



## MAN ARMED WITH A SKILLET SHOT BY DEPUTY

February 2017

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Article Source: [http://www.llrmi.com/articles/legal\\_update/2017\\_bell\\_v\\_cumberland\\_co.shtml](http://www.llrmi.com/articles/legal_update/2017_bell_v_cumberland_co.shtml)

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On December 5, 2016, the Sixth Circuit Court of Appeals of decided *Bell v. Cumberland County, TN et al.*, in which the court examined whether a deputy's use of deadly force was reasonable when a suspect attacked him with a skillet.

The incident began when Mr. Fish, who had been in a relationship with Ms. Franklin, came onto her property for the purpose of harassing her. Mr. Fish had a history of domestic abuse toward Franklin, and deputies had been called there on numerous occasions. Deputies located Fish and gave him a criminal trespass warning prohibiting him from coming onto Franklin's property. Two days after the trespass warning, Fish was back on her property knocking incessantly on her windows. Eventually, he located an unlocked door and entered her home. He grabbed a meat cleaver, and told her that they were "both going to die." Franklin called 911. Additional relevant facts of *Bell*, taken directly from the case, are as follows:

Shortly thereafter, Deputy Human arrived. Fish directed Franklin to answer the door and "get rid of [the police]." Franklin informed Deputy Human that, although Fish was there, she was "OK"; to Deputy Human, though, Franklin appeared visibly upset. As Deputy Human was leaving, he noticed Fish standing at the edge of the nearby woods. Given the well-known history of the couple's domestic discord, as well as the fact that Fish was trespassing on Franklin's property, Deputy Human called over to Fish, asking to speak with him. Fish took off running and disappeared.

After searching unsuccessfully for Fish in the yard surrounding the home, Deputy Human returned to Franklin's residence where, according to Deputy Human, Franklin "let [him] in" by opening the door, stepping aside, and pointing Deputy Human to the basement, where Fish had retreated in hiding. Deputy Human immediately spotted Fish in the corner of the dimly lit basement amid piles of clothes and a clutter of other objects. He ordered Fish to show his hands and drew his weapon in the process. Fish complied and, since his hands were empty, Deputy Human re-holstered his gun. Deputy Human then told Fish the two needed "to go upstairs to talk."

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Fish refused to obey orders and likewise ignored Franklin's pleas to cooperate. Instead, Fish became "agitated" and assumed a "fighting stance." He then "lunged" at Franklin, at which point Deputy Human deployed his pepper spray, although it had no effect on Fish and was eventually knocked from his hands. In a second attempt to contain Fish, Deputy Human grabbed his arm. Fish responded by tackling Deputy Human and driving him backwards into a steel pole.

The struggle continued on the ground. Deputy Human testified that he attempted to get up, but Fish "kept pulling me down toward him. He was hitting me in the sides and the back of my head with something." According to Franklin, "[Fish] was beating the hell out of Officer Human and Officer Human could not see." In his third attempt to ward off Fish, Deputy Human grabbed his baton, but Fish once again batted it away. At this point, Fish was sitting on top of Deputy Human's chest, and Deputy Human was "black[ing] in and out" of consciousness. Fish then attempted to reach for a cast iron skillet lying nearby. See R. 32, Franklin Dep. at 66, PID 368 ("David picked up the iron skillet . . . He's trying to hit Officer Human with it."). Deputy Human "knew if [Fish] got [the skillet], he would beat [him] to death with it." R. 33, Human Dep. at 86, PID 566. When Fish was reaching for the skillet, Deputy Human was able to un-holster his gun and fired at Fish "until [Fish] stopped attacking [him]." *Id.* at 88, 151, PID 568, 631; see also R. 32, Franklin Dep. at 146, PID 448 ("[H]e didn't start shooting until—he had tried and tried to get out from under David.").

In the immediate aftermath, Deputy Human found himself largely incapacitated. Deputy Human was in severe pain, his vision was blurry, and Fish was lying across his legs. However, he was still able to radio for help and instruct Franklin to call 911. Police from the Cumberland County Sheriff's Department arrived at the scene shortly thereafter, handcuffed Fish, and had him transported to Cumberland Medical Center, where he was pronounced dead on arrival. Deputy Human was also treated for rib contusions and a concussion. The Tennessee Bureau of Investigation (TBI) conducted a review of the incident, concluded that Deputy Human acted in accordance with established principles and protocols, and no disciplinary action was taken.<sup>ii</sup>

Bell, Fish's sister, later sued the Cumberland County Sheriff and Deputy Human for violating Fish's Fourth Amendment right to be free from excessive force and Fourteenth Amendment rights regarding a denial of medical assistance after Fish was shot. The district court granted summary judgment for the county and qualified immunity for the deputy. Bell appealed to the Sixth Circuit Court of Appeals.

There were three issues before the court of appeals. The first issue was whether Deputy Human violated the Fourth Amendment when he shot Fish. The second issue was whether he denied medical treatment for Fish in violation of the Fourteenth Amendment. The third issue was whether the county, or sheriff was liable for the actions of Deputy Human because a policy, custom or practice of the sheriff's department caused the Fourth and/or Fourteenth Amendment violations.

Regarding the first issue, the court set out to determine if Deputy Human violated Fish's Fourth Amendment right to be free from an unreasonable seizure (excessive force) when he shot him.

