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Volume 39



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The Pennsylvania Police Criminal Law Bulletin

In Memoriam

Police Officer John David Dryer, 46, East Washington, Pa, PD, made a traffic stop December 19, 2011. When the officer learned that the car was not validly registered and there was no insurance, he told the driver he was going to tow the car and asked the driver if he was armed and he said yes. The officer told the driver to get out of the car and when he did the driver immediately fired at the officer hitting him in the groin. He then walked over to the officer who was on the ground and shot him in the side of the head.

Taser, use of by police is lawful provided the force used is reasonable

Mattos v. Agarano
And
Brooks v. City of Seattle
United States Court of Appeals (9th Cir.
10/17/11)
No. 08-15567, and No. 08-35526

Facts

These cases involve questions about whether the use of a taser to subdue a suspect resulted in the excessive use of force and whether the officers are entitled to qualified immunity. Plaintiff Brooks and Jayzel Mattos, both women, were tased during encounters with police officers. They sued the officers claiming their Fourth Amendment rights were violated.

In Brook's case the district court ruled the officers used excessive force when they tased her and those officers were not entitled to qualified immunity. In Jayzel and Troy Mattos's case, the court ruled that questions of fact existed regarding whether the use of the taser against Jayzel was constitutionally reasonable, and denied the motion by the officers for qualified immunity. We decided to review these two decisions, en banc, as the entire court sitting together. We rule that, although both plaintiffs have alleged constitutional violations, the police officer defendants are entitled to qualified immunity because the law was not clearly established at the time of the incident.

The facts in the **Brooks** case are as follows: Brooks, seven months pregnant, was driving her young son to school and was stopped for speeding in a school zone. The officer told Brooks she was going to be cited for speeding.

Brooks denied speeding and refused to sign the citation. One officer explained what signing is and Brooks told the officer he was lying. There were heated words between the two. The officer told Brooks she would be arrested if she did not sign, When she refused to sign, she was told she was under arrest and to get out of the car. Brooks refused to get out of the car. A police officer showed Brooks a taser, and Brooks told the officer she was pregnant. Two officers discussed where to use the taser on Brooks. One officer opened the door and twisted Brooks' arm behind her back. Brooks grabbed the steering wheel to stay in the car. One officer showed Brooks what the taser did by cycling his taser. The officer applied the taser to Brooks's left thigh in drive-stun mode and Brooks began to cry and started honking the horn. The officer applied the taser to Brooks's left arm. Six seconds later he applied the taser to her neck and she continued to cry and honk the horn. Brooks fell over in her car and the officers dragged her out, laying face down on the street and handcuffing her hands behind her back. After being taken to a hospital, Brooks was taken to jail.

Police filed a misdemeanor charge against Brooks (refusal to sign an acknowledgment of a traffic citation). She was convicted, but the resisting charge was dismissed.

The baby was born healthy and Brooks suffered no lasting injuries, suffering only several permanent burn scars from the incident.

Brooks sued the officers involved and the City for excessive force in violation of her Fourth Amendment rights and for assault and battery. The trial court denied the officers' motion for qualified immunity. The officers appealed to the present court.

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The only issue on this appeal is whether the trial court erred when it rejected the claim by the officers for federal qualified immunity.

The facts in the Mattos case are as follows: Jayzel Mattos and her husband had a domestic dispute. Jayzel called the police and officers arrived Troy became agitated and rude at the police questions. One officer asked Troy to get Jazel. When the officer followed Troy into the house, Troy became angry seeing the officer in his house. Jayzel got in front of Troy on her way to the door to speak with the officer. Troy yelled at the officer to get out of the house because he had no right to be in the house. One officer entered the house and arrested Troy. Jayzel was still in front of Troy. As one officer moved in to arrest Troy, he pushed up against Jayzel's chest, at which point she "extended her arm to stop her breasts from being smashed against the officer's body. The officer then asked Jayzel, "Are you touching an officer?" At the same time Jayzel was speaking to another officer asking why Troy was being arrested, attempting to defuse the situation by saying that everyone should calm down and go outside, and expressing concern that the commotion not disturb her sleeping children who were in the house.

Then, without warning, the officer who pushed against Jayzel's chest, shot his taser at Jayzel in dart-mode. Jayzel felt an incredible burning and painful feeling locking all of her joints and muscles and she fell hard onto the floor. Two officers handcuffed Troy. Troy and Jayzel were taken into custody. Troy was charged with harassment and resisting arrest, and Jayzel was charged with harassment and obstructing government operations.

