

**Commonwealth of Kentucky  
Fayette Circuit Court  
Civil Action No: 23-CI-00804**

**Linda Trapp,  
Plaintiff**

**v.**

**Lexington-Fayette Urban County Government  
Lexington Police Department, et.al.,  
Defendants**

**Ryan H. Wilfong  
Wilfong & Associates, LLC  
908 Golden Bell Place  
Lexington, KY 40515  
November 30, 2024**

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### **A. Background and Area of Expertise**

I have twenty-five years of law enforcement experience at the local and state level, including municipal, campus and state investigative law enforcement. My area of expertise is crisis communication/management serving in capacities as Hostage Negotiator, Hostage Negotiator Supervisor, Hostage Negotiation Assistant Commander and Hostage Negotiation Commander.

Additionally, I have served as an instructor and Assistant Director of the *Kentucky Crisis Intervention Team (CIT)* managing/ training Kentucky Law Enforcement Officers in a statewide approved curriculum by the *Kentucky Law Enforcement Council (KLEC) (CIT for Kentucky Law Enforcement)*. CIT for Kentucky Law Enforcement is based upon the "*Memphis Model*", a structure recognized by the *Crisis Intervention Team International*. This training is conducted with law enforcement instructors, mental health professional instructors and consumer advocate instructors to provide signs/symptoms associated with mental health, as well as substance use factors in mitigating/resolving crisis incidents. This includes crisis communication and measures to de-escalate crisis encounters. I have developed and structured the *Advanced Crisis Intervention Team Curriculum*, which is also approved by KLEC and in current use throughout the Commonwealth to train law enforcement officers statewide. I also have experience as the law enforcement team member of a multi-disciplinary *Behavioral Intervention Team (BIT)* examining factor associated with potential risk due to mental health/crisis in a collegiate/academic environment. I am currently assigned to a training review group for *Crisis Intervention Team International*.

### **B. Qualification and Employment/Educational Experiences**

I have a Master of Science in Management – Strategic Management from *Indiana Wesleyan University* and a Bachelor of Arts in Criminal Justice from *Marshall University*. I have served in municipal/state law enforcement ranks of Patrol Officer, Detective, Sergeant, Lieutenant, Investigator and Investigator Supervisor. I have served as a Chief of a campus law enforcement agency at the state level. Additionally, I have served as an adjunct academy instructor at my former agency (Louisville Metro Police/ Jefferson County Police Department) and law enforcement instructor at the *Department of Criminal Justice Training*. My areas of instructor certification include Hostage Negotiations, Crisis Intervention Team (CIT), Police Firearms Instructor, Police Driving Instructor, Criminal Investigations and Drug Investigations.

I have received basic police academy certifications in both the Commonwealth of Kentucky and the State of South Carolina. I have specific training in Hostage Negotiations from the *Federal Bureau of Investigation*, Crisis Intervention Team -Train the Trainer from the *University of Memphis* and Realistic De-Escalation Train the Trainer from *Force Science*.

I have presented/instructed at both the state/national level for the *Kentucky Sheriff's Association*, the *Kentucky Tactical Officer's Association*, the *Kentucky Administrative Office of the Courts*, the *Southern Police Institute National Conference* and the *National Institute for Crime Prevention*

I am a member of *Crisis Intervention Team International*, the *International Law Enforcement Educators and Trainers Association* and the *National Association of Law Enforcement Firearms Instructors*.

### **C. Instructions Related to the Review/Report Summary**

I have prepared a report analysis based upon my knowledge, skills, abilities and experience at the request of John E. Reynolds, counsel for Plaintiff Linda Trapp) in the civil case *Fayette County Circuit Court #23-C1-00804 – Linda Trapp v Lexington Fayette Urban County Government / Lexington Police Department*.

Counsel of Record:

John E. Reynolds  
John E. Reynolds Law Offices  
101 West Short Street, Suite 300  
Lexington, KY 40507  
(859) 212-3111

On November 5<sup>th</sup>, 2024, I was asked to review materials associated with the aforementioned case to assess "*Pre-Encounter, Encounter and Post Encounter*" materials associated with Officer Myles Foster and officers on-scene with the subsequent arrest of Ms. Trapp, as outlined in *#23-C1-00804*.

The sources (document and video) specifically examined for this report are listed on Pages 5 & 6.

#### D. Sources Reviewed - Documents

- Lexington Police Department GO 1991-02K – *Response to Resistance*
- Lexington Police Department GO 2005-01A – *Interacting with Persons Affected by Mental Illness*
- Lexington Police Department GO 1992-16H – *Prisoner Custody, Security and Transportation*
- Lexington Fayette Urban County Government – *Performance Development Form* – Officer Myles Foster (01-20-2020 through 03-20-2020) May 8<sup>th</sup>, 2020
- *Recruit Administrative Evaluation and Review Form* – Officer Myles Foster – May 14<sup>th</sup>, 2020
- Lexington Police Department – *Formal Complaint Form* – 111 – File #PIU2021F-022 – Date Reported October 11<sup>th</sup>, 2021
- Lexington Police Department Memorandum #PIU-21-114 – *Formal Complaint* – October 11<sup>th</sup>, 2021
- Lexington Fayette Urban County Government – *Performance Development Form* – Officer Myles Foster (01-01-2021 through 12-31-2021) November 27<sup>th</sup>, 2021
- Lexington Police Department Memorandum #PIU21-133 – *Formal PIU 21F022* – Officer Myles Foster Summary – November 29<sup>th</sup>, 2021
- Lexington Police Department Memorandum - #COP21-0204 – *Disciplinary Recommendation PIU 2021F-022* – Officer Myles Foster – December 9<sup>th</sup>, 2021
- Lexington Police Department – *Agreement of Conformity* – Form 113 – Officer Myles Foster (Signed January 5<sup>th</sup>, 2022)
- Lexington Police Department – *Personnel Order #PO22031* – Officer Myles Foster (Suspension w/o Pay) – January 26<sup>th</sup>, 2022
- Lexington Police Department *CAD Report #2022-00039332* – Disorder at 150 North Eagle Creek Drive
- Lexington Police Department Memorandum – *Response to Resistance #2022-039332* – From Officer Myles Foster – March 10<sup>th</sup>, 2022
- Lexington Police Department Memorandum – *Response to Resistance #2022039332* – From Officer Daniel Helo – March 10<sup>th</sup>, 2022
- Lexington Police Department Memorandum – *Response to Resistance 2022-039332* – From Sergeant W.D Farley – March 10<sup>th</sup>, 2022
- Lexington Police Department – *Response to Resistance Report – PIU #2022RTR-054*- Sergeant Weslee Farley – March 16<sup>th</sup>, 2022.
- Lexington Police Department Memorandum – *Blue Team Involving Ofc. Foster* – From Lieutenant Taylor – March 26<sup>th</sup>, 2022

- Lexington Fayette Urban County Government – *Performance Development Form* – Officer Myles Foster (01-01-2022 through 12-31-2022) December 13<sup>th</sup>, 2022
- Complaint #23-C1-00804 – *Linda Trapp v Lexington Fayette Urban County Government / Lexington Police Department* – March 9<sup>th</sup>, 2023
- Lexington Police Department Training Record of Officer Myles Foster – February 28<sup>th</sup>, 2024
- *Linda Trapp -Plaintiff v Lexington Fayette Urban County Government/Lexington Police, et. al.* Deposition (Transcript) of Officer Myles Foster – January 11<sup>th</sup>, 2024
- BWC Transcript – Officer Myles Foster, Officer Daniel Helo and St. Joseph Hospital Personnel

#### **E. Sources Reviewed – Video (BWC)**

- *Disorder 150 North Eagle Creek.mp4* – Ofc. Myles Foster BWC – 38:49
- *Disorder 150 North Eagle Creek.mp4* – Ofc. Myles Foster BWC- 6:21
- *Disorder St. Joe East 150 N. Eagle Creek.mp4* – Ofc. Daniel Helo-BWC -40:18
- *150 N. Eagle Creek Transport.mp4* – Officer Vita Kasko – 43:20
- *Disorder 250 N. Eagle Creek-C3mp.4* – Officer James York- 6:08

## F. Pre- Encounter Analysis / Opinion

1. In reviewing the documents provided by the Respondent, (Pre-Encounter) *Recruit Administrative Evaluation and Review Form* for Recruit Officer Myles Foster #58517, dated May 14<sup>th</sup>, 2020, the following was noted. On May 14<sup>th</sup>, 2020, the class received instructions and demonstrations for safely conducting felony traffic stops during “nighttime hours”. ***It was documented that instructors stressed to “revert back to training and utilize the commonality of techniques taught throughout the academy.”***

Officer communication during S.T.O.P.S. Training with occupants of the vehicle, as well as coordinating communication with on-scene officers is critical to ensure safety and training objectives are met.

