined weight to hold him down. Their weight restricted the movement of Jones's diaphragm and made it difficult for him to breathe. Jones struggled to twist his body under the officers in an attempt to breathe. In response, the officers pressed down on him even harder. Once they had subdued Jones, they left him face down on the ground handcuffed behind his back for a prolonged period of time. During this time, Jones stopped breathing; all the officers knew it. Reese saw Jones changing color. Johnstone, Reese, and Abrams knew that a suspect lying face down risked positional asphyxia (difficulty breathing due to one's posture or position). None of the officers provided mouth-to-mouth resuscitation or other respiratory aid. Instead, they stood there and discussed the absence of fire personnel." Jones v. City of Cincinnati, 521 F.3d 555, 558 (6th Cir. 2008);
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> See also: "Coroner: Man had enlarged heart, drugs in system."

COURT HELD IN COLUMBUS CASE:

> [EXCESSIVE FORCE CLAIM.] "First, Officer Bowers asks us to focus on the parts of the video which show Mr. Heeter was not following the officers' commands to exit the house, to put his gun down, or to raise his hands. Mr. Heeter's disobedience and words of frustration that the group of armed officers in his home were 'really starting to piss [him] off' indicated that the situation was tense. Redding Footage at 10:45–10:50. But 'the mere failure of a citizen—not arrested for any crime—to follow the officer's commands' does not give the officer probable cause to use deadly force against him.
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> [FAILURE TO PROVIDE FIRST AID CLAIM.] "To summarize, it is undisputed that Officer Bowers focused on ordering an officer to handcuff Mr. Heeter, then stood idle as Mr. Heeter bled out, moaned, and struggled to breathe. A reasonable jury could find that

Mr. Heeter's critical injury called for immediate first aid before professional paramedics arrived, and that Officer Bowers—trained in first aid and unoccupied by police duties—could and should have rendered that care. Therefore, a reasonable jury could find Officer Bowers violated Mr. Heeter's Fourteenth Amendment right to adequate medical care."

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In Jones v. City of Cincinnati, a police sergeant arrived at a scene to find a detainee lying face down and not breathing; other responding officers had subdued and asphyxiated him. 521 F.3d 555, 558 (6th Cir. 2008)."

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The Supreme Court established in 1983 that an officer has an obligation under the Due Process Clause to provide adequate medical care to suspects shot during apprehension. City of Revere, 463 U.S. at 244. As discussed above, the standard applicable in November 2018 [Jones v. City of Cincinnati case] required a plaintiff to show an officer knowingly and deliberately disregarded a detainee's risk of harm in order to prevail on an adequate medical care claim."

FACTS:

"On the morning of November 21, 2018, the day before Thanksgiving, Bill Heeter told his wife Karen he was about to commit suicide. Mr. Heeter's brother called the police to stop him. At about 10:05 a.m., officers began to arrive at the family's Columbus, Ohio home. They spotted Mr. Heeter through his kitchen window—he was sitting at a table smoking a cigarette, with one hand on his pistol. He told the officers he'd put his gun away if they left. At approximately 10:15 a.m., a group of officers entered the house with their weapons drawn. At 10:17 a.m., Officer Kenneth Bowers fired five rounds from his M16 service rifle into Mr. Heeter's chest. At 10:57 a.m., Mr. Heeter was pronounced dead at the hospital. Police bodycam footage captured almost everything that happened. It shows that a police sergeant called the paramedics. It also shows that Officer Bowers did not administer first aid or otherwise try to help Mr. Heeter while waiting for the paramedics to arrive, even though Mr. Heeter was audibly and visibly alive, hemorrhaging blood, and struggling to breathe."

DISSENT:

"The majority [opinion} acknowledges that if Officer Bowers had reasonably believed that personal intervention would not have helped Mr. Heeter, he would not have been deliberately indifferent in failing to render any basic first aid under our precedent. *** Because we do not have jurisdiction to review the factual disputes Defendants present, I respectfully dissent from the majority's choice to find jurisdiction in this case. We should dismiss this qualified immunity appeal for lack of jurisdiction.

Legal Lesson Learned: Under the 6th Circuit's 2008 Jones v. City of Cincinnati case, police officers in 6th Circuit states [Ohio, Michigan, Kentucky, Tennessee] must render first aid to person in their custody. Fire & EMS when calling PD to scene of violent person should stage nearby.

