

Stuff You Already Know

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(1) Exigent Circumstances; (2) Handcuffing During Investigative Stops

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It's the start of a new year and a new decade¹ and many folks use this time to look ahead with plans and resolutions on how to improve their lives. In our quest to be different, the legal office takes a look back today at two areas of the law. Our nostalgia was triggered by two recent court cases that didn't really change the law but clarified some points. Don't worry, however – in addition to the past, we've sprinkled in a couple of announcements for the present and some words of wisdom for you to build on in the future. In fact, let's start with this wise tidbit:

MURPHY'S LAWS² OF LAW ENFORCEMENT #1

“The bigger they are, the harder they fall. Also the harder they punch, kick, and choke.”

Our first recent case comes from the U.S. Supreme Court and deals with the exigent circumstances doctrine. In Michigan v. Fisher,³ officers responded to a complaint of a disturbance. Upon approaching the area, a couple directed them to a residence where a man was “going crazy.”⁴ When the officers got to the house, the Court described the scene thusly: “a household in considerable chaos: a pickup truck in the driveway with its front smashed, damaged fence posts along the side of the property, and three broken house windows, the glass still on the ground outside. The officers also noticed blood on the hood of the pickup and on clothes inside of it, as well as on one of the doors to the house. . . Through a window, the officers could see respondent, Jeremy Fisher, inside the house, screaming and throwing things.”⁵ The back door was locked, and a couch had been placed to block the front door.”

At that point, the officers knocked on the door, but Fisher refused to answer. They observed a cut on Fisher's hand and asked him if he needed medical help. In response, Fisher cursed the officers and demanded they go get a search warrant. Officer Christopher Goolsby⁶ then

¹ I fully realize that we are over two weeks into this “new” decade and most of you have been on the edge of your seats waiting for a “new” update. I apologize, but I overslept and just woke up. Did I miss anything?

² Murphy's Law (which you already knew) says that if anything CAN go wrong, it WILL. This principle originated at Edwards Air Force Base in 1949. More on this later.

³ 558 U.S. ____, 2009 US LEXIS 8773 (2009).

⁴ I know that these are police officers' favorite types of calls. “Alright, Joe, we get to go deal with a CRAZY person! Yippee! I love this job! And tomorrow we get to go to in-service training and it's LEGAL UPDATE day! Whoohoo!”

⁵ I'm not proud of it, but you would have seen me doing the same thing in my house the other night watching the Tarheels play basketball. Without the blood, of course.

⁶ I love this name. “Goolsby.” Kinda rolls off the tongue, doesn't it?

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pushed the front door partway open and entered the house where he saw Fisher pointing a long gun at him. The Court's next statement is as priceless as it is understated: "Officer Goolsby withdrew."

MURPHY'S LAWS OF LAW ENFORCEMENT #2

"If the crooks are within pistol range, so are you."⁷

The officers then went and got a search warrant and came back to the house where Fisher surrendered without further incident. Fisher was charged with assault with a dangerous weapon and possession of a firearm during the commission of a felony. On appeal, Fisher argued that the officers' initial entry into the front door was unconstitutional under the Fourth Amendment.

As you know, the Fourth Amendment requires the government to obtain a search warrant to enter a home. Over the centuries, there have been some exceptions carved out of the warrant requirement, including the "emergency aid exception." This doctrine in its most basic form says that officers can enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury.⁸ In North Carolina, we have a statute that addresses this as well:

§ 15A-285. Urgent Necessity

Non-law-enforcement actions when urgently necessary.

When an officer reasonably believes that doing so is urgently necessary to save life, prevent serious bodily harm, or avert or control public catastrophe, the officer may take one or more of the following actions:

- (1) Enter buildings, vehicles, and other premises.**
- (2) Limit or restrict the presence of persons in premises or areas.**
- (3) Exercise control over the property of others.**

An action taken to enforce the law or to seize a person or evidence cannot be justified by authority of this section.

In this case, Fisher argued that there was not enough evidence at the time the officers entered to cause them to believe that there was someone in need of emergency aid. The Court disagreed and found the officers' actions to be reasonable, stating "It does not meet the needs of law enforcement or the demands of public safety to require officers to walk away from a situation like the one they encountered here. . . The role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties. It sufficed to invoke the emergency aid exception that it was reasonable to believe that Fisher had hurt himself (albeit non-fatally) and needed treatment that in his rage he was unable to provide, or that Fisher was about to hurt, or had already hurt, someone else."

So the bottom line is that where the information available to the officer would lead a reasonable officer to conclude that ongoing violence is occurring in a residence, officers may enter without a warrant under the emergency aid exception to the warrant requirement and need not

⁷ As I mentioned, Murphy's Law originated at Edwards Air Force Base in 1949. It was named after Capt. Edward A. Murphy, an engineer working on a project designed to see how much sudden deceleration a person can stand in a crash. One day, after finding that a transducer was wired incorrectly, he cursed the technician responsible and said, "If there is any way to do it wrong, he'll find it."