The Mattoses sued the officers for violating their rights by the warrantless entry into their home, their arrests and the officers' use of the taser on Jayzel. The trial court denied the officers' motion for qualified immunity on the excessive force claim for the tasing. The police officers filed this appeal.

Issues

1. Whether the use of the taser against Brooks was unreasonable?

2. If the use of the taser against Brooks was excessive and unreasonable, is the police officer entitled to qualified immunity?

3. Whether the use of the taser against Jazel Mattos was unreasonable?

4. If the use of the taser against Mattos was excessive and unreasonable, is the police officer entitled to qualified immunity?

Decision

Yes to all four questions. Reversed.

Reasoning

We state the rules for qualified immunity (QI) and excessive force and then apply these rules to the facts in the two cases. QI protects police officers from liability for civil damages provided that their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known QI protects a police officer from liability even if his or her action results from a mistake of law, a mistake of fact. The purpose of QI is to strike a balance between the competing need to hold police officers accountable when they exercise power irresponsibly and the need to shield police officers from harassment, distraction, and liability when they perform their duties reasonably.

In deciding if a police officer is entitled to QI, we consider a two step test: First, we decide if the officer violated plaintiff's constitutional right; if the answer is yes, then we consider whether the constitutional right was clearly established in light of the specific context of the case at the time of the officer's actions.

We consider the first step of whether the officer violated a constitutional right. We look for guidance to the Supreme Court's guidance on excessive force in **Graham v. Conner**, 490 U.S. 386 (1989). (*Editor's Note: Conner is in the June 1989 Bulletin*). In **Graham** the rule is this: In determining if the force used by a police officer to make a seizure is reasonable there must be a balancing of the nature and quality of the intrusion on the citizen's Fourth Amendment interests against the opposing governmental interests at stake. All that matters is whether the police officer's actions were reasonable.

We first consider the nature and quality of the alleged intrusion by the police. We then consider the governmental interests at stake by

looking at (1) how severe the crime at issue is, (2) whether the suspect posed an immediate threat to the safety of the officers or others, and (3) whether the suspect was actively resisting arrest or trying to evade arrest by flight. Factors other than these may also be considered.

The most important factor is whether the suspect posed an immediate threat to the safety of the officers or others. There must be circumstances that justify an officer's fear for his safety other than his simple statement that he has such a fear.

Concerning the second step in granting or denying QI, whether the constitutional right was clearly established at the time the officer used force, we ask whether its outline or shape were sufficiently clear that every reasonable police officer would have understood that what he is doing violates that right. Prior court decisions must have shown that the actions of the officers would violate the right. Police officers can be on notice that their actions violate established law even in new factual circumstances. Reasonableness, which is the Fourth Amendment requirement always depends on the specific facts in each situation. In deciding whether a police officer acted reasonable, we must consider that police officers are often forced to make split-second judgments--in circumstances that are tense, uncertain, and rapidly evolving--about the amount of force that is necessary in a specific situation.

Applying these rules to the **Brooks** case, the officers used excessive force. We begin by considering the nature and quality of the force used against Brook: a taser in drive-stun mode. In this mode, the taser uses compressed nitrogen to propel a pair of probes--aluminum darts tipped with stainless steel barbs connected to the taser by insulated wires-- toward the target at a rate of over 160 feet per second. Upon striking the person, the taser delivers a 1200 volt of low ampere electrical charge. The electrical impulse instantly overrides the victim's central nervous system, paralyzing the muscles in the body, rendering the target limp and helpless. When a taser is used in drive-stun mode, the operator removes the dart cartridge and pushes two electrode contacts located on the front of the taser directly against the victim. In this mode, the taser delivers an electric shock to the victim, but it does not cause an override of the victim's central nervous system as it does in dart-mode. Each of the three times the officer

tased Brooks in drive-stun mode, the shock was extremely painful. We have held that tasers used in drive-stun mode constitute an intermediate, significant level of force.

It is unclear from the record for us to determine what level of force is used when a taser is used in drive-stun mode. We do not have to decide this issue in order to assess the reasonableness of the tasing. All that matters is whether the officer's actions were reasonable. We determine whether the officer's use of the taser against Brooks in this case was reasonable, keeping in mind the magnitude of the electric shock at issue and the extreme pain that Brooks experienced.

In evaluating the reasonableness of Jones's use of the taser, we consider the governmental interests at stake and begin with (1) how severe the crime was, (2) whether the suspect posed an immediate threat to the safety of the officers or others, and (3) whether the suspect was actively resisting arrest or trying to evade arrest by fleeing.