Note: EMS agencies using body cameras. See this May 2, 2024 article: "Body Cams Help New Orleans EMS Protect Providers While Prioritizing Patient Safety."

"New Orleans EMS embarked on a soft launch of body cameras in late 2022 to determine if staff wanted them and to calculate costs. The first deployment was 15 cameras, which recently increased to 30 more."

File: Chap. 13, EMS

ME: COVID VACCINATIONS – 17 EMS SUED - STATE EMS HAD THE STATUTORY AUTHORITY REQ. EMS VACCINATED

On April 25, 2024, in Chris Calnan, et al. v. San Hurley, [Director of Maine Emergency Medical Services], the Supreme Court of Maine held (6 to 0) that trial court properly dismissed the plaintiffs' complaint for a declaratory judgment, and EMS lost wages for failure to get vaccinated.

COURT HELD:

> "The Maine Emergency Medical Services Act of 1982 (EMS Act) provides for the EMS system in Maine. *See* 32 M.R.S. §§ 81-98 (2024).
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> The statute unambiguously delegates to the EMS Board rulemaking authority regarding qualifications of EMS personnel, and its statutory purpose clearly vests the EMS Board with the responsibility of creating standards and qualifications for such personnel.
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> Calnan argues that unlike in the chapter relating to the Department of Health and Human Services, *see* 22 M.R.S. § 802 (2024), which gives the Department of Health and Human Services express authority to promulgate immunization rules for healthcare workers, Section 81-A does not specifically confer such authority on the EMS Board. Thus, he maintains, it is beyond the power of the EMS Board to address immunization in its rules. We disagree."

FACTS:

> "Maine's Emergency Medical Services Board (EMS Board) promulgated an emergency immunization rule through 16-163 C.M.R. ch. 20, § 2 (effective Aug. 25, 2021) requiring EMS workers to be fully vaccinated against COVID-19; the rule expired on November 21, 2021. The EMS Board then promulgated a nonemergency immunization rule that became effective on August 7, 2022."

Legal Lesson Learned: This is another case upholding State EMS agencies authority to require COVID vaccination.

Note: The Court referenced other similar court decisions.

"Although Calnan challenges the EMS Board's overall authority with regard to immunization, when the EMS Board initially promulgated the rule in 2021, public policy supported requirements that certain people, especially healthcare workers such as EMS personnel, be vaccinated. *See In re City of Newark*, 264 A.3d at 327 ("Th[e] right ['to hire or direct its workforce',] coupled with the clear national and state public policy to combat the health threats posed by COVID-19, supports the City's authority to implement a vaccination mandate."); *Boston Firefighters Union, Loc. 718 v. City of Boston*, 205 N.E.3d 282, 294-95 (Mass. 2023) ('[V]accination against COVID-19 not only protected the health of the city residents, but also protected the [City's] ability to continue to maintain a sufficiently healthy workforce during the Omicron surge, as would be needed to deliver emergency public safety services to the residents of the city.'). We conclude that the EMS Board did not exceed its statutory authority in issuing the EMS immunization rule."

File: Chap. 13, EMS

NJ: UNCONSCIOUS DIABETIC – IV SITE ADVERSE REACTION TO DEXTROSE – MEDICS ACTED GOOD FAITH - IMMUNITY

On April 24, 2024, in Robin Newsome v. Inspira Health Network, Inc, and Gloucester County Emergency Medical Service, the Superior Court of New Jersey, Appellate Division, held (3 to 0) that trial court properly granted summary judgment for the defense since the two medics acted in good faith. Four years prior, one of medics had transported the patient and did not use dextrose when husband told him about her adverse reaction (used glucagon instead); husband claims that he again warned the medic. The patient when transported to hospital recovered but needed emergency "compartment syndrome" surgery to repair IV site.

COURT HELD:

"Therefore, we agree with the trial court's determination the initial communication, or miscommunication, was in the scope of rendering life support services, and thus conduct the Legislature intended to afford the shield of immunity.