As a Recruit Officer, Recruit Foster administered significant force on an instructor participating in a **controlled training scenario** during a S.T.O.P.S. (Strategies and Tactics of Patrol Stops) Training Exercise.

A grappling match ensued between another recruit and the instructor when the recruit failed to utilize a “double push principle” when attempting to apply handcuffs. Subsequently, a grappling match ensued. Recruit Foster, a participant in this practical exercise, then intervened into the encounter and placed his bicep around the throat of the instructor with counter pressure to the head, identified as a “rear naked choke”.

The instructor fell to the ground during this incident, which increased his vulnerability toward injury, especially when force is applied in a vulnerable area such as the neck/head/spine. Additionally, the instructor provided the correct signal (repeated taps) for the application of force to be stopped. ***However, the force applied was increased by Recruit Foster and applied for a longer period of time, versus reduction of pressure immediately. Additionally, the training officer is not physically resisting but is utilizing a “tap out” technique to physically demonstrate compliance and/or distress due to the application of force.***

*Lexington Police General Order 1991-02K Response to Resistance, V. Procedures, A. De-Escalation, Number 4 (Page 3)*

4. Officers shall modify their level of force in relation to the amount of resistance offered by a subject.

a. As the subjects offers less resistance the officer shall lower the amount or type of force used.

**It was noted on Recruit Administrative Evaluation and Review Form for Officer Myles Foster #58517, dated May 14<sup>th</sup>, 2020, that Recruit Foster did not follow correct legal guidelines with the response to resistance.** If there was additional documentation regarding corrective action, retraining, discipline or other related documents associated with this incident, those documents were not contained in the documents for review. The recommendation was listed as “Open Recommendation.”

Additionally, **it was also noted on the Recruit Administrative Evaluation and Review Form: Recruit Foster could not articulate why he utilized force and failed to explain why he did not follow correct legal guidelines with the response to resistance.**

Verbal and written communication skills in the explanation of “why” or “why not”, especially in the application of force of this magnitude should be clearly articulated by the officer applying force .

S.T.O.P.S Training utilizes a “Contact/Cover Principle” relying on a designated person to communicate with occupants of a vehicle (Contact) and assisting officers responsible for securing persons in an area of positionally advantageous for officers (Cover). Coordination, Communication and Tactics are crucial, as well as sound judgment.

**This level of increased force (placed against the neck and/or carotid) was utilized by a recruit on an instructor during a traffic stop training exercise, in a controlled environment that could not be articulated nor justified.**

2. Officer Myles Foster was trained in *CIT for Kentucky Law Enforcement* by the Lexington Police Department Academy. He completed training for the forty (40) hour course on November 30<sup>th</sup>, 2020. Training instructors are from three (3) backgrounds: law enforcement, mental health professionals and consumer advocates. Additionally, peer support specialists interact with officers in small groups to discuss challenges, barriers and specifics of their diagnosis/treatment (alcohol, drugs and mental health, or a combination of thereof.). Lexington Police teaches the Kentucky Law Enforcement Council (KLEC) approved curriculum to train sworn personnel within the agency.

An overview of Mental Health Disorders/Substance Use Disorders/ Co-Occurring Disorders and Intellectual and Developmental Disabilities are provided in this training. Additionally, officers receive training in such areas as Post-Traumatic Stress Disorder and Suicide Prevention.

Training includes practical scenarios in which officers engage persons exhibiting behaviors that may indicate a mental health, substance/alcohol or intellectual or developmental disability. Some scenarios may include medical or other instances requiring proper judgement/decision-making.

Lexington Police Department Law Enforcement Instructors are utilized for this training pursuant to the requirements of *KRS 210.365*. The training information, as well as techniques that are crucial to crisis encounters and can strengthen the knowledge, skills and abilities of communication principles of officers in non-crisis encounters.

A review of communication principles utilized during the encounter was not consistent with training via the approved curriculum for *Crisis Intervention for Kentucky Law Enforcement*. In fact, multiple factors in the analysis of this case were identified that in fact escalated the encounter.

3. The agency identified and documented performance needs in annual *Performance Development Forms* for both the calendar years 2021 and 2022, for Officer Myles Foster #58517. In the documents provided for review, there were no documents associated with an action plan, officer-initiated training requests, nor documentation clearly showing response to improvement or the identification of continued diminished performance.

In the 2021 Performance Development Form, *oral communication, interview skills, interrogation skills and training opportunities to “sharpen oral communication skills when in contact with the members of the public”* were specifically mentioned.

Due to the identification and documentation of needs/recommendations to improve job performance, as well as the criticality of effective communication, especially during challenging encounters, I would expect subsequent follow-up documentation from a position of authority, including direct supervisor in regard to the specific needs, as well as an action plan to improve performance.

In the 2022 Performance Development Form, “continue to work on his communication skills to develop his ability to utilize verbal de-escalation techniques, continue to work on proactive efforts to place him in situations where he can continue to work toward strengthening his communication skills” were noted. Additionally, an action plan should also include whether “Officer Foster submitted requests for any training opportunities that he requested in order to further develop performance as an officer”. The agency has the oversight and responsibility for an action plan to determine employee needs, including retraining, new training, written documentation for need of improvement or disciplinary action. A timeline progression of improvement, continued deficiencies or decline of performance should be articulated.

These recommendations were after the completion of Crisis Intervention Training (*CIT for KYLEN*). Considering an identified improvement of performance was needed this should have triggered an agency responsibility for supervision, as well as oversight of encounters. Especially since the agency has Body Worn Cameras (BWCs) to provide clear, unbiased feedback under actual working conditions.

The responsibility of additional training should be based upon identified needs of improvement in critical areas of communication/de-escalation. The burden of accountability of supervision and oversight is incumbent upon the agency. Frequency and criticality of crisis encounters, as well as the techniques to de-escalate should be monitored, reviewed and evaluated. This will ensure the trained techniques are in compliance with legal standards/policies. The employee should be able to demonstrate, articulate a technique and have actions independently validated toward an acceptable standard.

4. The agency processed a formal complaint filed by a citizen in regard to an incident on October 8<sup>th</sup>, 2021, in which Officer Foster contacted a group of citizens at 321 East Vine Street. **The complaint alleged that Officer Foster was unprofessional, antagonistic and made threats to individuals gathered at a car show.**

An investigation summary and interview of Officer Myles Foster was contained in *Lexington Police Department Memorandum* by Lt. David Biroshchik dated November 29<sup>th</sup>, 2021, in reference to Formal P.I.U.21F022 – Officer Myles Foster Summary.

The specific allegations as specifically noted in this document under *F. Pre-Encounter – Background Review- Section 4*. The allegations during this encounter alleged:

- **Physical contact by the officer (push or poke in the chest) causing a citizen to stumble backwards.**
- Statement by Officer Foster of: *“You better watch who the fuck you’re talking to and what the fuck you say to me.”*
- Statement by Officer Foster of: ***“I don’t care, I’ll put all 8 of you in the dirt right now”, while having his hand on his gun.***
- Statement of Officer Foster to citizen of *“Whoopy fucking doo, I don’t care”*.

