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Sixth Circuit affirms excessive force claim involving taser

FACTS:

Michael Kent's father, Rick Kent, died a natural death while visiting at his son's home in Commerce Township. After Michael Kent, who is a physician, determined that his father had died after not responding to any stimulus for several hours, a call was made to non-emergency dispatch. The EMT/firefighter arrived and asked whether a hospice nurse was present and whether Kent had a do-not-resuscitate order or power of attorney paperwork. Kent explained that his parents were visiting from out of state and that his mother did not have the living will directive or durable power of attorney with her. The EMT then radioed for his partner to assist him in attaching an Automated External Defibrillator to determine if there were signs of life and to do "everything" they could for the patient. Kent began yelling at the EMTs and the deputies, telling them they "were not going to assault [his] dead father" and the situation escalated at that point. Ultimately one of the deputies pulled out his taser and stunned Kent who fell to the floor. Kent was not arrested nor was he ever told he was under arrest. Kent sued the deputies in federal court claiming that they had violated his Fourth Amendment rights in the use of excessive force. The defendant officers moved for summary judgment on the basis of qualified immunity.

QUESTIONS:

Did the officers' use of force violate Kent's constitutional rights under the Fourth Amendment? Was it clearly established, at the time of the incident, that Kent had a right not to be tased under the circumstances?

ANSWERS ACCORDING TO THE FEDERAL DISTRICT JUDGE: Yes. The court found that it was clearly established that the use of a taser on an individual who was "not under arrest, posed no safety threat to officers or others, made no such verbal threats, was not physically resistant, and may have actually shown physical compliance, constituted excessive force."

ANSWERS ACCORDING TO THE SIXTH CIRCUIT COURT OF APPEALS: Yes. The Sixth Circuit affirmed the district court's decisions. The Court concluded that the "the nature and quality of the intrusion on [Kent's] Fourth Amendment interest[s]" outweigh "the countervailing governmental interests at stake." After an examination of prior Sixth Circuit opinions and the facts underlying the opinions, the Court found that, at the time of the incident, it was clearly established that it was excessive force to "tase an individual who refused to comply with officers' commands to calm down and yelled at emergency responders, but was never told he was under arrest, never demonstrated physical violence, and had his arms in the air and his back to the wall when tased."

Kent v Oakland County, No. 14-2519, January 6, 2016.

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