The paramedics' conduct must then be measured against the good faith standard, not negligence. Generally, 'good faith' exists where there is 'honesty of purpose and integrity of conduct without knowledge, either actual or sufficient to demand inquiry, that the conduct is wrong.' *Frields v. St. Joseph's Hosp.*, 305 N.J.Super. 244, 248 (App. Div. 1997) (quoting *Marley v. Borough of Palmyra*, 193 N.J.Super. 271, 294 (Law Div. 1983)). While the issue of good faith is often determined in a plenary hearing, summary judgment is proper where the defendant demonstrates that the actions 'were objectively reasonable or that they performed them with subjective good faith.' *Canico v. Hurtado*, 144 N.J. 361, 365 (1996). 'This test recognizes that even a person who acted negligently is entitled to a qualified immunity, if he acted in an objectively reasonable manner.' *Frields*, 305 N.J.Super. at 248 (citing *id.* at 366)."

FACTS:

"The following facts were adduced during discovery. Plaintiff has diabetes and, in the few years prior to the incident at issue here, had multiple episodes of hypoglycemia (low blood sugar). On January 1, 2018, plaintiff's family found her unresponsive and called 9-1-1. Defendant's employees, paramedics Christopher Taylor and James Thompson, responded to the call and found plaintiff unconscious and unresponsive.

***

Plaintiff's family members told Thompson and Taylor that they measured her blood sugar multiple times on a home glucose meter, and it consistently read 'Lo,' indicating a critically low blood sugar level.

> According to defendant's expert, a normal blood sugar reading is between 80 and 120. Home glucose meters read 'Lo' when glucose is less than 20 millimoles per liter (mmol/L), but sugar readings of less than 70 mmol/L are a medical emergency when the patient's consciousness is altered, as plaintiff's was.

***

Plaintiff's husband testified he told 'every single human being that was in that bedroom surrounding [his] wife' that she was allergic to dextrose, but Taylor's notation in the record indicated he had confirmed plaintiff had no known drug allergies. Taylor did not recall confirming plaintiff's allergies but stated it was common practice to confirm allergies before administering any medication. Thompson also did not recall having any conversations with Taylor or plaintiff's family members on the scene because he was responsible for plaintiff's care and was focused on the IV. While they were on the scene, the paramedics did not have access to plaintiff's Inspira medical records.

***

After assessing plaintiff's situation, Thompson opted to initiate an intravenous (IV) line to administer dextrose, also known as D50. Thompson described administering the dextrose in a carefully controlled manner, where he observed the IV site to ensure there were no problems with it. After Thompson started the IV line, he administered half the dextrose dose, but plaintiff's skin was diaphoretic, meaning sweaty, so the IV adhesive did not stick to her skin and the IV line came out of her arm. Three minutes later, Thompson removed the IV line but could not find another suitable vein, so he and Taylor decided to move plaintiff to the ambulance and transport her to the hospital. On the way, Taylor obtained approval to administer glucagon, which he administered intranasally. Plaintiff's blood sugar level registered twenty-one but she was still unconscious, so Taylor administered a second dose intramuscularly.

Once at the hospital and conscious, plaintiff began to complain of pain in her left arm where Thompson had administered the IV. She required emergency surgery to fix the compartment syndrome in her arm, which she alleged was caused by the dextrose.

***

> Dr. Maenza [defense expert] also noted Thompson had responded to a prior call for plaintiff's hypoglycemia in July 2014, during which plaintiff's husband informed Thompson of her adverse reaction to dextrose, and he administered glucagon instead. Dr. Maenza pointed out plaintiff had been given dextrose without any adverse reaction in October 2014, September 2015 and December 2016. Dr. Maenza found the 'standard of care [did] not require knowledge of, or utilization of, any prior documentation in the management of a patient in the field with an acute medical crisis,' nor did it require Thompson to recall patient details from an encounter four years prior."

Legal Lesson Learned: Medics acted in good faith, so they have immunity as does their employer.

File: Chap. 13, EMS

MN: MENTAL – POLICE TACKLED - MEDIC INJECTS KETAMINE – NO CASE, BUT CAN'T RECOVER $4,690 COSTS

On April 22, 2024, in Brandon Currie v. Clayton Aswegan, et al., United States District Court Judge Eric C. Tostrud, U.S. District Court for District of Minnesota, held that even though he granted summary judgment for the defense, the EMS agency is denied court order to recover their costs in defending the litigation brought by homeless man living in tent in the woods, since the complaint did adequately allege a medical malpractice claim, supported by affidavit from medical expert.

