



**Using Force on Persons in Medical Emergencies
United States Court of Appeals for the 6th Circuit in a published decision
Applies New Analysis**

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Applying the *Graham* factors to a medical emergency “is equivalent to a baseball player entering the batter’s box with two strikes already against him.”

In *Estate of Corey Hill v. Miracle*,ⁱ the United States Court of Appeals considered the proper analysis of use of force in a case where the officer was not making an arrest, but instead used his TASER in the drive-stun mode in an effort to control a subject who was in need of medical assistance but was fighting the EMTs efforts to provide the assistance. At the outset, the court noted what law enforcement has recognized for many years, that the foundational use of force analysis from *Graham v. Connor*,ⁱⁱ does not necessarily fit medical and mental health emergencies. The three factors from *Graham* to judge whether an officer’s use of force was objective reasonable include determining how serious was the offense that the officer considered at the time the force was used; whether the subject posed an immediate physical threat to the officer or anyone else present, and finally whether the subject was actively resisting [the arrest] or attempting to evade arrest by flight. Using a baseball analogy, the court noted that the officer in these cases is not dealing with an arrest therefore the seriousness of the offense and the resisting arrest or attempting to evade arrest by flight, are two strikes against the officer’s use of force even before the officer gets into the batter’s box.

In June of 2013, Deputy Miracle was called to a medical emergency along with Emergency Medical Services, who were dispatched because Corey Hill was suffering a diabetic emergency due to low blood sugar. The court noted that a person with low blood sugar can lose consciousness; suffer seizures, become combative and if left untreated may even die. While examining Hill, a paramedic was able to prick the finger of a resistant Hill and determine that his blood sugar was 38, an extremely dangerous level thus constituting an medical emergency.

Deputy Miracle arrived on the scene after the paramedics had determined Hill’s extremely low blood-sugar level and while the paramedics were trying to give Hill an IV. The court noted that Hill was becoming more combative and actually was able to rip the IV from his arm causing “blood to spray from the open vein.”

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The court described: [the paramedic] managed to finally stop the bleeding, but Hill continued to kick, swing, and swear at the paramedics as they tried to hold him down.

Deputy Miracle ordered Hill to relax but when “Hill continued to kick and swing, Miracle informed Hill that he (Miracle) was going to use his taser. Miracle then deployed his taser in drive-stun mode directly to Hill’s right thigh.” “After Miracle held the taser against Hill’s thigh for a few seconds, Hill calmed down long enough for Streeter, [the paramedic], to reestablish the IV catheter and administer dextrose. As noted by Streeter, Hill ‘became an angel’ and was ‘very apologetic’ after the dextrose kicked in.”

Hill claimed in this lawsuit that as the result of the TASER deployment he suffered burns on his right thigh and his diabetes worsened. It is noted that May of 2015 Hill died of complications from his diabetes.

The Federal District Court in Michigan after applying the *Graham* denied summary judgment and qualified immunity finding that on the facts as alleged by Hill’s estate, Deputy Miracle violated the clearly established rights of Mr. Hill when he used his TASER.

In its review of the case the court noted that since this was a medical emergency, two of the three *Graham* factors automatically cut against Miracle’s use of force because Hill had not committed a crime, nor was he resisting arrest. The 6th Circuit noted that “no appellate court has previously provided any guidance on how to assess objective reasonableness in the present *atypical* situation of a medical emergency.”

The court then 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)?”**

The court then noted that if the answer to the first two questions is “yes”, and the third question is “no” then the officer will be entitled to qualified immunity. The court indicated that while these three new factors are not exhaustive and may not completely decide objective reasonableness in every medical case, the questions will guide the answer to whether under the totality of circumstances the officer’s actions were objectively reasonable.

The court then applied these newly announced factors to Hill and determined that Miracle’s use of the TASER in the drive-stun mode under the facts presented here was objectively reasonable.

The court noted that Hill was in a medical emergency and unable to make rational decisions. The court went on to note that Hill was kicking, swinging, and as the result of his conduct, spraying blood. The court concluded that Hill posed an immediate threat to the EMTs. The court rejected the argument that the EMTs and Miracle could have avoided Hill’s threat by simply walking away. The court said this argument ignored the extreme threat that Hill posed to himself if left untreated for this medical emergency. The court also

rejected plaintiff's argument that the drive-stun is not a recommended practice noting that the reason it is not recommended is the difficulty in maintaining contact with the subject and not because it is excessive force.

It should be noted that the court indicated that it was not holding that the TASER in drive-stun will be objectively reasonable in every medical emergency, however it was objectively reasonable under the facts faced by Deputy Miracle. In addition, the court wrote that having found Miracle's action to be objectively reasonable "leaves no doubt that Hill's § 1983 excessive force claim also fails to show that the alleged right was clearly established." The court also dismissed Hill's state law claims.

Bottom-Line

- **6th Circuit Agencies: In much the same way agencies have incorporated Graham into Use of Force/Response to Resistance policy and training, the three factor test from this case must be incorporated into policy and training.**
- **Note: Clients of LLRMI in the 6th Circuit will be receiving an updated policy within the next few days that incorporate this holding.**
- **Outside the 6th Circuit: Agencies outside of the 6th Circuit should consider this decision as instructive as to factors an officer may consider and document when faced with a medical emergency while recognizing that this test is not binding on their Circuit.**

ⁱ *Estate of Corey Hill v. Miracle*, slip opinion No. 16-1818 (6th Cir. Decided April 4, 2017).

ⁱⁱ *Graham v. Connor*, 490 U.S. 386 (1989).