According to the facts as alleged by Brooks, the officers pulled her over for speeding and then detained and took her into custody because she refused to sign a traffic citation. We appreciate the danger with speeding, especially in a school zone.. Also it is important that people sign their traffic citations when required by state law.. However, we have no difficulty deciding that failing to sign a traffic citation and driving 32 miles per hour in a 20 mph school zone are not serious crimes. In a prior case, trespassing and obstructing a police officer were not severe crimes

We now consider whether Brooks posed an immediate threat to the safety of the officers or others. When the encounter began, Brooks was compliant: she pulled over when signaled to do so, gave her driver's license to the officer and waited in her car while the officer checked her information. When the officer returned, he told her he was going to cite her for speeding and she became upset and increasingly agitated and uncooperative. At no time did Brooks verbally threaten the officers. She gave no indication of being armed and, behind the wheel of her car, she was not physically threatening. At most, the officers may have found her uncooperative and her agitated behavior to be potentially threatening while Brook's keys remained in the ignition of her car. Possibly, she could have tried to drive away. But at some point after one officer

grabbed Brook's arm and before the other officer applied the taser to her, and he removed the keys from Brook's ignition and the keys dropped to the car's floor. Thus, at the time the officer applied the taser to Brooks, she no longer posed even a potential threat to the officers or others' safety, much less an immediate threat. We restate that this is the most important single factor in the governmental interests at stake.

The third governmental interest factor in the test is whether Brooks was actively resisting arrest. Brooks refused to get out of her car when requested to do so and later stiffened her body and clutched the steering wheel to frustrate the officers' efforts to remove her from her car. In other words, she resisted arrest. But, Brook's resistance did not involve any violent actions towards the officers. Also, she did not try to flee, and there were no other emergency circumstances existing at the time. The facts show that the officers proceeded deliberately and thoughtfully, taking time in the middle of the incident to discuss where they should tase Brooks after they learned she was pregnant. There was no allegation that an emergency existed somewhere else, so that the encounter with Brooks had to be resolved as quickly as possible. Still, Brooks engaged in some resistance to arrest.

Finally, we must examine the totality of circumstances and consider whatever specific factors may be appropriate in a specific case. We note that Brooks bears some of the responsibility for the escalation of this incident, which influences the totality of these circumstances. There are, however, two other specific factors in this case that we find overwhelmingly important. First, Brooks told the officer who tased her, before he tased her, that she was pregnant and less than 60 days from her due date. And, as she explained above, the officer and another officer paused after they learned she was pregnant and discussed whether where they should tase her.

The second overwhelmingly important fact is that the officer who tased her three times over the course of less than one minute. Twenty-seven seconds after he cycled his taser as a warning, he applied the taser to Brooks. Thirty-six seconds later, he tased her for a second time. Six seconds after that, he tased Brooks for the third time. Each time, Brooks cried out in pain. Three tasings in such rapid succession provided no time for Brooks to recover from the

extreme pain she experienced, gather herself, and reconsider her refusal to comply.

In sum, Brook's alleged crimes were minor. She did not pose an immediate threat to the safety of the officers or others. She actively resisted arrest to the extent she refused to get out of the car when told to get out of her car and she stiffened her body and clutched her steering wheel to prevent the officers from removing her from her car. Brooks did not evade arrest by flight, and no other emergency circumstances existed at the time. She was seven months pregnant, which the officers knew, and they tased her three times within less than one minute, inflicting extreme pain on Brooks.

A reasonable jury fact finder could conclude, taking the evidence in the light most favorable to Brooks, that the officers' use of force was unreasonable and therefore constitutionally excessive.

Concerning QI for the officers, the officers did not violate clearly established law when they tased Brooks, and thus, they are entitled to QI, even though they used excessive force as we decide in this case. At the time the officers tased Brooks, was the constitutional violation described above sufficiently clear that every reasonable police officer would have understood that what he was doing violated that right.

We look first at whether this constitutional violation was clearly established by looking at the most similar case law that existed when the officers tased Brooks. At the time the officer used the taser there were three relevant court decisions: **Russo v. City of Cincinnati**, 953 F.2d 1036 (6th Circuit 1992) (*Editor's Note: I reported Russo in the August 1992 Bulletin and suggest subscribers read this decision*). In **Russo** the Court ruled the defendant police officers did not use excessive force when they tased the plaintiff. The plaintiff threatened to kill police officers if they entered his home, and he held knives toward the officers. The facts in **Russo** are different than the facts in the present case

In **Hinton v. City of Elwood**, 997 F.2d 774 (10th Cir.1993). (*Hinton is in the September 1993 Bulletin*), the court held the officers did not use deadly force in using the taser on the plaintiff who declined the officer's request to talk to him and shoved an officer out of his way, he was arrested and he continued to struggle with officers by kicking his feet and biting. The facts in **Hinton** are different than in **Brooks**. There is

little similarity between what Hinton did and what.