This got modified slightly to become Murphy's Law.

⁸ Brigham City v. Stuart, 547 U.S. 398 (2006).

wait until serious injury results before making entry. So nothing that new and exciting here, but a good reminder of what you can do when faced with these types of circumstances.

MURPHY’S LAWS OF LAW ENFORCEMENT #3
“Surprise inspections will only occur after you have been
in a foot pursuit through mud.”⁹

Our second case today comes from the N.C. Court of Appeals and deals with the issue of handcuffing individuals during investigative stops. In State v. Carrouthers,¹⁰ Agent Robert Huneycutt of the NC ALE observed what he believed to be a drug transaction occur in the parking lot of a convenience store in Charlotte. As he approached the person he believed sold the dope, he identified himself as a law enforcement officer and told him what he observed. The man (who would later become “the Defendant”) denied that a drug transaction occurred.

Huneycutt, fearing that Defendant was armed, conducted a frisk of the Defendant¹¹ and felt a lumpy plastic bag in one of his pockets.¹² After the frisk, Huneycutt placed the Defendant in handcuffs “for officer safety” because of the presence of other people in Defendant’s car. After being placed in handcuffs, the Defendant spontaneously confessed to having some rocks of crack cocaine in his pocket; he was then arrested, searched, and hauled off to jail.

At a suppression hearing, the defendant argued that upon being placed in handcuffs, a reasonable person would not have felt free to leave and therefore he was under arrest. He also argued that at the time that arrest occurred, there was not probable cause of a crime and therefore the arrest was unconstitutional. The trial court agreed, suppressed the evidence, and the State appealed.

On appeal, the Court pointed out that in determining whether this investigative stop had turned into an arrest requiring probable cause, the question was not whether a reasonable person would have felt free to leave but “whether there existed special circumstances which would justify” the handcuffing, and whether the handcuffing was “the least intrusive means of carrying out the purpose of the stop.” Here are the highlights of what the court had to say:

1. The characteristics of an investigatory stop, including its length, the methods used, and any search performed, “should be the least intrusive means reasonably available to effectuate the purpose of the stop.” (quoting State v. Campbell, 188 N.C. App. 701 (2008).)
2. In performing an investigatory stop, “police officers are ‘authorized to take such steps as [are] reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop.’” (quoting Campbell quoting U.S. v. Hensley, 469 U.S. 221 (1985).)

⁹ Murphy is not the only one with a law named after him. George E. Nichols, who was involved in the same engineering project, is credited with “Nichols’ Law” which says “Avoid any action with an unacceptable outcome.”

¹⁰ 683 S.E.2d 781; 2009 N.C. App. LEXIS 1642 (2009).

¹¹ Remember that to frisk a person during an investigative stop, you must have a reasonable belief that the person may be armed with a weapon. When there is evidence of drug dealing, courts have generally upheld frisks due to the fact that where drug dealing is occurring, weapons are frequently found.

¹² Huneycutt testified that without manipulating the object, “it was immediately apparent that [Defendant] had contraband in his left front pocket.” A strong argument could be made that this gave Huneycutt probable cause to search and arrest under the “plain feel” doctrine. See State v. Robinson, 189 N.C. App. 454 (2008). Either this argument wasn’t made or the trial court didn’t buy it.

3. In order to maintain the status quo or to ensure officer safety, officers are permitted to engage in conduct and use “forms of force typically used during arrest,” such as “placing handcuffs on suspects, placing the suspect in the back of police cruisers, [or] drawing weapons.” (quoting Campbell quoting Longshore v. State of Maryland, 399 Md. 486 (2007).)
4. If the methods used by the police exceed those least intrusive means reasonably required to carry out the stop, the encounter becomes an arrest, creating the need for the police to show probable cause to support the detention.

The bottom line is that you are permitted to handcuff during an investigative stop so long as you can articulate a good reason for why it is necessary. Some possibilities include officer safety concerns, a danger of the suspect fleeing, or the nature of the crime being investigated. If you are handcuffing for “officer safety,” you must be able to articulate specific facts and circumstances that gave rise to that concern. You should also include in your report the reason that you handcuffed the individual.

So there you have it – a look at some things you know already, and hopefully now you know that you know and know that you know why you know and can act accordingly. One more word of wisdom before we close:

MURPHY’S LAWS OF LAW ENFORCEMENT #4

“Never search a dark warehouse with a cop whose nickname is “Boom-Boom.”¹³

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ABOUT THE AUTHOR: Brian Beasley is the Legal Advisor for the High Point Police Department. This legal update is provided free of charge to the SR&S Webpage in the hopes that officers across the state would be able to benefit from it. Brian is not an attorney with Smith, Rodgers, & Strickland, PLLC but he thinks they’re pretty cool guys.



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¹³ Col. John P. Stapp, also connected with the Edwards Air Force base project, and who became known as “the fastest man on earth,” coined “Stapp’s Ironical Paradox” which says, “The universal aptitude for ineptitude makes any human accomplishment an incredible miracle.” To which I say, “I resemble that remark.”