

The Gift of Time: The Effects of Body-Worn Cameras and Tasers on the Graham Standards

Description

Before we get into our current case, let's take a look back at *Graham v Connor*, as the *Graham* factors will come into play in *Glasscox v. City of Argo*. In *Graham*, the plaintiff (Graham) was suffering from a diabetic reaction but police believed he may have been involved in suspicious behavior at a drug store. During the ensuing investigative detention, officers used force against Graham and refused to provide him with any medical care, despite his repeated requests for sugar or orange juice to counteract his insulin reaction. As a result, the Supreme Court fashioned the three *Graham* factors that we still use today to evaluate whether an officer's use of force was reasonable.

This article will focus on two factors that were not in the picture when *Graham* was decided – Tasers and Body-Worn Cameras. Coming out of the 11th Circuit, [Glasscox v. City of Argo](#) involves a pick-up truck operator suffering from a diabetic reaction. As we review the facts of this case and the court's ruling we will begin to see the important role that video footage plays in use of force cases and how the court uses video footage to break down this particular incident into seconds, and even fractions of seconds.

FACTS

Mr. Glasscox was driving his pickup truck on an Alabama interstate when he experienced a diabetic reaction. His truck picked up speed and began swerving from one side of the road to the other causing several motorists to call the 911 center. An Argo police officer pursued the pickup truck and Glasscox was finally able to stop his vehicle on the median. The officer approached the driver's side of the truck brandishing his firearm and Taser and ordered Glasscox out of the vehicle. Before Glasscox could explain his medical condition, the officer fired the Taser in dart mode – both darts struck Glasscox in the chest and fired a five second electrical charge. The first Taser shock came less than two seconds after the officer ordered Glasscox out of the vehicle. Three to four seconds after the first shock, and with "Mr. Glasscox's hands clearly visible", the officer deployed his Taser a second time while yelling at Glasscox to get out of the vehicle.

Less than a second after the second shock, the officer yelled to Glasscox "I'll give it to you again" and Glasscox responded "I'll get out if you just leave me alone". One second later Glasscox is shocked a third time. As the plaintiff was telling the officer that he would get out of the car and less than two seconds after the third Taser application, the officer Tases Glasscox for a fourth time.

Glasscox was then removed from the car and handcuffed. Officer Moses asked Glasscox what his problem was and Glasscox replied that he is a diabetic and was having a reaction to his insulin. EMS units confirmed that Glasscox was suffering from an insulin reaction and he was transported to the hospital. Despite the fact that the officer told Glasscox he would not be charged if, in fact, he was suffering from diabetic shock, Glasscox was later charged with Reckless Driving, Resisting Arrest and Eluding Police.

Glasscox brought a Section 1983 claim in federal district court alleging excessive force in violation of his 4th Amendment protections. The defendants filed a Summary Judgment motion claiming that they were entitled to Qualified Immunity. The district court denied the motion and the defendants appealed to the 11th Circuit Court of Appeals.

Court Findings

The use of a Taser and the time between charges becomes key in the court findings in this case. And how exactly was the court able to provide this detailed description in their rendition of the facts? Using Body-Worn Cameras the court was able to dissect the entire incident in living color. This makes for a much easier verdict, but a much tougher day in court for Officer Moses.

The court was then able to apply the law – our trusty *Graham* factors – to the facts they observed on the video and determined that the plaintiff had made “a sufficient showing that the force applied by Officer Moses in repeatedly Tasing him was excessive under the circumstances”. The court noted a number of factors to support their finding:

- The officer failed to give the plaintiff reasonable time to comply to the officer’s commands between shocks
- The tape shows that the plaintiff was attempting to comply but his attempts were thwarted by additional shocks
- The pursuit had ended and Glasscox was not engaged in any dangerous behavior at the point he was Tased
- By the second Tasing episode the plaintiff posed no threat to the officer and any hand gestures were involuntary movements caused by the Taser

Establishing that the use of force was excessive, the court moved to the second question – was the protection “clearly established” at the time the officer used such force? The court quickly determined that “no objectively reasonable officer could have thought it was lawful to use a taser repeatedly on an arrestee who was not resisting, even if that arrestee had previously offered resistance and was not yet restrained”.

Takeaways

This case illustrates the heightened importance of BWC video footage in civil cases. Officers need to be extra aware and vigilant when it comes to how they handle a suspect; in this case a little bit of patience on Officer Moses’s part would have gone a long way. In [Glasscox v. City of Argo](#) the court wrote that:

“In every case when opposing parties tell two different stories, one of which is blatantly contradicted by the record [as with a video recording of the incident] so that no reasonable jury could believe it, a court should not adopt that version of the facts”

This case also underscores the importance of giving a Tased suspect the opportunity to comply with your commands. Glasscox was not given a reasonable amount of time to meet the expectations of Officer Moses, which escalated the situation on both sides. If Glasscox had been given a even thirty seconds to get out of his truck, Moses would have been able to properly assess the situation and he would have quickly learned that Glasscox was in need of medical attention. The gift of time is of course not always possible, but when a suspect’s hands are clearly visible and the suspect appears to be

complying with your commands, give your suspect an opportunity to do so.

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