Use of Force and Mental Illness – Policy Development for No Win Situations

Description

In the last two years, we have seen a significant increase in the use of force incidents, including deadly force incidents, involving individuals who are mentally ill or incapacitated. Of great concern is that, for responding officers, these incidents are often “no win” situations for the involved officers. The law governing a law enforcement officer’s use of force, specifically Graham v. Connor [1], is based on the supposition that the subject can comprehend the officer’s commands, and the ability to make rational decisions in response to those commands. What we have learned from our review of these incidents, is that when a subject is incapacitated by mental illness, excited delirium, or alcohol or drug intoxication, the capacity for reasonable decision-making is diminished so that the subject is unable to properly calculate an appropriate response. Officers, however, often have only split seconds to decide as to whether or not to use force against an individual, and many times have limited to no knowledge as to the individual’s mental state or capacity. This leaves the officers in the untenable situation of having to determine, at that moment, the level of force necessary and objectively reasonable to take the subject into custody or protective custody for medical treatment. In fact, in a recent 6th Circuit decision in Estate of Corey Hill v. Miracle[2], the Court stated that applying the *Graham* standards in this situation “was equivalent to a baseball player entering the batter’s box with two strikes already against him.”

These ever-increasing situations have presented a clear challenge to policing over the past five years, and lead to our previous article Mental Illness Response: The Need to Follow Policy and Training. The article reviewed the U.S. Supreme Court’s holding in Sheehan v. City and County of San Francisco[3], wherein the Court clarified the need for effective training and policy on how a police department handles these high-risk contacts. The question before the Court was whether the Americans with Disabilities Act (ADA) “required law enforcement officers to provide accommodations to an armed, violent, and mentally ill suspect in the course of bringing the suspect into custody.” This is an important question that could have serious consequences for the use of force practices, policy, and training standards. Rather than address this question, however, the Court held that the officers were entitled to Qualified Immunity.

After the Sheehan decision, we recommended that departments develop policies and conduct training that incorporates best practices for an officer’s response to persons with mental illness or incapacitation issues. Whether your agency has adopted the Daigle Law Group Policy Center directive on this subject, or you have drafted your policy and procedure, it is important that you understand key concepts when coming into contact with a person suffering from mental illness, or who is incapacitated.

The latest data suggests that over 30% of police calls for service have some relationship to a mental health issue. Often, law enforcement becomes the final stop for citizens suffering a mental health crisis. Whether or not we are properly trained or equipped to deal with these issues, the bottom line is we will face these sensitive incidents. The most import policy and training objective, when dealing with a person suffering from a mental health crisis, is to **de-escalate** the situation and calm things down when circumstances allow.

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Two cases that show some of the progression of the courts on this matter come from the Sixth Circuit (Roell v. Hamilton County[4] and Estate of Corey Hill v. Miracle.) In Roell, the Deputies were faced with an enraged and violent subject, who had smashed a neighbor's window and was causing property damage in the neighbor's yard. When the Deputies attempted to calm Mr. Roell, he charged at them, and a struggle ensued.

Roell was brought to the ground, tased several times, and handcuffed. As he continued to trash about and kick the deputies, they used leg shackles and positioned Roell on his left side. Once restrained, Roell went limp and began to snore. He would wake up, thrash around, then go limp and snore again. Roell did this twice until a deputy noticed that Roell had no pulse and had stopped breathing. CPR was administered until medical personnel arrived. The EMTs were unable to revive Roell and he was pronounced dead in the hospital emergency room. The deputy coroner determined that the cause of Roell's death was "excited delirium due to schizoaffective disorder," and the manner of his death was "natural."

The Sixth Circuit found that that the level of force the deputies used to restrain Roell and to effectuate his arrest did not violate any clearly established law and, therefore, did not violate Roell's 4th Amendment rights. The Appellate Court, however, stated that the *Graham* analysis was not an end to their excessive use of force inquiry. The Court stated that it must also analyze whether the "totality of the circumstances justified the particular sort of seizure imposed on Roell." The Court found that while the deputies were unaware that Roell was in a state of excited delirium, Roell's behavior indicated that he was suffering from some sort of mental illness. **The Appellate Court found, therefore, that the deputies were "required to take into account Roell's diminished capacity before using force to restrain him."**

The Appellate Court agreed with the district court's finding that the "fact that Roell's resistance was probably caused by his excited delirium did not preclude the deputies from using a reasonable amount of force to bring him under control." The Appellate Court found that despite Roell's diminished capacity, he had committed a series of property crimes, was a threat to the neighbor and deputies and was activity resisting arrest. The Appellate Court found, therefore, the use of force was necessary based on the totality of the circumstances.