The complainant activated a cell phone camera which captured a partial portion of the event and enough to capture some of the claims to the degree of substantiation. Citizen video did not capture the allegations of physical contact.

The department determined allegations of this complaint, although unprofessional, indicate unacceptable behavior related to communication/interaction with the public during encounter contacts by Officer Foster. Additionally, allegations of unlawful physical contact combined with statements clearly construed as threatening /intimidation, as well as antagonism should raise the level of concern by the agency. The verbalization of “I don’t care, I’ll put all 8 of you in the dirt right now”, while placing his hand on a gun should facilitate some type of future accountability monitoring of performance by the agency.

Further ancillary concerns of this encounter concerning the totality of the circumstances of this incident are:

- Body Worn Camera (BWC) was not activated by Officer Foster during this encounter.
- *“When questioned about why he did not activate his body worn camera as required by policy, Officer Foster stated **“he did not know why he didn’t activate it”**.”*
- *Officer Foster advised he knew he policy required him to activate it and admits to violating policy.”*
- *He (Foster) does not deny that he spoke to Mr. Gross, although **he does not recall what he said.**”*
- *“He does admit to using inappropriate language during the exchange with the group”.*
- ***“He admits to cursing multiple times due to being angry.”***
- ***“He also does not deny that the subject pushed his buttons and made him mad.”***

Lt. David Biroshchik documented in the memorandum the following:

*After reviewing this incident, it is clear that Officer Foster responded in a manner that is **“inconsistent with training and policy laid out by the Lexington Police Department”**.*

Clear non-compliance with training, policy and a clear lack of verbal articulation of the “why” of non-compliance is demonstrated in this incident. Emotional self-regulation and observable behavior due to language/intimidation should indicate a need for future monitoring actions to ensure accountability with policies, procedures, as well as acceptable expectations of respectable/ humane treatment of the public.

The failure to activate a Body Worn Camera (BWC), especially based upon an officer-initiated interaction with the public, should result in some type of documentation of written warning, retraining and/or discipline. (Progressive action to correct the behavior and ensure future compliance).

The final disciplinary action in this case resulted in a one (1) day suspension due to Misconduct.

**Allegation:** Violation of General Order 1973-02K, Disciplinary Procedures, Appendix B, Operational Rule 1.02 – Misconduct

*“Officers shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the department and to not cast doubt on the officer’s integrity, judgement, or character, Misconduct of an officer shall include that which tends to bring the department into disrepute or reflects discredit upon the officer as an employee of the department, or that which tends to impair the operation and efficiency of the department of officer”.*

**Finding:** Improper Conduct – The allegation is true; the action of the agency or officer was inconsistent with agency policy.

The gravity of the communication during this encounter and not articulating “why” of his actions, including “why he failed “ to complete an authorized requirement of policy, using threatening language intended to intimidate or provoke, as well as anger resulting from performing standard law enforcement encounters is of significant concern.

### **G. Pre-Encounter – Incident Response**

A review of the Lexington Police Department Incident Report from the *Computer Aided Dispatch of Incident # 2022-00039332* on March 10<sup>th</sup>, 2022 (printed on August 2<sup>nd</sup>, 2024) was conducted in reference to this case. A brief synopsis of the encounter with Linda Trapp by Lexington Police Officers is as follows.

On March 10<sup>th</sup>, 2022, Lexington Police Officers responded to a report of a “disorder” at 150 North Eagle Creek Drive at *St. Joseph Hospital (East)*. The call was dispatched at 21:57 hours to Officer Myles Foster (324 C) and Officer Daniel Helo (324 B).

The complainant, “an employee”, reported that a sixty-one (61) year-old female, last seen wearing a black sweatshirt and black pants was being “disorderly” and refusing to leave Emergency Room #3. The notation in CAD also stated: “*Advise Subject also possibly 10-58*”.

The sixty-one-year-old female was later determined to be Linda Trapp, an unhoused woman, with previous contacts with Lexington Police, as well as Lexington Fire through Emergency Care (EC) calls for service.

On this date, Ms. Trapp had arrived earlier at the Emergency Room at *St. Joseph* via Lexington Fire Department EC to be evaluated for a potential head injury. This was due to a fall possibly sustained at the Catholic Action Center located at 1055 Industry Road.

Officer Myles Foster (324C) arrived on scene-first at 22:00 hours, followed by dispatched Officer Daniel Helo (324B) at 22:06 hours

## H. Analysis/Opinion – Encounter by Officer Myles Foster and Officer Daniel Helo

The review was based upon the BWC of Officer Myles Foster. After entering the Emergency Department and discovering the patient in question was in Room #3, Officer Foster entered the room at approximately 1:04. Upon entering the room, an unknown person said, “*Hello*” to which Officer Foster, stated, “*Hello, What’s going on?*” Foster initiated the dialogue with Ms. Trapp, who was lying on a hospital bed by stating, “***It’s time for you to leave.***”

The initial encounter occurred with Officer Foster entering Room #3, where a nurse, security officer and physician were present, along with Ms. Linda Trapp, lying on a hospital bed.

Ms. Trapp stated, “*I guess, I can’t get a negative COVID Test?*” Further, Ms. Trapp advised “*I have to have proof of a negative COVID Test.*”

Foster replied at 1:17, “***Okay, Well, I guess it’s time for you to leave.***” Ms. Trapp replied, “*And go where?*” Officer Foster said, “*Huh?*” Ms. Trapp replied, “***Jail, I guess.***”

Based upon training in Crisis Intervention, I would have expected to see a basic introduction based upon the Four Step Process versus an immediate command. One of the reasons for a basic introduction is to “personalize the encounter” and “get a name” of the person in the encounter. This is instrumental in working toward building rapport.

Officers trained in Crisis Intervention Training (CIT for Kentucky Law Enforcement) are trained to utilize a Four-Step Process consisting of Calm, Investigate, Assess and Facilitate (C-I-A-F) in conjunction with Active Listening Skills. Active Listening Skills actively provide feedback to demonstrate listening to understand versus merely responding.

Some factors that would assist an officer in the first stage of the encounter, (Calm) would be:

- Introduce yourself
- Ask questions versus commands
- **Listen**
- One officer as a “Contact” establishing communications
- Maintain a low voice
- Show Concern
- Honesty
- Fairness
- Offering Help/Reassurance
- Remove distractions such as other persons causing stress into the encounter

The second step of the C-I-A-F Process would be to (Investigate). Based upon the information provided by Ms. Trapp, asking "Open-Ended Questions" would be an acceptable technique to gain investigative information. This would include:

- Information about her staying at the *Catholic Action Center (CAC)*
- Collateral or Point of Contact at the *Catholic Action Center* who could provide information regarding: COVID Testing, transportation options for Ms. Trapp to stay versus being placed on the street.
- Her specific physical challenges, co-morbidities, basic needs.
- **WHY and how she arrived at the hospital for treatment that day.**
- If/Who has assisted her in the past at CAC regarding basic needs.

Validating concerns, emotions and expressing a desire to help may show empathy and strengthen rapport. This includes "Emotion Labeling" or "I Statements" to reflect understanding:

- "I can tell you are worried about the COVID Testing to get back into CAC."
- "I want to help you get off the street tonight."
- "You seem like your biggest concern is having a place to stay versus being "outside."
- "Let me see what I can do. I'll talk to CAC and see what we can do to work this out".

The third step is (Assess). Assessing the content/quality of speech or speech challenges (unusual speech, unintelligible speech or not able to articulate speech) known as Verbal Indicators would be helpful. Also, assessing Behavioral Indicators, such as strange postures, pacing, agitation, confusion, inappropriate emotional reactions, hygiene, appearance, cleanliness and appropriateness of clothing are examples that could give insight into needs, as well as "how" to frame communication techniques.