COURT HELD:

> "Allina Health Emergency Medical Services and paramedic Lawrence seek to recoup taxable costs under 28 U.S.C. § 1920. ECF No. 86. They seek to recover deposition transcript costs of $2,535.86 and copying costs of $2,154.92, for a total of $4,690.78. *Id.* Mr. Currie objects. ECF No. 87. Because the record shows that Mr. Currie's financial circumstances are grim and his medical malpractice claim was not frivolous, the better answer is that it would be inequitable to allow costs. Therefore, Allina and Mr. Lawrence's bill of costs will not be allowed."

FACTS:

> "On September 3, 2018, the City of Elk River Police Department received a call that Plaintiff Brandon Currie was behaving strangely inside a gas station convenience store. Two officers-Defendants Clayton Aswegan and Brandon Martin-responded. After interacting with Mr. Currie, the officers grew convinced that he was impaired and probably needed medical attention, and they called for an ambulance. Things went sideways when the ambulance arrived. Mr. Currie tried to flee. After a short chase, the officers tackled Mr. Currie. And a paramedic-Defendant Ronnie Lawrence-injected Mr. Currie with ketamine.
>
> Mr. Currie brought this case seeking to recover damages and other relief in relation to these events. In his operative Amended Complaint, Mr. Currie asserted thirteen counts against the City of Elk River, the Elk River Police Department, Officers Aswegan and

Martin, Allina Health Medical Emergency Services, and Allina paramedic Lawrence. After all these Defendants filed summary-judgment motions (and before the hearing on Defendants' motions), Mr. Currie dropped all but two claims. The two not-dropped claims were a § 1983/Fourth Amendment claim against the officers and a medical malpractice claim against paramedic Lawrence. Summary judgment was entered against these claims. *See Currie v. Aswegan*, No. 20-cv-0839 (ECT/DJF), 2024 WL 1242326 (D. Minn. Mar. 11, 2024)."

Legal Lesson Learned: EMS use of ketamine in police incidents has been hot topic, including criminal prosecution of two Colorado medics and civil litigation around nation.

Note: April 26, 2024, "Former Colorado paramedic Jeremy Cooper sentenced to probation, work release after conviction in death of Elijah McClain,"

March 1, 2024, "Former Colorado paramedic sentenced to 5 years after conviction in death of Elijah McClain."

Jan. 31, 2024, "Burlington [Vermont] sued over claims of excessive force and inappropriate ketamine use on 14-year-old."

Oct. 18, 2023, "Charleston County EMS under fire for using ketamine as lawsuits, settlements mount."

April 12, 2023, "Suit claims Utah providers fatally injected teen with large ketamine dose after car crash."

File: Chap. 13, EMS

OR: COVID – EMS URGED ROOMMATE DRIVE PT HOSPITAL – NO REFUSAL SIGNED / CARDIAC ARREST – CASE PROCEED

On April 19, 2024, in Richard Vaughn, Jr., individually and as personal representative for the estate of Teresa Vaugh, et al. v. Klamath County Fire District No. 1, et al., United States Magistrate Judge Mark D. Clarke, U.S. District Court of Oregon (Medford Division) denied defense motion for summary judgment. The actions of the two medics may be viewed by a jury as "state-created danger." No patient refusal was ever signed, no vitals taken, and the patient's roommate, Ms. Kimbol contends she responded: "Isn't that your fucking job? I wouldn't have called you."

COURT HELD:

"In light of such dispute, the Court finds that Plaintiffs have raised a genuine question as to whether Engler and Dustin's conduct crossed from mere inaction into affirmative action that placed Ms. Vaughn in a worse circumstance than she otherwise would have found herself in.

***

Plaintiffs here have presented evidence that Engler and Dustin knew of Ms. Vaughn's Covid-19 diagnosis, were responding to her 911 call requesting urgent assistance, saw her in a state where she could barely breath or walk on her own, and still, they chose to cut off further aid . and abandon Ms. Vaughn and Ms. Kimbol. Drawing all inferences in Plaintiffs' favor, reasonable minds could differ regarding whether Defendants actions rose beyond mere' negligence to deliberate indifference to the known danger presented by Ms. Vaughn's condition. The Court is further mindful that the danger and uncertainty surrounding Covid-19 in December 2020 was significantly heightened compared to our current understanding in 2024.

***

While the particular facts of this case present a somewhat novel application of the state-created danger exception, the right to be free from state-created danger is, and has been, a clearly established constitutional right. Given the possibility of conflicting inferences, the Court declines to grant Defendants qualified immunity as a matter of law. Moreover, significant disputes of fact exist in this case creating uncertainty as to whether Engler and Dustin knew of the danger they were creating with their actions. If appropriate, Defendants are entitled to move for directed verdict at the close of trial."