The Appellate Court, however, stated that they did not need to definitively answer the question of whether the degree of force utilized was reasonable because, at the time of the alleged violation, there was no clearly established law that the degree of force used by the deputies violated Roell's 4th Amendment rights. The Appellate Court also stated that the necessary question was whether a "reasonable officer would have known that the forcible physical restraint employed in this case against an individual who appeared mentally impaired, yet posed a potential threat to the officers and to others, violated that person's Fourth Amendment rights."

The second case offers an interesting option when evaluating the use of force in criminal and non-criminal situations. In Estate of Corey Hill v. Miracle, the Sixth Circuit Court of Appeals held that a Taser may be used to momentarily subdue a patient, who is actively resisting life-saving treatment, in a medical emergency.

Mr. Hill suffered from low blood sugar and went into a diabetic emergency. His girlfriend called EMS. Two EMS units, with four paramedics, arrived. Finding Mr. Hill disoriented, Paramedic Streeter tried to talk to him, explaining what he needed to do, but Hill was "agitated and combative." Hill pulled away

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from Streeter's attempt to do a finger prick for blood. Finally, Streeter was successful and found Hill's blood sugar to be critically low, at 38. (Such a low blood sugar commonly results in combative behavior, confusion and potentially, life-threatening seizures.)

Deputies arrived, as was protocol in such medical calls. Deputy Miracle was familiar with the signs of a diabetic emergency, and when he came into the room, he observed the paramedics trying to insert an IV to administer dextrose to raise Hill's blood sugar, but Hill was resisting. Streeter finally got the catheter inserted, but a "completely disoriented Hill" swung on Streeter, ripping the catheter out and causing a spray of blood. Streeter continued to try to stop the bleeding while the other paramedics tried to hold down Hill.

Miracle, who at this point had not yet used any physical restraints, told Hill to relax, but to no avail. He told Hill that he was going to use his Taser. He then deployed his Taser in drive-stun mode to Hill's thigh, which caused him to be still long enough for Streeter to get the IV restarted and dextrose into Hill's bloodstream. As soon as it took effect, Hill immediately "became an angel" and was "very apologetic" for what had happened.

Hill appeared to be uninjured and recovering from his diabetic emergency, but was transported for evaluation. His blood sugar, by that point, was normal. A minor puncture wound was visible but did not require treatment.

Hill filed suit against Miracle, under 42 U.S.C. §1983, claiming excessive force for the Taser use. An excessive force claim requires the use of the objective-reasonableness test – ""whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." The District Court, using the Graham factors, found Miracle's actions unreasonable because Mr. Hill had not committed a crime nor was he resisting arrest. Graham, however, does not easily apply to a medical emergency and, in fact, the court failed to see the proverbial forest for the trees. The Appellate Court noted that it had not previously provided any guidance to the "present atypical situation."

The closest case in the Sixth Circuit, the Court noted, was Caie v. West Bloomfield Township[5]. In that case, the Court held that the use of the Taser against a drug-impaired subject was appropriate. In such cases, the Court agreed that a "more tailored set of factors be considered in the medical-emergency context, always aimed towards the ultimate goal of determining 'whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them.'"

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," but the answer to the third question is "no," then the officer is entitled to qualified immunity. Using its new analysis tool, the Appellate Court agreed that

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Miracle's actions were, in fact, appropriate, as Hill posed an immediate threat to both himself and others.

Remember, however, these cases are from the Sixth Circuit. Therefore, if you are in the Sixth Circuit the law directly applies to you. For the remainder of the Country, keep in mind that often cases from other districts provide some insight into how your own District Courts may apply the law to similar facts. As many of you know, district courts often look to surrounding districts to determine how they ruled on similar factual scenarios and applied similar rulings to the matters before them. Departments should focus on the lessons learned from the cases discussed herein as we believe you will see them again. An important take away is that officers must take into consideration their knowledge of a subject's diminished capacity; and, in medical calls, in particular, should consider whether the subject poses an "immediate threat of serious harm to the subject or others" when determining the level of force to be used

Dealing with citizens in the midst of a mental health crisis is a difficult experience for any police officer. It is important that we take a step back and understand that this citizen is indeed in crisis. Officers need to take the time to first stabilize and calm the situation and then work towards the best course of action for both the citizen and the community. Officers must always keep in mind, however, that protecting the safety of the officers and others is first and foremost in any situation.

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1. 490 U.S. 386 (1989) ?
2. 2017 WL 1228553 (6th Cir. 2017) ?
3. 135 S.Ct. 1765 (2015) ?
4. 870 F.3d 471 (2017) ?
5. 485 Fed.Appx. 92 (6th Cir. 2012) ?

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