The fourth step of the C-I-A-F Process is (Facilitate). Based upon the information spontaneously provided by Ms. Trapp, Officer Foster knew that Ms. Trapp needed a COVID Test to allow her to stay at the Catholic Action Center for housing, as well as basic needs. Facilitating resources/assistance, either internally or externally to assist a person in crisis or vulnerable person is the main premise of Facilitate.

*Lexington Police General Order 2005-01A- Interacting with Persons Affected by Mental Illness or in Crisis has an Appendix of Resources (Page 21 & 22) contains descriptions of agencies, services and phone numbers, including Bluegrass Community Mental Health (now New Vista). New Vista Mental Health Professionals are active participants in the Crisis Intervention Training provided to Lexington Police Officers.*

CIT Officers are trained in the use of Active Listening Skills (ALS) to demonstrate feedback and understanding. Active Listening Skills are the key components to handling persons in crisis, expressing empathy and developing rapport to influence and ultimately

changing behavior. Active Listening Skills are the “building blocks” toward a “Best Possible Outcome”.

Active Listening Skills include Emotion Labeling, Minimal Encouragers, Summarizing, Mirroring/Reflecting, Paraphrasing, Open-Ended Questions, Effective Pauses and “I Statements”. These are recognized techniques in both the law enforcement and mental health community to strategically de-escalate.

Slowing the dialogue and decompressing time, will allow time for the dialogue to continue, gain more information and show concern for the person you are conversing with during the encounter. At 1:25, Officer Foster sped up the encounter versus decompressing time and slowing the dialogue. Officer Foster said the following, **“I’m not taking you to jail. You need to leave. I’ll drag you out and throw you out on the sidewalk. You just want somewhere to-- you just want somewhere to sleep tonight and that ain’t gonna happen.”**

*De-Escalation* is defined in *Lexington Police General Order 1991-02K Response to Resistance, Section III* as follows:

*Taking actions or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary, De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion and tactical repositioning.*

Officer Foster accelerated time by the use of threatening force :21 seconds into the encounter. This was a critical error and the antithesis of techniques such as time, options, resources to resolve the situation without the use of force. The dialogue continued with Officer Foster reiterating, **“Come on or I’ll drag you out.”** Ms. Trapp countered with, **“No, you’re not gonna drag me out.”** Officer Foster challenged Ms. Trapp by stating, **“If you wanna call my bluff, go ahead”**. During this time, Ms. Trapp was escalated and using profanity. There was no threat, indication of threat or non-compliance on the behalf of Ms. Trapp.

Provocation, threats or intimidation are universally unaccepted measures to a positive outcome. These measures will likely force an outcome that is not “best possible” at minimum. There was no threat to the officer, or any other person present in the hospital. The goal of de-escalation should be the “Best Possible Outcome” by utilizing talk, tactics, time and/ or techniques to influence compliance through verbal communication, if at all possible.

The following are excerpts from Lexington Police General Orders in regard to interacting with persons with mental illness or in crisis. *Lexington Police General Order 2005-01A – Interacting with Persons Affected by Mental Illness or in Crisis, IV. Procedures, Number 3.*

- a. *Take Steps to calm the situation. Where possible, eliminate emergency lights and sirens, disperse crowds and assume a quiet non-threatening manner when approaching or conversing with the individual.*
- b. *Officers and civilian employees should operate with the understanding that time is an ally and there is typically no need to rush or force the situation.*
- e. *Provide reassurance that the police are there to help and that the person will be provided with appropriate care.*
- f. *Avoid topics that may agitate the person and guide the conversation towards subjects that help bring the individual back to reality.*
- g. *Do not deceive or use tricks. Always attempt to be truthful with the individual. If the person becomes aware of a deception, they may withdraw from the contact in distrust and may become hypersensitive or retaliate in anger.*

Ms. Trapp explained to Officer Foster that she needed a negative COVID Test to “stay at the Catholic Action Center”. Ms. Trapp (referring to the COVID Test), “It’s a big deal. It’s a really big deal.”

Officer Foster asked Ms. Trapp, “*Is that all you want is a COVID Test?*”, to which she replied, “*Yeah*”.

Officer Foster then said, “***All right. I’ll take you somewhere for a COVID Test. Let’s go.***”

Ms. Trapp provided a **clear reason** as to “why” she needed the negative COVID Test (to stay at *the Catholic Action Center*). A basic need for such things as shelter, food, clothing, medical treatment (survival needs) are terminal to vulnerable persons, such as those who are unhoused and/or have medical challenges. Her explanation was discounted and the probability of conferring with external resources such as the *Catholic Action Center* to facilitate assistance was not considered.

Officer Foster verbalized to Ms. Trapp an implied promise to take her for a COVID Test if she went with him. Trickery or deception is not an acceptable course of action during the communication process, especially with a vulnerable person. Ways of escalating will impact the trust and rapport of future encounters with law enforcement if prior encounters with law enforcement were based on mistreatment or ways to escalate. A single incident of using measures that are considered “ways to escalate” will inhibit or diminish the likelihood of future “Best Possible Outcomes.”

As Officer Foster and Ms. Trapp neared the main doors, Ms. Trapp stated, “***I can’t walk down hills. I can’t.***” A follow-up question for a direct explanation as to “why Ms. Trapp can’t walk down hills” would have been an appropriate question to gain relative information on injury, disability or physical limitations/impairment.

Ms. Trapp paused and turned facing away from the main doors, toward the interior of the building. Officer Foster said, "**Let's go.**" Ms. Trapp responded by saying, "*I can't go back there though?*" Officer Foster then stated, "*You can't go back where? Come on.*" Ms. Trapp then replied, "***I'm gonna be stuck outside.***"

At approximately 5:36, Officer Foster then told her, "***It ain't that cold tonight. You'll be all right. I'm not taking you to jail, so you need to go.***" Ms. Trapp responded, "***And stay outside?***"

Officer Foster told Ms. Trapp, "*Yes. Where do you live at? Are you homeless? I never met you before. I'm not—I'm new to this side of town.*" After asking this question, which occurred after the threats, intimidation and provocations statements, Ms. Trapp did not answer. And Officer Foster did not follow up to the question.

A review of weather on March 10, 2022, according to *Weather Underground* via the following web address: <https://www.wunderground.com/history/daily/KLEX/date/2022-3-10> at 10:54PM, the temperature in Lexington, Kentucky was 38 degrees F.

Realizing once she reached the doors leading from the Emergency Department to the outside; she had been deceived, **Ms. Trapp said, "You just lied to me."** At approximately 6:06, Ms. Trapp turned clockwise toward the interior of the building and at that point, Officer Foster grabbed her left wrist/upper arm, and she fell to the floor. While Ms. Trapp was on the floor, Officer Foster said, "***I do not wanna hurt you. Do you wanna ride somewhere? I'll try to get you a ride.***"

Eventually, Ms. Trapp advised Officer Foster, "***I'll go on my own***", to which he responded, "You wanna go? All right. Let's go." The security officer and Officer Foster lifted her to her feet. **Officer Foster said, "All right. We're not touching you. Just go. If I have to touch you again, you're going in cuffs and you're gonna get hurt because I'm gonna put you on the ground."**

**Officer Foster again explicitly introduced the threat of force into the dialogue. Specifically, that he was going to hurt her and "put her on the ground."**

Threats of injury/pain, as well as "put you on the ground" are escalating statements, not de-escalating and will not benefit the dialogue/ facilitate a positive outcome of an encounter. In fact, statements of harm will "shut down" the dialogue.

At approximately 7:00, Linda Trapp walked out of the hospital Emergency Department and turned right on the paved road surface. As she was walking away, Officer Foster said, "***Bye-Bye***" at 7:04, as Ms. Trapp continued walking away toward the incline on the paved driveway (Away from the building). At approximately 7:19, she turned back toward the Emergency Department and said, "*Can I have a cane please?*"

Officer Foster responded, "You don't have a cane, Linda." Ms. Trapp rebutted, " I brought a cane." **Officer Foster then said, "Go find a tree branch or something."** Nurse 1 then shouted out, "Go get you a tree branch." Officer Foster continuing the taunting of Ms. Trapp said, "There's some good trees over there downtown." Nurse 2 was observed visibly smiling/chuckling.

