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**Sixth Circuit Adopts New Test for Judging Reasonableness
of Force Used in Non-Criminal Medical Situations**

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Applying the Graham factors to the situation that an officer faces in using force in a medical emergency, the court stated “is equivalent to a baseball player entering the batter’s box with two strikes already against him.”

❖ **Introduction**

A troubling issue for some time has been the use of force by law enforcement personnel in non-criminal medical situations, such as emergencies in which an individual is out of control for a wide variety of reasons, such as diabetic incidents, epileptic seizures, alcohol or drug use and abuse (including prescription medication), failure to take anti-psychotic medication, and psychotic and other psychiatric conditions. In all these circumstances, law enforcement personnel may be summoned to or happen upon the scene and be called upon, either alone or in cooperation with emergency medical personnel, to attempt to restrain and subdue such individuals to prevent them from harming themselves or others, and to make it possible to effectively provide them with badly needed and often life-saving medical attention.

The dilemma, however, has been that the main objective reasonableness legal test for judging the constitutionality of the use of force—deadly or otherwise—by law

enforcement was adopted by the U.S. Supreme Court in the context of efforts to detect and apprehend criminal suspects. In many of the medical emergencies described above, no crime has been committed, and criminal intent is absent. As a result, a test that bases the reasonableness of the force employed on such factors as the “severity of the crime” or the presence or absence of a criminal suspect’s attempt to resist and escape arrest becomes difficult to apply in circumstances in which there is no crime at all and no “arrest” is justified, and yet in which the use of some level of force may be absolutely necessary.

If mechanically applied, that test could result in an officer facing a lawsuit and potential liability after they have used needed force in a medical situation and, as a result, an individual has suffered injuries. Recognizing this problem, the U.S. Court of Appeals for the Sixth Circuit in a recent case has adopted a new legal test for judging the objective reasonableness of the use of force in non-criminal medical situations.

This article takes a brief look at the existing test for objective reasonableness of the use of force, the facts of the Sixth Circuit case, and the new test adopted by the court, as well as its application to the facts. At the end of the article, there is a brief listing of relevant resources and references.

❖ **Graham Objective Reasonableness Test**

In [*Graham v. Conner*](#), #87-6571, 490 U.S. 386 (1989), the U.S. Supreme Court held that all claims that law enforcement officials have used excessive force - deadly or not - in the course of an arrest, investigatory stop, or other “seizure” of a free person are properly analyzed under the Fourth Amendment’s “objective reasonableness” standard. The right to make an arrest or investigatory stop, the Court stated, necessarily carries with it “the right to use some degree of physical coercion or threat thereof to effect it.”

All the law requires is that it be a reasonable amount of force. Such reasonableness, however, has to be judged in light of the facts and circumstances confronting the officer, rather than on the basis of their underlying “motivation” or intent. The issue is whether the officer acted in an “objectively reasonable” manner based on what they knew at the time. The reasonableness of each particular use of force has to be judged, the Court stated, from the perspective of a reasonable officer on the scene,

and must make an allowance for the fact that police officers often have to make “split second” decisions about the amount of force that is necessary.

This must be based on the facts that the officer knows at that time, or reasonably believes that he or she knows, rather than looking back at the circumstances with hindsight or on the basis of information later discovered but not then known. An officer may, therefore, act upon what he reasonably believes or perceives is a threat of death or serious bodily harm to himself or others, and the fact that he may, for example, be mistaken in believing that a suspect confronting him is armed, will not alter the legitimacy of his use of deadly force.

The three factor inquiry in *Graham* looks at (1) “the severity of the crime at issue,” (2) “whether the suspect poses an immediate threat to the safety of the officers or others,” and (3) “whether he is actively resisting arrest or attempting to evade arrest by flight.” This test has been successfully applied by many courts in the context of many different criminal situations. Troubling difficulties, however, have arisen when courts have attempted to apply this test to circumstances in which the need for the use of force arises because of medical circumstances rather than criminal intent.

❖ Facts of the Case

In *Estate of Corey Hill vs. Miracle*, #16-1818, 2017 U.S. App. Lexis 5993, 2017 WL 1228553 (6th Cir.), the court confronted a case arising after a man suffered a diabetic emergency. Paramedics encountering him in his bedroom at his home after a 911 call found him to be extremely disoriented and combative. He initially even pulled back when they tried to prick his finger to test his blood-sugar level. Eventually, they managed to do so.

His blood-sugar level tested extremely low at 38. A normal range is anywhere between 60 and 110. As blood sugar falls, a person may lose consciousness, become combative and confused, or suffer a seizure. A blood-sugar level of 38 is regarded as a medical emergency and, untreated, can lead to death.

A deputy sheriff arrived at the home some time after that. As a member of the road patrol, his duties included responding to calls for emergency medical services. Having encountered over a dozen diabetic emergencies throughout his career, the deputy was aware that persons suffering from low blood-sugar levels are often

disoriented and unaware of their surroundings. When he arrived, the paramedics were attempting to intravenously administer dextrose to the man in order to raise his blood-sugar level. He became “increasingly combative” in resisting the paramedics’ efforts to insert an IV catheter into his arm.