FACTS:

"KCFD paramedic, Defendant Cody Engler, arrived five to ten minutes later in full personal protective equipment. *Id.* at 18-19. He claims Ms. Kimbol communicated through the door that Ms. Vaughn had Covid for a week, was feeling shaky, and wanted to go to the hospital to get checked out. ECF No. 71-3 at 13. Ms. Kimbol placed masks on herself and Ms. Vaughn, and Engler entered the apartment enough to glance at Ms. Vaughn in the chair. ECF No. 71-1 at . 20. His account of Ms. Vaughn's condition differs from Ms. Kimbol's. Engler claims that from looking at Ms. Vaughn and briefly speaking to her, he was able to conclude there were no signs of respiratory distress or increased respiratory rate, she was not tripoding or breathing shallow, and her skin showed positive signs of being pink, warm, and dry. ECF No. 71-3 at 13. Engler asked a few questions about Ms. Vaughn's symptoms and condition, and he inquired as to how she got down the stairs, to which Ms. Kimbol answered that she assisted. ECF No. 71-1 at 2223. It's unclear exactly when he raised it, but at some point early into the visit Engler asked Ms. Kimbol if she was willing to drive Ms. Vaughn to the hospital in her own vehicle, claiming it was encouraged at the time to limit exposure. *Id.* at 20; ECF No. 71-3 at 16. Ms. Kimbol contends she responded: "Isn't that your fucking job? I wouldn't have called you." ECF No. 71-1 at 21.

A second KCFD paramedic, Defendant Alex Dustin, came to the doorway with a medical bag. Id. at 24, 39. According to Ms. Kimbol, Engler stopped Dustin from entering and explained that Ms. Kimbol would be providing transport. Id. at 24. Engler verbally confirmed with Ms. Vaughn that it was alright for Ms. Kimbol to take her, to which she responded, 'I guess so.' Id. at 25. The two women then got up and headed out of the apartment with Ms. Kimbol physically supporting Ms. Vaughn the entire way. Id. at 26. As they approached the car, Ms. Vaughn dropped to the step and started to fall sideways. Id. Dustin steadied her and helped walk Ms. Vaughn the rest of the way to her car. Id. He

> put her seatbelt on and retrieved her slipper, which had fallen off in the process. Id. Engler, meanwhile, canceled the oncoming engine en route with defibrillators, medical equipment, and three more senior paramedics. ECF No. 71-3 at 12. Once the women were in their car, Engler and Dustin got back into the ambulance. Ms. Kimbol began driving towards the hospital; the paramedics began driving the opposite direction. ECF No. 71-1 at 27.
>
> Approximately three-tenths of a mile down the road, Ms. Vaughn suffered a cardiac event. *Id.* at 29. She and Ms. Kimbol arrived at the emergency room approximately eight minutes later, at which point Ms. Vaughn had lost consciousness and wasn't breathing. *Id.* at 30. Hospital personnel met the car in the ambulance bay, retrieved Ms. Vaughn, and began administering CPR and oxygen. *Id.* at 31. Ms. Vaughn's brother and sister arrived later, but Ms. Kimbol, not permitted to enter the hospital due to her Covid-19 exposure, returned home alone. *Id.* at 31-32.
>
> The doctors were able to revive Ms. Vaughn, but they could not keep her alive without ventilator support. *Id.* at 33. The family, with Ms. Kimbol's counsel, made the decision to end life support a short while later."

Legal Lesson Learned: Get patient to sign a refusal if not going to transport.

File: Chap. 13, EMS

CA: METH - PD STRUGGLE - EMS ON BACKBOARD FACE DOWN, EMT TOLD PD SIT ON HIM – DEAD – QUAL. IMMUNITY

On April 15, 2024, in Anthony Perez, et al., individually and as successor in interest to Joseph Perez v. City of Fresno, the U.S. Court of Appeals for 9th Circuit (San Francisco) held (2 to 1) that trial court properly granted summary judgment to the defense on basis of qualified immunity. Police had Perez on the ground, and then put him on backboard. As this was happening, Perez yelled that he could not breathe. "Paramedic Morgan Anderson nevertheless told one of the officers to sit on the backboard. The officer complied and sat on the board for one minute and thirteen seconds while other officers applied pressure and worked with Anderson to secure the backboard. After the seated officer stood up, the paramedics continued securing Perez to the backboard for another two minutes before turning him over. Once Perez was placed on his back, the paramedics discovered that he did not have a pulse." According to the coroner, the average lethal dose of methamphetamine is 200 nanograms per milliliter. Perez had ten times that amount in his bloodstream.