Taunting words are not constructive to the communication process and serve no purpose, other than to mock, ridicule and/or demean.

In the CIT/C-I-A-F Process, officers are trained that some of the following variables are ways to "escalate crisis encounters":

- ✓ **Laugh at Persons/Make Fun of Them**
- ✓ **Get in a Power Struggle**
- ✓ **Argumentative**
- ✓ **Seem Unconcerned**
- ✓ **Violate Personal Space**
- ✓ **Challenge Delusions**
- ✓ **Threaten Arrest**
- ✓ **Overreact**
- ✓ **Preach/Judge**
- ✓ **Negate the Seriousness of their Crisis**
- ✓ **Police Radio Blaring**

Ms. Trapp responded by saying, " I brought a cane here." Foster countered with, "No, you didn't." Ms. Trapp responded with. "Yes I did." Officer Foster responded, "Go." The dialogue continued until 7:37, when **Ms. Trapp said, "You're a liar."**

At that moment, Officer Foster began quickly walking toward Ms. Trapp. At 7:40, Ms. Trapp said again, "**You're a liar.**" At that point, Officer Foster called out on his handheld radio, designating his Unit Number, "324C".

At 7:45, Ms. Trapp yelled out, "**No. Oh, no, you're not gonna hurt me.**" Officer Foster then called out on his handheld radio, "Go ahead and start me a 10-16 or 10-60" (unable to confirm based on the audio). This was the most likely a request for an arrest transport.

During the closing distance by Officer Foster, Ms. Trapp took approximately eight or nine steps slowly backing away down the driveway away from the building and Officer Foster. Officer Foster reached Ms. Trapp in her stationary position at 7:49. Ms. Trapp then faced toward Officer Helo, who was also approaching. Officer Foster grasped the left wrist and upper arm of Ms. Trapp in an "escort position". Officer Foster then utilized force in a takedown by propelling Ms. Trapp forward onto the pavement, while using his foot to displace Ms. Trapp's left foot from the pavement. This likely prevented her from having control over her balance, as well as her ability to control what area of her body would impact the pavement.

Ms. Trapp was yelling after impacting the pavement. She yelled, "***Oh my God. Fuck you. Oh, shit. What the fuck you just do? Because I said I wanted my cane, you broke my knee? You broke my kneecap.***"

A review of the video frames by starting/stopping the provided video showed the following:

- 22:08:49 (BWC Time) – Ms. Trapp in Escort Position w Straight Left Arm w back toward Ofc. Foster. Ofc. Foster with Right Hand close to Left Upper Arm of Ms. Trapp
- 22:08:50 (BWC Time) - Ofc. Foster grasping Left Upper Arm of Ms. Trapp with Right Hand. Ofc. Foster's Left Hand grasping Left Hand of Ms. Trapp at her waistline near base of thumb of Left Hand. Fingers of Ms. Trapp grasped and fingers near the outside of the Left Leg.
- 22:08:51 (BWC Time) – Ms. Trapp partial view of upper torso and left side of head/hair falling forward.
- 22:08:52 (BWC Time) – Ms. Trapp partial view of Left Upper Arm being grasped by Ofc. Foster's Right Hand, falling forward toward pavement. Left Elbow bent with Lower Left Arm straightened point downward to the rear of her body.
- 22:08:52 (BWC Time) – Ofc. Foster grasping Left Wrist of Ms. Trapp with thumb on wrist line with his Left Hand. Back of Left Wrist of Ms. Trapp facing towards her body with fingers curled near waistline. Right Hand of Ofc. Foster on Left Upper Arm (palm toward her arm) as Ms. Trapp is falling toward the pavement.
- 22:08:52 (BWC Time) – Ofc. Foster grasping Left Wrist of Ms. Trapp with thumb on wrist line with his Left Hand. Back of Left Wrist of Ms. Trapp facing toward her body with fingers curled near the waistline. (Left Fingers of Ms. Trapp grasping paper). Left Elbow bent toward the back of torso. Right hand of Ofc. Foster on Left Upper Arm of Ms. Trapp.

22:08:52 (BWC Time) - Ofc. Foster grasping Left Wrist of Ms. Trapp with thumb on wrist line with his Left Hand. Back of Left Wrist of Ms. Trapp facing towards her body with fingers curled near the waistline. (Left Fingers of Ms. Trapp grasping paper). Left elbow bent toward back of torso. Right hand of Ofc. Foster on Left Upper Arm of Ms. Trapp.

22:08:53 (BWC Time) – Ms. Trapp falling forward to pavement (more forward movement). Ofc. Foster grasping Left Wrist of Ms. Trapp with thumb on wrist line with his Left Hand. Back of Left Wrist of Ms. Trapp facing towards her body with fingers curled near the waistline. (Left Fingers of Ms. Trapp grasping paper). Left elbow bent toward back of torso Right hand of Ofc. Foster on Left Upper Arm of Ms. Trapp.

22:08:54 (BWC Time) – Ms. Trapp with upper torso and head parallel to pavement. Right hand of Ofc. Foster on Left Upper Arm of Ms. Trapp.

Officer Foster responded by saying, ***“You should’ve listened. I gave you plenty of warnings.”*** Ms. Trapp responded by saying, ***“Oh God. Fuck you.”*** Officers Foster and Helo handcuffed Ms. Trapp while she was in a prone position on the ground.

At no time, did Officer Foster verbalize with an intent to arrest prior to the engaging “hands-on”/applying force with Ms. Trapp. Verbal warnings when time allows or is feasible is even more crucial in dealing with vulnerable persons, advising of intent to “touch”. This is also important to allow time for clear intent, as well as compliance.

Officer Foster stated to Ms. Trapp, ***“I don’t mess around Linda, or whatever your name is. Next time you see me, you better not act like this. Sit up. I don’t mess around. You understand? You shouldn’t have resisted.”*** Ms. Trapp was assisted by Officer Foster to a standing position. Officer Foster admitted under deposition that he was “bragging” to Ms. Trapp that he doesn’t “mess around.” (Page 56)

*Lexington Police General Order 1991-02K V. Procedures, B. Resistance Control Principles, Number 4*

*4. At all times, officers should bear in mind the legal principle of “lesser force” in any apprehension, felony or misdemeanor, and use only the force necessary to affect lawful objectives.*

A wheelchair was subsequently brought out to the driveway area where the arrest was made. Ms. Trapp was placed in the wheelchair and taken inside of the outer doors to the Emergency Department. Nurse 1 was using a syringe on the left side cheek of Ms. Trapp, which was bloodied. Ms. Trapp, stated, *"It's not just my face. It's my left knee"*. Nurse 1 responded by saying, *"Your knee's fine."* Ms. Trapp responded by saying, *"No it's not. No, it's not fine. It's most definitely not fine."* Again, Ms. Trapp verbalized, *"It's not fine."* And again, Nurse 1 stated, *"Your knee's fine."* This time, Ms. Trapp responded, *"No it's not. Have you checked?"*

Ms. Trapp stated, "I can't walk". At 12:38, Dr. Anderson, the Emergency Room Physician, approached Ms. Trapp who was still sitting in the wheelchair. Dr. Anderson used a light to shine on the facial area (forehead, cheek, eyes, nose) of Ms. Trapp for several seconds. Ms. Trapp said, *"X-ray it. X-ray my knee. X-ray my left knee. X-ray my left knee."* Dr. Anderson advised Ms. Trapp, *"You can do that with your doctor in the office, OK?"* Ms. Trapp then replied, *"Huh?, I can't walk"*. Dr. Anderson advised that he would *"go write new papers"*.