One of them was finally able to insert the catheter while the other paramedics held the man down to the bed. At this point, the completely disoriented man swung a fist towards one paramedic and ripped the catheter from his arm, causing blood to spray from the open vein. The paramedic managed to finally stop the bleeding, but the patient continued to kick, swing, and swear at the paramedics as they attempted to hold him down, making it very difficult to do so.

The deputy, who up to that point had not joined in the attempt to physically restrain him, ordered the patient to “relax.” When he continued to kick and swing, the deputy informed him that he was going to use his Taser. He then deployed his Taser in stun mode directly to the patient’s right thigh.

After the Taser was activated for a few seconds, the patient calmed down long enough for a paramedic to reestablish the IV catheter and administer dextrose. As the paramedic described it, the patient “became an angel” and was “very apologetic” after the dextrose kicked in.

Medical personnel then checked the patient’s blood-sugar levels and performed an electrocardiogram test. The results of both tests were normal. While the man denied being in any pain at the time, the paramedics still transported him to an area hospital. Once there, his blood-sugar level was again measured as being within normal range. Medical records from the hospital note a Taser puncture wound on his right thigh, but a doctor later testified that no treatment was rendered for the wound because it was not infected. The patient, in a later filed excessive force lawsuit, claimed that, as a result of this incident, he suffered burns on his right thigh and that his diabetes worsened. He later died from complications of diabetes, and the lawsuit was continued on behalf of his estate.

❖ **New Non-Criminal Medical Situations Test**

The Sixth Circuit federal appeals court overturned a denial of qualified immunity to the deputy for his use of the Taser. It found that he acted in an objectively reasonable

manner with the minimum force necessary to bring the man under control, enabling the paramedics to save his life.

The case is notable for setting forth a different test for judging the objective reasonableness of the force used by an officer in medical situations than the standard test under *Graham v. Connor*, #87-6571, 490 U.S. 386 (1989), used in a criminal context. The three factor inquiry in *Graham* looks at (1) “the severity of the crime at issue,” (2) “whether the suspect poses an immediate threat to the safety of the officers or others,” and (3) “whether he is actively resisting arrest or attempting to evade arrest by flight.”

In the situation faced by the deputy in this case, however, there was no crime, no resisting of arrest, and no direct threat to the officer. Accordingly, a strict application of the Graham factors could result in a determination that the force was not objectively reasonable or even that no force was justified at all.

Instead, the appeals court held:

Where a situation does not fit within the *Graham* test because the person in question has not committed a crime, is not resisting arrest, and is not directly threatening the officer, the court should ask:

(1) Was the person experiencing a medical emergency that rendered him incapable of making a rational decision under circumstances that posed an immediate threat of serious harm to himself or others?

(2) Was some degree of force reasonably necessary to ameliorate the immediate threat?

(3) Was the force used more than reasonably necessary under the circumstances (i.e., was it excessive)?

If the answers to the first two questions are “yes,” and the answer to the third question is “no,” then the officer is entitled to qualified immunity.

Applying its newly adopted approach, the appeals court found the force used objectively reasonable and the officer entitled to qualified immunity.

Two questions are asked in evaluating whether a law-enforcement officer is entitled to qualified immunity on an excessive-force claim: “(1) whether the officer violated

the plaintiff's constitutional rights under the Fourth Amendment; and (2) whether that constitutional right was clearly established at the time of the incident.”

While the trial court, applying the Graham factor analysis test, found that the deputy acted unreasonably in using the Taser on the patient, the appeals court disagreed. Indeed, it stated that “applying the Graham factors to the situation that [the deputy] faced is equivalent to a baseball player entering the batter's box with two strikes already against him.” In other words, because the patient had not committed a crime and was not resisting arrest, two of the three *Graham* factors automatically weighed against the deputy.

The key problem, the appeals court reasoned, was that the trial court tried to apply the Graham factors to a completely different factual situation—a medical emergency—where there was no crime, no resisting of arrest, and no direct threat to the law-enforcement officer. By doing so, the court “failed to see the forest (the overall standard of objective reasonableness) for the trees (the three factors to use as an aid in assessing objective reasonableness in the typical situation).”

Far from blaming the trial judge, however, the appeals court expressed its sympathy, noting that “no appellate court has previously provided any guidance on how to assess objective reasonableness in the present atypical situation of a medical emergency. In fact, most of the cases dealing with excessive force and Taser use simply hold that an officer does not use excessive force by tasing a person who is actively resisting arrest, but does use excessive force if that person is not resisting arrest.”

Examples cited included *Rudlaff v. Gillispie*, #14-1712, 791 F.3d 638 (6th Cir. 2015) (“When a suspect actively resists arrest, the police can use a Taser to subdue him; but when a suspect does not resist, or has stopped resisting, they cannot.”); and *Cockrell v. City of Cincinnati*, #10-4606, 468 Fed. App'x 491 (Unpub. 6th Cir. 2012) (collecting cases) (drawing a distinction between cases where a plaintiff was tased while “actively resisting arrest by physically struggling with, threatening, or disobeying officers” and cases where a law-enforcement officer tases “a plaintiff who has done nothing to resist arrest or is already detained”).

