While Subject's Diminished Capacity Must be Taken Into Account, It Does Not Preclude Officers from Using Reasonable Amount of Force to Bring Subject Under Control

Description

Roell v. Hamilton County, Ohio, _____ (6th Cir. 2017)

In the late evening hours of August 12, Gary Roell, who suffered from a mental illness, entered into a state of excited delirium, and created a disturbance at his neighbor's condominium, including throwing a flower pot through her window. The neighbor was awakened by the noise and attempted to talk to Roell. After Roell threw a screen at her, she became scared and called 911, and told the operator that her neighbor was "acting crazy."

Deputies Alexander and Huddleston arrived on scene and found Roell standing near the neighbor's broken window holding in his hands a hose with a metal nozzle and a garden basket. Huddleston proceeded to ask Roell how his was doing, and Roell immediately turned and approached Huddleston and Alexander in an aggressive manner. Roell still had the hose and garden basket in his hands. As Roell approached the deputies, Huddleston told him to stop and get on the ground or he would be tased. The deputies told Roell to calm down, to stop resisting, to come over to them, and to drop what he had in his hands. Huddleston unholstered his taser and arced it as a warning. Roell flinched but get approaching the deputies. Huddleston arced his taser again and told Roell to get on the ground. When Roell refused, Huddleston holstered his taser and reached out to grab Roell's arm. At the same time, Alexander grabbed Roell's other arm. Huddleston, Alexander, and Roell all fell to the ground, and Roell managed to break free of their grasp. As Roell tried to enter through the patio gate, Huddleston tased him, which had some effect on Roell. Roell, however, continued into the patio and closed the gate.

When Deputy Dalid arrived on scene, all three deputies tried to restrain Roell, but they were unsuccessful as Roell was combative and thrashing on the ground. While Alexander and Dalid tried to hold Roell's arms, Huddleston tried to deploy his taser in drive-stun mode to the back of Roell's legs. The taser failed to incapacitate Roell, and he continued to struggle with the deputies on the ground. Huddleston once more tased Roell using the dart mode, and while it still did not take effect, the deputies were able to handcuff Roell. Roell continued to trash about and kick the deputies, so the deputies 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 Dalid noticed that Roell had no pulse and had stopped breathing. CPR was administered under the life squad arrived. The EMTs were also unable to revise Roell and his 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.

Procedural History: Nancy Roell, as executrix of Roell's estate, filed suit against both Hamilton County and the Hamilton County Board of Commissioners and Deputies Alexander, Dalid, and Huddleston. Among other claims, Nancy Roell's § 1983 actions claims that Deputies Alexander, Dalid, and Huddleston used excessive force in violation of Roell's 4th Amendment rights. The district court held

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that the deputies were entitled to qualified immunity and granted their summary judgment motion. Nancy Roell appealed to the Court of Appeals for the Sixth Circuit (Appellate Court) the district court's granting of summary judgment in favor of Deputies Alexander, Dalid, and Huddleston on her § 1983 claims (as well as the § 1983 claim against Hamilton County)

Ruling: The level of force used by the deputies in restraining Roell and effectuation his arrest did not violated any clearly established law and, therefore, did not violate Roell's 4th Amendment rights.

Reasoning: When evaluating whether law enforcement is entitled to qualified immunity on an excessive force claim, courts ask two questions: (1) whether the officer violated the plaintiff's constitutional rights under the 4th Amendment, and (2) whether that constitutional right was clearly established at the time of the incident. When determining whether an officer used excessive force in violation of the 4th Amendment, courts use an "objective reasonableness" test, and ask whether the officers' actions were "objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." The United States Supreme Court has articulated three factors for determining the objective reasonableness: "(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."

The first *Graham* factor supports a finding that some degree of force was justified to restrain and arrest Roell, as the deputies found Roell half-naked, muttering to himself, and standing next to a window that he had broken. Looking at the second *Graham* factor also indicated that the deputies' use of force was warranted. When the deputies first encountered Roell, he was "holding objects that could have been used as weapons amid a scene of property destruction." The court found, therefore, that the deputies had a reasonable basis to believe that Roell presented "an immediate threat to the [neighbor] and to the deputies themselves." With respect to the third *Graham* factor, the undisputed record shows that Roell was actively resisting arrest and the deputies' attempts to restrain and handcuff him by kicking, flailing, and wriggling away from their grasp.

The Appellate Court, however, stated that the *Graham* analysis is 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, Huddleston stated that Roell's behavior indicated that Roell was suffering from some sort of mental illn**ess. 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, 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 stated that it needed to determine whether a "reasonable officer would have known that the forcible physical restraint employed in this case against an individual who appeared

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mentally impaired, yet posed a potential threat to the officers and to others, violated that person's Fourth Amendment rights."

The Appellate Court found that Nancy Roell could not point to case law that clearly established that the deputies violated Roell's 4th Amendment rights in effectuation his arrest. The Court stated, "Even assuming that law-enforcement officers must "adjust the application of force downward" when confronted with a conspicuously mentally unstable arrestee, . . . , no precedent establishes that the level of force used by the deputies in this case was excessive or that the deputies were required to use only verbal de-escalation techniques. The content of the OPTC training material and Nancy Roell's proffered expert testimony do not change our conclusion. Deputies Alexander, Dalid, and Huddleston are therefore entitled to qualified immunity, meaning that the district court did not err in granting summary judgment to the them on Nancy Roell's § 1983 claim."

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