While awaiting medical release paperwork from Dr. Anderson and the requested transporting officer for Ms. Trapp, the following was noted. Officer Foster asked Ms. Trapp two (2) times, *"What were you here for today?"* After the second time of asking the questions, Officer Foster commented, *"So you probably hurt your knee earlier when you fell?"*

**At no time was Ms. Trapp's left knee or right knee medically evaluated by a nurse or physician following the use of force. This fact was also known to law enforcement personnel present at the scene (Officers Foster and Helo).**

During the course post-arrest component of the encounter, the following verbalizations were made by Ms. Trapp in regard to her left knee/leg injury following the application of force:

- *"Oh my God. Fuck you. Oh, shit. What the fuck you just do? Because I said I wanted my cane; you broke my knee? You broke my kneecap."*
- *"It's not just my face. It's my left knee."*
- *"No, it's not. No, it's not fine. It's most definitely not fine."*
- *"It's not fine."*
- *"No, it's not. Have you checked?"*
- *"X-ray it. X-ray my knee. X-ray my left knee. X-ray my left knee."*
- *"Huh?, I can't walk"*

Officer Daniel Helo remained in the vestibule area with Ms. Trapp and security personnel, along with Nurse 2. At 17:36, Officer Foster exited the hospital, walked to his assigned police vehicle, and drove the vehicle directly under the awning at the entrance to the Emergency Department.

## I. Analysis/Opinion – Post-Arrest of Linda Trapp

At approximately 18:17, Officer Foster parked under the awning area at the main entrance and remained in his vehicle. Following entering information into the vehicle Mobile Data Terminal (MDT), Officer Foster exited the vehicle and walked toward the back of his car to speak to an unknown officer sitting in his vehicle. During the course of the interaction between the two at approximately 20:01, Officer Foster advised, ***“She got busted up pretty good.”*** Officer Foster followed with a statement touting, ***“She got man dropped.”***

Prior to the review of this case, I have never heard the term *“man dropped.”* Although when questioned under oath during a deposition on January 11<sup>th</sup>, 2024, Officer Foster testified that ***“he did not remember saying that”***, referring to the phrase (Page 58).

When asked by counsel, *“What does that mean, man dropped?”*, Officer Foster’s response was, ***“I have no idea. There’s no definition I could give you.”*** (Page 58-59). Deposing counsel on the record advised Officer Foster that according to Urban Dictionary, *“It says, the act of dunking your testicles and/or scrotum on a significant other.”* (Page 59) When counsel articulated the derogatory meaning of the phrase according to the Urban Dictionary, Officer Foster’s response was, ***“I didn’t know it meant that.”*** (Page 59)

Officer Foster returns back to his vehicle and again continues to enter information on the MDT. At approximately 27:07, Officer Foster exits his vehicle and walks to the driver’s side rear quarter-panel of his vehicle to speak with Sergeant Benjamin Baker, who has now arrived on-scene.

Officer Foster told Sergeant Baker the following at approximately 27:16. ***“She wouldn’t leave here. We finally got her to walk out. And she was like, F-U, I am not leaving, and I was like, OK. And I went to arrest her, and she started flailing her arms and kicking and stuff. So, I put her to the ground. She’s got a little scrape, and she is saying her knee hurts.”*** This ended at approximately 27:30.

Video review of the BWC does not indicate that Ms. Trapp’s “arms were flailing”. Additionally based upon the video, it is not clearly established that Ms. Trapp was “kicking and stuff” as described to Sergeant Baker. At no time during the BWC Review, could Ms. Trapp be heard saying, “F-U. I’m not leaving” when outside of the hospital.

Under oath while being deposed by counsel on January 11<sup>th</sup>, 2024, Officer Foster stipulated that Ms. Trapp was not “kicking, hitting, fighting”. (Pages 60, 63 and 64).

Additionally, the resulting injuries are described as a *“little scrape”* and *“She says her knee hurts.”* This was a minimization of the verbalized injury/complaint of pain.

Accurate reporting of applying force to supervisors investigating Use of Force (UOF) should be accurate and in accordance with complaint of pain/injury by the arrestee. The description of the verbalized injury by Officer Foster is not accurate.

Additionally, Officer Foster also advised, ***“They patched and put a Band-Aid on it. And gave her clearance papers for the jail. We got two. One, when she was released before we got here and then now. And hopefully they won’t have any concerns.”***

Although medical release papers were provided by the hospital, Ms. Trapp verbalized a “broken knee”, a “broken kneecap” and pleaded for an “x-ray of her left knee”. Officer Foster, who applied the force; clearly knew the physician referred Ms. Trapp to “her doctor in the office” for an outpatient medical appointment in regard to her left knee.

This is a significant factor considering the outcome of Ms. Trapp’s body impacting pavement and the fact that the attending physician, nor a nurse evaluated or attempted to evaluate Ms. Trapp’s left knee following the application of force. The severity of the complaint of injury and no evaluation of the complaint of injury should have been articulated to Sergeant Baker.

Officer Foster instead described the injury and minimized it through his choice of words. Officer Foster is responsible for ensuring medical treatment and relaying accurate, articulable information to the investigating supervisor. At the moment of Ms. Trapp’s seizure per a physical arrest, the duty to accurately ensure medical treatment for injured arrestees is the duty of the arresting officer.

Sergeant Baker responded, “Where did it happen at?” Officer Foster answered, ***“Right down there. She got to there and was like, Nope.”*** Sergeant Baker asked, “You’re not injured?” Officer Foster replied, “Yeah, No, were not. I didn’t know if you needed to take picture of her.” ***Sergeant Baker then responded, “Yeah, I’ll grab some pictures of her. So, was it like a straight arm bar or just kind of a..?”*** Officer Foster added, ***“Just kind of fell, fell on her.”***

Officer Foster in this statement told Sergeant Baker that “he kind of fell on her.” This is not an accurate statement based upon the video evidence of the intentional takedown and balance displacement initiated by Officer Foster.

After Sergeant Baker asked for clarification on where the incident occurred, Officer Foster added, ***“Yeah. There’s a little bit of blood and she’s saying her knee hurts, but they said she came in here for the same knee hurting, so.”***

Officer Foster again provided inaccurate information to Sergeant Baker by minimizing the complaint of pain/injury of Ms. Trapp by saying “her knee hurts.” And adding that “she came in here for the same knee hurting” is also inaccurate. Ms. Trapp verbally indicated that her complaint of injury/pain is with the left knee.

Sergeant Baker then walked toward the Emergency Department and Officer Foster returned to his vehicle at approximately 28:52. Ms. Trapp was transported via wheelchair to the Transport Van located in the parking lot. The van required Ms. Trapp to walk up three metal steps and fourth step to enter the compartment of the van.

At approximately 7:26, Officers attempted to lift Ms. Trapp out of the wheelchair to load her in the van. At 7:58, Ms. Trapp stated, "*They didn't x-ray that now did they? No.*" Officer Foster responded, "***They said they did.***"

Ms. Trapp verbalized and confirmed that her left knee/leg was not x-rayed. Officer Foster knew that the hospital did not evaluate, provide diagnostic testing or treat Ms. Trapp for her injury to her left leg/knee. Despite that fact, he told Ms. Trapp, "*They said they did.*"

At 9:21, attempts were made to stand Ms. Trapp upright and have her step up the staircase and final step into the Transport Van. At 11:00, Ms. Trapp told Officer Kasko, "***It hurts like hell.***" At 11:09, still standing in an upright position, Ms. Trapp stated, "***They didn't even check my left leg, now did they? No.***" At 11:25, Ms. Trapp said, "***I am not standing up on my left leg. I can't. It's not that I want to. I'm trying. It won't work.***"

At 12:00, Officer Helo, Officer Foster and Sergeant Baker started to physically lift Ms. Trapp into the van and placed her in a seated position at approximately 12:19. Ms. Trapp was subsequently seat-belted in via two harness straps. Ms. Trapp said, "***At least they'll give me some medical attention. I don't get it out here. It hurts like hell.***" The door leading to the van transport compartment was closed at 12:55. The Axon Time was noted as 22:45:58. Officer Kasko began driving away from 150 North Eagle Creek at 22:48:42 (Axon Time) – 15:38.