COURT HELD:

> "Because the law-enforcement officers' actions that Plaintiffs contend led to Perez asphyxiating were taken at the direction of a medical professional who was trying to provide medical care, both the officers and the paramedic are entitled to qualified immunity. The district court also properly granted summary judgment against Plaintiffs' Monell claims because Plaintiffs presented insufficient evidence that the City and the

County were deliberately indifferent to their duty to properly train their law-enforcement officers.

***

At the time of Perez's death, the law did not clearly establish, nor was it otherwise obvious, that the officers' actions, directed by medical personnel, would violate Perez's constitutional rights. Likewise, the paramedic involved was acting in a medical capacity during the incident, and the law did not clearly establish that medical personnel are liable for constitutional torts for actions taken to provide medical care or medical transport. Thus, the officers and the paramedic are entitled to qualified immunity. We also conclude that Plaintiffs produced insufficient evidence to support their municipal-liability claim against the City and the County based on a failure-to-train theory.

***

Because we conclude that the law did not clearly establish at the time of the events at issue that a paramedic restraining a person in order to secure the person for medical transport could be held liable for a constitutional violation under either the Fourth or Fourteenth Amendment, we conclude that Anderson is entitled to qualified immunity. See Wesby, 583 U.S. at 63–64, 138 S.Ct. 577 (clearly established question must be specific to the context of the case)."

FACTS:

"In May 2017, FCSO received a call for assistance regarding a man—later identified as Perez—who was acting erratically, sprinting through the street, screaming, and hiding in bushes. Before FCSO could respond to the call, three FPD officers encountered Perez without being dispatched. The FPD officers observed Perez standing in the roadway, waving his arms, and yelling what sounded like "help" in their direction. When the officers approached Perez, he was talking to himself, stating that people were chasing and hitting him. Based on Perez's behavior, the officers believed that he was under the influence of a controlled substance. According to the officers, to prevent Perez from darting into traffic on the four-lane roadway or charging at the officers near the roadway, they seated Perez on the curb and placed him in handcuffs. When the dispatched FCSO deputies arrived, they found Perez seated, handcuffed, and surrounded by the FPD officers.

***

While awaiting the ambulance, Perez stood up from the curb and refused to comply with the officers' instructions to sit back down. In response, several of the officers took Perez to the ground to prevent him from running into traffic. While on the ground, one officer struck Perez's left side three times with his knee and then applied a wrist lock. At the same time, another officer reported that Perez was being combative. Two additional FCSO deputies responded to the scene and waited in their patrol vehicle on standby. While the officers on the ground attempted to restrain Perez, his face repeatedly hit the ground, causing him to bleed. One officer placed a towel underneath Perez's chin and face and lifted Perez's head off the ground while holding one end of the towel in each hand. Another officer asked Perez if he could breathe, and Perez responded that he could.

According to the officers, at this point, Perez was lying on his stomach, but he continued to kick his legs. The officers applied a RIPP restraint to Perez's ankles and looped it around his handcuffs to control his leg movement. The officers unlooped the restraint from Perez's handcuffs when EMS arrived—approximately thirty seconds to a minute after they applied this restraint.

When EMS arrived, the paramedics retrieved a backboard. Paramedic Morgan Anderson stated that they were going to attach Perez to the board while he was prone so that he could be medically transported. The officers removed the towel holding Perez's head and assisted the paramedics in applying the backboard. As this was happening, Perez yelled that he could not breathe. Anderson nevertheless told one of the officers to sit on the backboard. The officer complied and sat on the board for one minute and thirteen seconds while other officers applied pressure and worked with Anderson to secure the backboard. After the seated officer stood up, the paramedics continued securing Perez to the backboard for another two minutes before turning him over. Once Perez was placed on his back, the paramedics discovered that he did not have a pulse. The paramedics then transported Perez to the hospital, where he was pronounced dead. The coroner attributed Perez's death to compression asphyxia during restraint with methamphetamine toxicity as another significant contributor. The coroner classified Perez's death as a homicide."

