In *Kingsley v. Hendrickson*, the United States Supreme Court considered what the appropriate standard was for determining whether a use of force on a pretrial detainee was excessive under the Constitution. The Court concluded that use of force on a pretrial detainee would be judged by an objective reasonableness standard. In doing so, the Court cleared up several variations among the Circuits as to the appropriate use of force standard when dealing with a person who was no longer a free citizen, but was also not a sentenced prisoner. Up until this decision, the various U.S. Circuit Courts of Appeal would determine the appropriate Constitutional standard based on the status of the prisoner. The Court has now made clear that until an inmate is sentenced the objective reasonableness standard applies.

The Court outlined the facts surrounding this lawsuit for excessive force as follows:

Michael Kingsley, the [inmate], was arrested on a drug charge and detained in a Wisconsin county jail prior to trial. On the evening of May 20, 2010, an officer performing a cell check noticed a piece of paper covering the light fixture above Kingsley's bed. The officer told Kingsley to remove it; Kingsley refused; subsequently other officers told Kingsley to remove the paper; and each time Kingsley refused. The next morning, the jail administrator, Lieutenant Robert Conroy, ordered Kingsley to remove the paper. Kingsley once again refused. Conroy then told Kingsley that officers would remove the paper and that he would be moved to a receiving cell in the interim. Shortly thereafter, four officers, including respondents Sergeant Stan Hendrickson and Deputy Sheriff Fritz Degner, approached the cell and ordered Kingsley to stand, back up to the door, and keep his hands behind him. When Kingsley refused to comply, the officers handcuffed him, forcibly removed him from the cell, carried him to a receiving cell, and placed him face down on a bunk with his hands handcuffed behind his back. The parties' views about what happened next differ. The officers testified that Kingsley resisted their efforts to remove his handcuffs. Kingsley testified that he did not resist. All agree that Sergeant Hendrickson placed his knee in Kingsley's back and Kingsley told him in impolite language to get off. Kingsley testified that Hendrickson and Degner then slammed his head into the concrete bunk—an allegation the officers deny. The parties agree, however, about what happened next: Hendrickson directed Degner to stun Kingsley with a Taser; Degner applied a Taser to Kingsley's back for approximately five seconds; the officers then left the
handcuffed Kingsley alone in the receiving cell; and officers returned to the cell 15 minutes later and removed Kingsley’s handcuffs.

Kingsley filed a lawsuit alleging that the force used against him was excessive and therefore violated his Constitutional rights. When Kingsley’s case went to trial, the Federal District judge provided the jury with instructions similar to those used under the 8th Amendment’s Cruel and Unusual Punishment standard.

The Federal District Court Judge instructed:

“Excessive force means force applied recklessly that is unreasonable in light of the facts and circumstances of the time. Thus, to succeed on his claim of excessive use of force, plaintiff must prove each of the following factors by a preponderance of the evidence:

1. Defendants used force on plaintiff;
2. Defendants’ use of force was unreasonable in light of the facts and circumstances at the time;
3. Defendants knew that using force presented a risk of harm to plaintiff, but they recklessly disregarded plaintiff’s safety by failing to take reasonable measures to minimize the risk of harm to plaintiff; and
4. Defendants’ conduct caused some harm to plaintiff.”

“In deciding whether one or more defendants used ‘unreasonable’ force against plaintiff, you must consider whether it was unreasonable from the perspective of a reasonable officer facing the same circumstances that defendants faced. You must make this decision based on what defendants knew at the time of the incident, not based on what you know now.”

“Also, in deciding whether one or more defendants used unreasonable force and acted with reckless disregard of plaintiff’s rights, you may consider factors such as:
• The need to use force;
• The relationship between the need to use force and the amount of force used;
• The extent of plaintiffs’ injury;
• Whether defendants reasonably believed there was a threat to the safety of staff or prisoners; and
• Any efforts made by defendants to limit the amount of force used.”

The jury found in favor of the correctional officers. Kingsley appealed arguing that when judging a correctional officer’s use of force on a pretrial detainee, the appropriate standard is the 4th Amendment’s objective reasonableness standard. The United States Court of Appeals for the 7th Circuit disagreed in a 2-1 panel decision, holding that a pretrial detainee had to show that the officer had to have an actual intent to violate the pretrial detainee’s rights or a reckless disregard of those rights. Thus, rather than an objective standard, the 7th Circuit held that there would be a subjective inquiry into the actual officer’s state of mind.

Kingsley filed his petition to the United States Supreme Court, asking the Court to decide whether use of force on a pretrial detainee is judged by the subjective standard or the objective standard.
The Court held that a pretrial detainee does not have to prove the defendant officer’s subjective state of mind, but need only prove that the use of force was objectively unreasonable.

The Court wrote:

We now consider the question before us here—the defendant’s state of mind with respect to the proper interpretation of the force (a series of events in the world) that the defendant deliberately (not accidentally or negligently) used. In deciding whether the force deliberately used is, constitutionally speaking, “excessive,” should courts use an objective standard only, or instead a subjective standard that takes into account a defendant’s state of mind? It is with respect to this question that we hold that courts must use an objective standard. In short, we agree with the dissenting appeals court judge, the Seventh Circuit’s jury instruction committee, and Kingsley, that a pretrial detainee must show only that the force purposely or knowingly used against him was objectively unreasonable.

A court (judge or jury) cannot apply this standard mechanically. See Lewis, supra, at 850. Rather, objective reasonableness turns on the “facts and circumstances of each particular case.” Graham v. Connor, 490 U. S. 386, 396 (1989). A court must make this determination from the perspective of a reasonable officer on the scene, including what the officer knew at the time, not with the 20/20 vision of hindsight. See ibid. A court must also account for the “legitimate interests that stem from [the government’s] need to manage the facility in which the individual is detained,” appropriately deferring to “policies and practices that in th[e] judgment” of jail officials “are needed to preserve internal order and discipline and to maintain institutional security.” Bell v. Wolfish, 441 U. S. 520, 540, 547 (1979).

Considerations such as the following may bear on the reasonableness or unreasonableness of the force used: the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff’s injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting. See, e.g., Graham, supra, at 396. We do not consider this list to be exclusive. We mention these factors only to illustrate the types of objective circumstances potentially relevant to a determination of excessive force.

The Court noted that many facilities around the country already train their correctional officers to interact with all detainees as if their conduct will be judged by the objective reasonableness standard.

**Bottom Line:**

Use of Force in jail when dealing with pretrial detainees will be judged using the objective reasonableness standard but taking into account the need to maintain security and order in the jail.

Use of Force in jail when dealing with sentenced prisoners, continues to fall under the 8th Amendment’s Cruel and Unusual Punishment analysis.

**Note:** Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.