The attempts to force Ms. Trapp to stand on the left leg, later determined to be broken (tibia) and a right leg with a prior injury were a clear indication of a probable significant injury. The continued request to stand or step was continued despite her pleas for an x-ray and her indication her "kneecap was broken". And the added fact that medical evaluation and diagnostics were not provided, as well as the fact that she literally needed to be carried up/into a transport van shows a clear gravity of the injury.

## J. Analysis/Opinion – Post-Arrest Documents

On March 10, 2022, Officer Myles Foster completed a *Memorandum to Sergeant W. (Weslee) Farley in regard to the Response to Resistance Incident #2022-039332*, which occurred at 150 North Eagle Creek during the encounter of Ms. Linda Trapp. I reviewed the memorandum and noted the following:

- Mrs. Trap (as written) “told officers to take her to jail”. The actual dialogue was as follows: Officer Foster said, “**Okay, Well, I guess it’s time for you to leave.**” Ms. Trapp replied, “*And go where?*” Officer Foster said, “Huh?” Ms. Trapp replied, “**Jail, I guess.**”
- “She left the hospital building on her own, but stopped shortly after and would not leave the premises”. BWC shows that Ms. Trapp had walked away some distance of yardage away from the building and had walked on the paved driveway area at the hospital. There is no indication she was not leaving the premises. She walked a significant distance from the building.
- “After being told multiple times to leave the premises, she advised she was not going anywhere”. At no time did Ms. Trapp state, she was not going anywhere based upon BWC.
- “**She started to resist by curling up her arms and throwing her left elbow towards me.**” BWC does not indicate as such. In fact, BWC indicates that during the encounter, Officer Foster had hands on her left wrist and/or her upper left arm during the initial physical contact and during the initiation of the takedown. BWC also shows her wrist grasped by Officer Foster and wrist grasped where the wrist is rotated with the back of the wrist turned laterally and/or placed near her waistline near the middle of her back during part of this encounter.

Officer Foster testified during a sworn statement at deposition on January 11, 2024, reading the narrative of Exhibit 2 as follows: “*The listed subject refused to leave the property of the listed address. After being advised, she was placed under arrest and aggressively resisted by throwing her arms around and actively pulling her arms away. Once officers made contact, she dropped her weight and attempted to tuck her arms under her body. Body-worn camera present, activated, not reviewed.* (Page 40). This does not factually describe what actually occurred on BWC. Officer Foster had control of her left upper arm and left wrist prior to and after the takedown was initiated.

- “I conducted a balance displacement takedown to safely effect the arrest without further injury to the suspect or Officers”. Balance displacement while on pavement, with control of arm/wrist, as well as removing her ability to stand is not safe for Ms. Trapp, nor reducing further injury to Ms. Trapp.
- Under oath while being deposed by counsel on January 11<sup>th</sup>, 2024, Officer Foster stipulated that Ms. Trapp was not “kicking, hitting, fighting.” (Pages 60, 63 and 64).
- “She continued to resist by not putting her hands behind her back.” BWC does indicate Ms. Trapp started or continued to resist based on BWC.
- “She was checked out by the doctors at *St. Joseph* for complaint of knee pain and small laceration on her forehead.” Ms. Trapp asked for an x-ray and medical care for her left knee as a result of the takedown. Medical treatment for her left knee was not provided. This was known by Officer Foster prior to the completion of the memorandum. Ms. Trapp sustained a laceration to the left side of her cheek as a result of impact to the pavement during the takedown.

On March 10<sup>th</sup>, 2022, Sergeant W.D. Farley completed a Memorandum of Response to Resistance 2022-039332 to Lieutenant D. Taylor in regard to the incident. Sergeant Farley stated, *“I believe other options could have been attempted prior to using the takedown to gain control of Ms. Trapp, as she is a female in her 60s and there were two officers on scene to effect the arrest. In addition, Officer Foster failed to verbalize to Ms. Trapp that she was in fact under arrest and some of his comments made during the incident, while not vulgar did not project the professional image we hold so highly as a department. Officer Foster has been counseled on these matters with a coaching and counseling issued, during which he recognized the faults and was accepting of the criticism. I believe no further action is needed at this time.”*

The following is reiterated in the analysis of this incident:

*Lexington Police General Order 2005-01A, IV. Procedures*

*Responding to situations involving individuals who officers reasonably believe to be affected by mental illness or in crisis carries potential for violence; requires an officer to make difficult judgments about the mental state and intent of the individual; and necessitates the use of special police skills, techniques, and abilities to resolve the situation effectively and appropriately, while avoiding unnecessary violence and potential civil liability. The goal shall be to de-escalate the situation safely for all individuals involved when reasonable, practical, and consistent with established safety priorities.*

*Lexington Police General Order 1991-02K V. Procedures, B. Resistance Control Principles, Number 4*

*4. At all times, officers should bear in mind the legal principle of “lesser force” in any apprehension, felony or misdemeanor, and use only the force necessary to affect lawful objectives.*

I also reviewed photographs taken by Sergeant Benjamin Baker of Ms. Linda Trapp sitting in a wheelchair in the vestibule of St. Joseph Hospital on March 10, 2022. A direct full body view of Ms. Trapp, taken with a Lexington Police Vehicle in the background shows a distinct outward curvature of the left leg of Linda Trapp.

## K. Meeting with Director Ginny Ramsey - Catholic Action Center

On November 21<sup>st</sup>, 2024, Billy Fryer and I met with Ms. Ginny Ramsey, the Director of the *Catholic Action Center* in the administrative office at the *Catholic Action Center* located at 1055 Industry Road at approximately 11:20 AM. The purpose of the interview was to obtain basic information about the processes/procedures at the *Catholic Action Center* (CAC) on March 10<sup>th</sup>, 2022.

Ms. Ramsey advised that the CAC had developed policy that persons returning to the *Catholic Action Center* from hospitalization/medical treatment could not enter the facility without a negative COVID Test. The policies were implemented sometime during the COVID Pandemic. CAC directed this measure via various *Zoom Meetings* and phone. The meetings and phone calls were directed to various entities within Fayette County including Lexington Police, Lexington Fire (Paramedicine), the Fayette County Health Department and local hospitals within Fayette County.

Ms. Ramsey further stated that hospitals were advised that if a person seeking shelter at CAC needed transportation to the facility or if someone needed to receive a COVID Test to ensure their admittance to CAC, an *Uber*, *Lyft* or other public transportation means could be utilized. The hospital could confer with CAC Staff to ensure the transportation and for specific guidance.

Additionally, Ms. Ramsey also stated that hospital/medical facilities could assist for non-emergency transport, if needed, by calling for services that would bill insurance/*Medicare/Medicaid*. This included if a person seeking admittance to CAC needed transportation for a COVID Test.

Ms. Ramsey advised on occasions Lexington Police provided transportation for some clients to CAC, however it was her understanding that a Commanding Officer had to give permission to transport the person.

On March 10, 2022, CAC had an active policy of a 9:30PM curfew for persons staying overnight. I asked specifically about circumstances past the curfew time for persons needing a COVID Test, as well as transportation following emergency medical treatment. Ms. Ramsey did say under those circumstances, Ms. Trapp would have been allowed entry into CAC past the designated curfew time due to her prior emergency transport to *St. Joseph Hospital* earlier that day, subsequent to a negative COVID Test.

Ginny Ramsey advised that Ms. Trapp has been immobile and confined to a wheelchair since she was injured on March 10, 2022, following her encounter with Officer Myles Foster. She has been unable to walk and has undergone multiple surgeries to treat her broken tibia. She also advised that Ms. Trapp is still under care for the sustained injury and will require future surgery for continued medical care.