DISSENT:

"However, I respectfully disagree with the conclusion that the law governing the conduct of the individual officer defendants ('Officers') was not 'clearly established' in 2017. Extensive federal case law, departmental guidance, and common sense gave Officers fair warning that applying continuous force to the back of a prone person who claims he cannot breathe is constitutionally excessive. Any argument that Officers' continued force was nonetheless 'reasonable' under the circumstances turns on disputed issues of material fact—not confusion about 'what the law requires.' Saucier v. Katz, 533 U.S. 194, 205, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001). Therefore, I respectfully dissent in part.

***

The officers—indeed, any reasonable person—should have known that squeezing the breath from a compliant, prone, and handcuffed individual despite his pleas for air involves a degree of force that is greater than reasonable."

Legal Lesson Learned: EMS must be extremely cautious of backboard asphyxiation. This can lead to denial of qualified immunity for EMS and has also has recently led to two EMTs being charged with first degree murder.

Note: See article, Jan. 15, 2023, "Paramedics charged with murder after patient who was in stretcher face-down dies."

March 21, 2023, "2 Ill. EMTs charged with murder appear in court."

Chap. 14 – Physical Fitness, incl. Heart Health

File: Chap. 15, Mental Health

AR: PTSD – CAREER FF DISABILITY RETIREMENT – BUT STILL VOL. FF – NOT ELIGIBLE DUTY- RELATED DISABILITY

On April 24, 2024, in Gregory Mills v. Arkansas Local Police And Fire Retirement System, the Arkansas Court of Appeals held (3 to 0) the retirement Board decision was supported by substantial evidence. Oct. 2019 FD placed him on medical leave when informed by his doctor needed to avoid trauma events; terminated April 4, 2020 when he was approved long-term disability. Retirement board rejected his claim for duty-related disability retirement benefits since he is still running as a volunteer at another FD; trial court agreed. State statute:

> "Any active member who while an active member becomes totally and permanently physically or mentally incapacitated for any suitable duty as an employee as the result of a personal injury or disease that the board finds to have arisen out of and in the course of his or her actual performance of duty as an employee may be 3 retired by the board upon proper application filed with the board by or on behalf of the member or former member."

COURT HELD:

> "On April 4, 2020, the Bella Vista Fire Department terminated his employment because Mills was notified that he had been approved for a long-term disability policy.
>
> ***
>
> The Board's designated physician, Dr. Podkova, examined Mills and reviewed his medical records submitted to LOPFI. On June 29, 2020, Dr. Podkova issued a detailed report and determined that Mills was not totally and permanently disabled from his firefighting activity. Dr. Podkova concluded that Mills met the criteria for PTSD and that it was more likely than not that Mills's PTSD arose from his employment. However, she opined that the disability was not total and permanent due, among other things, to Mills's mental status, the severity of his impairment, his noted improvement in symptoms with treatment, his presentation, and the fact that he continued to volunteer with the Little Flock Fire Department in addition to his full-time employment with the Bella Vista Fire Department for a period of years after he started seeking help for his PTSD symptoms."

FACTS:

> "Mills was employed as a firefighter and an emergency medical technician beginning in 2008. Most recently, he worked for nine years with the Bella Vista Fire Department and volunteered at the Little Flock Fire Department. In 2017, Mills began seeking help through the anonymous first-responder hotline. In June 2019, he sought formal treatment and began therapy in July for 'recurrent and intrusive recollections of traumatic events' that were affecting his well-being.
>
> ***
>
> The Board's designated physician, Dr. Podkova, examined Mills and reviewed his medical records submitted to LOPFI. On June 29, 2020, Dr. Podkova issued a detailed report and determined that Mills was not totally and permanently disabled from his

> firefighting activity. Dr. Podkova concluded that Mills met the criteria for PTSD and that it was more likely than not that Mills's PTSD arose from his employment. However, she opined that the disability was not total and permanent due, among other things, to Mills's mental status, the severity of his impairment, his noted improvement in symptoms with treatment, his presentation, and the fact that he continued to volunteer with the Little Flock Fire Department in addition to his full-time employment with the Bella Vista Fire Department for a period of years after he started seeking help for his PTSD symptoms."

Legal Lesson Learned: Firefighter failed to prove he was "totally and permanently physically or mentally incapacitated for any suitable duty as an employee."

Chap. 16, Discipline

Chap. 17 – Arbitration, incl. Mediation, Labor Relations

Chap. 18 – Legislation, incl. Public Records