Applying the newly adopted three factor test for use of force in medical emergencies to the immediate case, the appeals court found that the deputy's use of the Taser did not amount to excessive force.

As to the first factor, the presence of a medical emergency rendering him incompetent, the patient was in the midst of a medical emergency and was incapable of making a rational decision due to his hypoglycemic episode. In resisting the paramedics' attempts to save his life, he repeatedly kicked his feet and swung his fists in their direction. The paramedics were therefore put in immediate physical danger by his combative actions. In addition, the testimony from a paramedic indicated that both the paramedics and the deputy were at risk due to the blood spraying from the patient's arm, which, for all they knew, could have been infected with hepatitis C or HIV.

Even assuming that the safety risk from his blood did not justify the deputy's use of a Taser, the appeals court continued, the patient's mental state and combative actions posed an immediate threat to his own safety. His extremely low blood-sugar level was in the hypoglycemic range and, if left untreated, would likely have led to a prolonged seizure and death.

Turning to the second factor, whether some degree of force reasonably necessary to ameliorate the immediate threat, it seemed clear that some degree of force was reasonably necessary to ameliorate the immediate threat to the paramedics and to deputy. Because of his hypoglycemic episode, the patient was violently resisting the paramedics' attempts to render him life-saving assistance. The four paramedics were unable to gain physical control over the patient, who had already ripped an IV catheter out of his arm.

While the trial court believed that any danger could have been avoided by "simply stepping away," that action would have amounted to abandoning efforts to provide badly needed medical assistance, putting the patient's life in jeopardy.

Under these circumstances, "we conclude that some degree of force on the part of [the deputy] was reasonably necessary to protect the paramedics and, more importantly, to save [the patient's] life."

Turning to the final factor—whether or not the deputy's single use of a Taser in stun mode was excessive under the circumstances, the appeals court rejected the argument that the deputy should have attempted first to try to handcuff the patient before utilizing the Taser. With four paramedics already unable to restrain the patient, the appeals court was not about to fault the deputy "for not joining the fray."

While the plaintiff argued that the use of a Taser in stun mode is “not recommended” and therefore excessive, the appeals court found that “this mode is discouraged because of the difficulty in keeping the Taser in contact with a person’s skin, not because such use constitutes excessive force.” In this case, further, the deputy testified that he used his Taser in stun mode because this was the best option to “minimize [the] damage” in light of the patient’s medical emergency.

We are not holding that a law enforcement officer is always justified in using a taser to gain control over a person suffering from a medical emergency. But under the circumstances, [the deputy’s] use of force was objectively reasonable.

Having concluded that the force used was not excessive, the appeals court easily found that any right of a patient under these circumstances not to be subjected to this level of force was not “clearly established” as required to defeat a qualified immunity defense.

It remains to be seen whether other federal appeals courts (or the U.S. Supreme Court) will adopt similar tests for the use of force by law enforcement in non-criminal medical emergencies. For now, the Sixth Circuit ruling is binding precedent in Kentucky, Michigan, Ohio, and Tennessee and provides a useful frame of analysis for courts that experience difficulties applying the Graham factor test in this context.

❖ Resources

The following are some useful resources related to the subject of this article.

1. [Firearms Related: Intentional Use](#). AELE Case Summaries.
2. [Electronic Control Weapons](#). AELE Case Summaries.
3. [Use of Force](#). Menu of Relevant Topics in AELE Case Summaries.
4. [Institute for Prevention of In-Custody Deaths \(IPICD\) articles page](#).

❖ Prior Relevant Monthly Law Journal Articles

1. [Public Protection - Part 1: The Physically Ill](#), 2013 (5) AELE Mo. L. J. 101.

2. [Public Protection: Part Two – The Mentally Ill or Deranged](#), 2013 (6) AELE Mo. L. J. 101.
3. [Civil Liability for Use of Tasers, stunguns, and other electronic control devices--Part III: Use Against Detainees and Disabled or Disturbed Persons](#), 2007 (5) AELE Mo. L.J. 101.
4. [Use of an Electronic Control Weapon on a Person Suffering from Delirium or Other Agitated Condition](#), Part 1, 2015 (3) AELE Mo. L. J. 101.
5. [Use of an Electronic Control Weapon on a Person Suffering from Delirium or Other Agitated Condition](#), Part 2, 2015 (4) AELE Mo. L. J. 101.

❖ **References:** (*Chronological*)

1. [6th Circuit Outlines New Guidelines for Police Use of Force During Medical Emergencies](#), by Ken Wallentine, Lexipol (April 27, 2017).
2. [Using Force on Persons in Medical Emergencies: United States Court of Appeals for the 6th Circuit in a published decision Applies New Analysis](#), by Jack Ryan, Legal and Liability Risk Management Institute (April 5, 2017).

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Bernard J. Farber

Civil Liability Law Editor

P.O. Box 75401

Chicago, IL 60675-5401 USA

E-mail: bernfarber@aele.org

Tel. 1-800-763-2802

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