## L. Summary

On March 10, 2022, an encounter with Officer Myles Foster and sixty-one-year-old Linda Trapp, an unhoused person discharged from treatment in the Emergency Department of *St. Joseph Hospital East* ended with the subsequent arrest of Ms. Trapp. As a result of force during the arrest, Ms. Trapp sustained an injury that has left her immobile; confined to a wheelchair, as of the writing of this report. The time elapsed has been two years and eight months following the incident.

In the analysis of the materials, the following opinions were drawn based on the review.

Officer Myles Foster was trained in Crisis Intervention Training (CIT) Techniques and completed CIT Training approximately one year and six months prior to this encounter. Despite the completion of this training, knowledge, skills and techniques geared toward de-escalation were not considered or demonstrated. In fact, multiple techniques utilized were focused on escalating the situation versus de-escalation.

Seconds into the encounter with Ms. Trapp, Officer Foster threatened to drag her out and throw her on the sidewalk. Shortly thereafter, he then telegraphed what would be the end result of this encounter by telling her she would be hurt and "I'm gonna put you on the ground". The end result of this encounter was Ms. Trapp was indeed "put on the ground" and sustained a significant injury leaving her immobilized.

Basic de-escalation skills were absent. Time was compressed (sped up) without regard to training or policy. Time, options and resources were discounted and not applied in an attempt to de-escalate. Officer Foster set the "tone" for the encounter.

Ms. Trapp was subjected to statements of provocation, as well as threats and intimidation during the course of the encounter. Deception and trickery were offered to Ms. Trapp by implying a ride or taking her to get a COVID Test; in order to get her to the main doors of the Emergency Department.

Once outside, Ms. Trapp was taunted and ridiculed by Officer Foster, as well as health care professionals working in the Emergency Department, when Ms. Trapp asked if she could have a "cane".

Once outside of the Emergency Department, Ms. Trapp called Officer Foster "a liar" multiple times. Officer Foster, who was standing just outside the Emergency Department, then hurriedly walked toward Ms. Trapp, who began backing away taking multiple steps to distance herself from Officer Foster. Ms. Trapp yelled out, "**No. Oh, no, you're not gonna hurt me.**"

Following the arrest, a physician and two nurses failed to assess Ms. Trapp's complaint of her left leg/knee injury, despite pleas to have an x-ray. This information was known by Officers Foster and Helo, but not relayed to the on-scene Sergeant. This is an indication of the officers knowingly acting as tacit partners to conceal the lack of medical care for Ms. Trapp. This is despite what may have been contained in the hospital discharge papers that facilitated Ms. Trapp's transport to jail.

Once the on-scene officers realized that a physician was not confirming or eliminating the injury through evaluation and/or diagnostic testing, it was their duty to ensure medical treatment was provided to a custodial arrestee. In this case, the likelihood of the complaint of the arrestee was reasonable, considering the force applied to Ms. Trapp on pavement could have resulted in a broken bone.

Clear articulation of what actually happened in regard to injury, as well as other material facts were not accurate. This includes the account of Ms. Trapp's actions leading up to and during the arrest process. Ms. Trapp was alleged to have been kicking and flailing arms, which were refuted during deposition.

For approximately four minutes and forty-nine seconds, there were five sworn officers on-scene that attempted to coax and finally carried Ms. Trapp up/into a seated position into an elevated transport van. No one stopped to consider re-evaluating whether Ms. Trapp needed further medical treatment, should be transported to another hospital for medical treatment, question the specifics of the release of Ms. Trapp from current medical care or reassess whether Ms. Trapp needed to be carried into a transport van to jail at all, based upon her condition.

Sergeant Farley articulated in his memorandum (post-encounter), *"I believe other options could have been attempted prior to using the takedown to gain control of Ms. Trapp, as she is a female in her 60s and there were two officers on scene to effect the arrest. In addition, Officer Foster failed to verbalize to Ms. Trapp that she was in fact under arrest and some of his comments made during the incident, while not vulgar did not project the professional image we hold so highly as a department."*

When using de-escalation techniques, the techniques used should be clearly demonstrated, clearly articulated (orally and in writing) and should be validated (recognized as sound).

In this case, some of the things I saw that actually facilitated escalating this situation that were demonstrated by Officer Foster included:

- ✓ **Demeaning**
- ✓ **Taunting**
- ✓ **Argumentative**
- ✓ **Antagonistic/Intimidation**
- ✓ **Provocation**
- ✓ **Overreacting**
- ✓ **Dishonest/Deception**
- ✓ **No demonstration of Active Listening Skills**
- ✓ **No use of C-I-A-F**
- ✓ **Discounted their situation (basic needs including medical care)**
- ✓ **No reassurance**
- ✓ **Threat of injury/pain (hurt)**
- ✓ **No personalization of encounter**
- ✓ **No use of empathy/rapport**
- ✓ **No consideration of resources or collateral**

I did see Officer Foster use one opened ended question, "*What's going on?*" but it was not directed toward Ms. Trapp, but rather an unknown person who said, "*Hello*" when he entered Room #3.

Other "mixed signals" of telling Ms. Trapp he wasn't going to hurt her or take her to jail, then specifically telling her she was going to get hurt or threatening her was confusing/convoluted at best. Combined with the other escalation factors previously mentioned, this encounter was on a path which unfortunately ended as life altering for Ms. Trapp.

When questioned about material facts, including the specific circumstances/ accuracy of the criminal charges placed on Ms. Trapp following the arrest, Officer Foster had instances of not articulating, remembering or recalling specifics related to this incident. This is consistent with documents provided by the agency in regard to the previously mentioned force case and escalation of the individuals confronted/threatened per the complaint of Mr. Gross. This complaint was substantiated because the complainant activated a cell phone camera and captured some of the claims to the degree of substantiation. Officer Foster did not activate his BWC and could not articulate reasoning of "why" during the investigation.

Failure to utilize de-escalation and actually using measures to escalate this encounter led to the deterioration of the legal principle of lesser force. If officers on-scene had facilitated with collateral, such as the CAC, this event would have likely ended with a strategic, intended outcome that included the basic needs of Ms. Trapp (testing/shelter).

I am convinced training, and specific policies are in place to guide/direct officers. A reasonably trained officer should not have acted as Officer Foster did on March 10, 2022. I would like to confirm or eliminate if specific supervision and oversight were in place at the time of the incident, based upon the previously mentioned incidents involving force and the encounter with a sustained charge as reported by Mr. Gross. If documentation did show as such, they were not contained within the documents provided for review.

I do not believe the force applied in this case is objectively reasonable based upon the materials that have been reviewed, including BWCs. I do believe the force utilized was retaliatory/punitive after Ms. Trapp called Officer Foster, "a liar" multiple times.

Based upon the primary charging crime, which meets the elements of *Criminal Trespass 3<sup>rd</sup>* (KRS 511.080); a violation and the ancillary charge of Resisting Arrest (as outlined below), the level of force was not appropriate, nor in the interest of protecting Ms. Trapp from injury.

Based upon BWC Evidence, I am not convinced Ms. Trapp created a "substantial risk of causing physical injury to the peace officer or another" or "using or threatening to use physical force or violence against the peace officer or another", as required by KRS 520.090 (*Resisting Arrest*).

The outcome of this encounter could have been different. A successful resolution for an unhoused woman seeking basic human needs should have been simple. She clearly told Officer Foster why she needed a COVID Test. She just wanted to have a basic human need of shelter. Considering Officer Foster had been trained to use de-escalation techniques toward a solution absent of force, it is unclear why he chose to "handle this encounter" with his own reckless methodology. One thing is clear. This outcome resulted in a debilitating; long-term injury to Linda Trapp that could have been prevented.

I reserve the right to amend, add or delete my findings if additional information is presented to me regarding this case. I also reserve the right to submit additional opinions in response to testimony that may be presented by other witnesses in this case.



Ryan H. Wilfong,  
Wilfong & Associates, LLC

November 30, 2024

RHW/rw