The court first examined the law pertaining to the use of force and deadly force under the Fourth Amendment. The court stated

In determining whether a use of force is reasonable, courts engage in a "careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." *Graham*, 490 U.S. at 396. To aid in this analysis, **we consider (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.** *Id.*<sup>iii</sup> [emphasis added]

Further, regarding deadly force, the court went on to explain

**When a case involves the use of deadly force, the same balancing test is applied; however, the use of force will be deemed reasonable when "the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others."** *Garner*, 471 U.S. at 7. Furthermore, "[t]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" given that officers "are often forced to make split-second judgments—in circumstances that are tense, uncertain and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham*, 490 U.S. at 397.<sup>iv</sup> [emphasis added]

The court then applied the legal principles above to the facts of Fish's incident. The court observed that the only two witnesses to the shooting were Franklin and Deputy Human. Franklin and Deputy Human both testified that Fish was the aggressor, the deputy was in fear for his life, and Fish was going to beat Human with a iron skillet so shooting him was his last chance to save himself and Franklin. The court of appeals, in light of these facts stated

This evidence, being undisputed, is enough to end the inquiry because it establishes that Fish "pose[d] a serious threat of physical harm" and that the use of deadly force was therefore reasonable. *Garner*, 471 U.S. at 7.<sup>v</sup>

Further, the court also analyzed the use of deadly force in light of the factors listed above from *Graham v. Connor*. First, regarding the severity of the crime at issue, while it was originally only trespassing, Fish elevated that crime to aggravated assault when he attacked the deputy.

Regarding the second *Graham* factor, the court noted that in the moments before the shooting, Fish was striking the deputy with continuous blows to the head and was about to strike him with an iron skillet, which was likely to inflict serious bodily harm or death. The court also noted that Deputy Human had exhausted other options such as pepper spray, hands, and baton before resorting to his firearm.

Regarding the third *Graham* factor, the court observed that fish was not even merely trying to resist the deputy but rather, was actively attacking him. The court stated

[R]esistance alone is enough to "increase[] the weight that must be given to the state's interest in a deadly-force seizure." *Untalan*, 430 F.3d at 317; see also *Davenport*, 521 F.3d 544, 551 (6th Cir. 2008).<sup>vi</sup>

The plaintiff also argued that the number of shots fired by the deputy, which was twelve (12), was also unreasonable under the Fourth Amendment. However, the court noted that the evidence provided by the deputy and Franklin was that the deputy ceased firing when Fish stopped attacking. The court stated

**"[I]f police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended."** See *Krause v. Jones*, 765 F.3d 675, 681 (6th Cir. 2014) (quoting *Plumhoff v. Rickard*, 134 S. Ct. 2012, 2022 (2014)).<sup>vii</sup> [emphasis added]

In light of the above reasons, the court of appeals held that there was no evidence to conclude that Deputy Human was unreasonable in his use of deadly force and, as such, there was no Fourth Amendment violation.

The second issue before the court was whether Deputy Human violated the Fourteenth Amendment by failing to provide medical care to Fish after he shot him.

The court first examined the law pertaining to Fourteen Amendment denial of medical treatment claims. The court stated

**Plaintiffs may bring § 1983 claims under the Fourteenth Amendment if government officials demonstrate "deliberate indifference to [the] serious medical needs" of those individuals they have apprehended.** *Phillips v. Roane Cty., Tenn.*, 534 F.3d 531, 539 (6th Cir. 2008); *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983). **Proving deliberate indifference requires a plaintiff (1) to show the existence of a "sufficiently serious" medical need (the objective component); and (2) to allege facts that, if true, would demonstrate that the official "perceived facts from which to infer substantial risk to the [individual], that he did in fact draw the inference, and that he then disregarded that risk" (the subjective component).** *Phillips*, 534 F.3d at 539-40 (internal quotation marks omitted). **An official exhibits deliberate indifference, for example, if he "intentionally den[ies] or delay[s] access to medical care."** *Blackmore v. Kalamazoo Cty.*, 390 F.3d 890, 895 (6th Cir. 2004). **On the other hand, an officer's actions comport with the Due Process Clause if he "promptly summon[s] the necessary medical help."** *Rich v. City of Mayfield Heights*, 955 F.2d 1092, 1097 (6th Cir. 1992).<sup>viii</sup> [emphasis added]

In this case, Deputy Human testified that, after he shot Fish, he radioed the sheriff's department about the shooting and told Franklin to call 911. This "prompt summons," was sufficient to defeat a claim of "deliberate indifference" to Fish's medical needs. As such, the court of appeals held that Deputy Human did not violate the Fourteenth Amendment.

The final issue was regarding whether Cumberland County and the sheriff's department were liable for Fish's injuries. Since the court held that Deputy Human did not violate the Fourth or Fourteenth

Amendment, there is no underlying constitutional violation which is required to hold the county and sheriff liable. As such, the county and sheriff are also entitled to summary judgment.

Thus, the court of appeals affirmed the decision of the district court in this case.

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i No. 16-5403 (6<sup>th</sup> Cir. Decided December 5, 2016)

ii Id. at 2-4

iii Id. at 7

iv Id.

v Id.

vi Id. at 8

vii Id. at 10

viii Id.

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