

6th Circuit Outlines New Guidelines for Police Use of Force During Medical Emergencies

Ken Wallentine April 25, 2017

Hill v. Miracle, (6th Cir. 2017)

Corey Hill was on a near-certain collision course with death. Finding him in a profound diabetic emergency, Hill's girlfriend called for emergency medical help. Paramedics found Hill very disoriented and combative. Hill's blood sugar level was at 38, low enough to be considered a medical emergency because it may lead to a seizure and death.

Paramedics inserted a catheter to intravenously administer dextrose to raise Hill's blood sugar level. An officer arrived just as Hill ripped the catheter from his arm, causing blood to spray, and Hill kicked, swung and swore as the paramedics tried to restrain him and save his life. The officer deployed a TASER® device in drive-stun mode (e.g., direct contact without probes) on Hill's thigh, distracting Hill long enough for paramedics to secure the catheter and administer dextrose.

Hill "became an angel" and was "very apologetic" after the dextrose took effect, and paramedics took him to the hospital. Later, however, rather than express gratitude that his life had been saved, Hill sued, alleging excessive force and assault and battery. He claimed his diabetes worsened and he suffered contact burns as a result of the TASER application.

The trial court ruled that the officer violated Hill's clearly established Fourth Amendment rights and denied qualified immunity for the officer. In a decision stunningly rife with common sense and practicality, the Court of Appeals reversed and ordered the trial judge to dismiss the lawsuit. The court held that the officer acted in an objectively reasonable manner with the minimum force necessary to bring Hill under control, and the officer helped save Hill's life.

The trial court came to its conclusion by applying the test of Graham v. Connor (490 U.S. 386 (1989)). But as the appeals court noted, such analysis was fundamentally problematic in this case. Graham prescribes analysis of three factors to determine the objective reasonableness of police use of force. The factors are:

1. The severity of the crime at issue
2. Whether the suspect poses an immediate threat to the safety of the officers or others
3. Whether he is actively resisting arrest or attempting to evade arrest by flight

“pplying the *Graham* factors to the situation that faced is equivalent to a baseball player entering the batter’s box with two strikes already against him,” the appellate court noted. “In other words, because Hill had not committed a crime and was not resisting arrest, two of the three *Graham* factors automatically weighed against .” Citing a precedent with similar facts, the court said that it was time to fashion a new test for situations where officers use force to help resolve a medical emergency:

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)?

The Court of Appeals stated that the officer should benefit from qualified immunity if the first two questions are answered affirmatively and the third question is answered negatively.

Applying that test, it was an easy conclusion to extend qualified immunity to the officer. Hill’s combative behavior presented an immediate threat to the paramedics and to Hill himself. Though the trial court observed that the danger to Hill could have been resolved by leaving him alone, the Court of Appeals cited Hill’s likely death as an appropriate reason to use some force. Finally, the appellate court held that the officer’s decision not to wrestle Hill into compliance (he was, after all, flailing a catheterized arm), and to instead use a distracting application of the TASER, was objectively reasonable.