In **Draper v. Reynolds**, 369 F.3d 1270 (11th Cir. 2004) (*I cited Draper in my Editor's Note to German v. Sosa in the November 2010 Bulletin*) a lone officer stopped a car and Draper became very angry and yelled at the officer and failed five requests to produce documents when the officer tased him. The court held this was not excessive force. The facts in **Draper** differ than the ones in our present case because Brooks was immobile in her car in daylight and police outnumbered her three to one when they tased her.

Although Brooks has alleged an excessive force claim, the law was not sufficiently clear at the time to show the alleged violation was clearly established. Thus, the defendant officers are entitled to QI and do not have to stand trial on the claim.

Concerning **Mattos v. Agarano**, the officers used excessive force against Mattos. We start by considering the nature and quality of the force used. The taser was used in dart-mode, which is an intermediate significant level of force. The taser's darts penetrated Jayzel's skin and delivered the intended dart-mode response: the electrical impulse instantly overrides the victim's central nervous system, paralyzing the muscles in the body, rendering the target limp and helpless. Jayzel felt an incredible burning and painful feeling locking all her joints and muscles and she fell hard on the floor. Now we consider the governmental interests at stake and the ultimate reasonableness of the officers' action.

Looking at the first governmental interest factor, the severity of the crime, when Jayzel appeared in the hallway, one officer asked to speak with her outside, and he agreed, but before she could comply, another officer entered the residence, and said that Troy was under arrest. Jayzel was already standing in front of Troy. She did not immediately move out of the way. As the officer moved into arrest Troy, he pushed up against Jayzel's chest, at which point she extended her arm to stop her breasts from being smashed against the officer's body. The officer then asked her "are you touching an officer?" At the same time, she was speaking to another officer, asking why Troy was being arrested, and trying to defuse the situation by saying that everyone should calm down and go outside, and she was concerned the noise would

wake her sleeping children. The most that can be said about her action is that, while standing between Troy and the other officer, she tried to prevent the officer from pressing up against her breasts. While this may have momentarily deterred the officer's immediate access to Troy, it did not rise to the level of obstruction. Thus, the severity of the crime, if any, was minimal.

The next and most important factor is whether the suspect posed an immediate threat to the safety of the officers or others. Jayzel was the suspect against whom force was used. Officers responded to a 911 call made at Jayzel's request during a domestic dispute with Troy. The officers had no reason to believe Jayzel was armed, she did not verbally threaten the officers, and her only physical contact with the one officer resulted from her defensively raising her hands to prevent him from pressing his body against hers after he came into contact with her. She gave no indication of being armed. The third factor for measuring the degree of force used to see if it was reasonable is whether the target was actively resisting arrest or trying to evade arrest by fleeing and any other emergency circumstances that existed at the time of arrest. Jayzel minimally resisted Troy's arrest. She was standing between one officer and Troy before the other officer moved in to arrest Troy, and her physical contact with the officer was defensive, intended to protect her own body from contact with the officer. When the officer stated that Troy was under arrest, Jayzel did not immediately move out of the way to facilitate the arrest. There is a difference between failure to facilitate an arrest and an active resistance to arrest. Also the crucial point of this factor is compliance with the officers' requests, or refusal to comply. Here, Jayzel was trying to comply with the officer's request to speak with her outside when she got physically caught in the middle between one officer and Troy. Thus, this factor weighs in favor of Jayzel.

Finally, we must consider additional specific facts relevant to the totality of circumstances. While Jayzel herself did not pose any threat to the officers' safety, we must also consider the danger that the overall situation posed to the officers' safety and what effect that has on the reasonableness of the officers' actions. The officers came to the Mattoses' residence in response to a 911 domestic dispute call. When they arrived they encountered Troy, who was sitting outside the house, hostile and

drunk, six feet three inches tall and 200 pounds. The volatility of situations involving domestic violence makes them very dangerous. When officers respond to a domestic dispute call, they understand that violence may be lurking and explode with little warning. More officers are killed or injured on domestic violence calls than any other type of call. The emergency of domestic abuse cases present dangers that, in an appropriate case, may override considerations of privacy.

We take very seriously the danger that domestic disputes pose to police officers, and we conclude that a reasonable police officer could be concerned about his/her safety. In light of these concerns, we have recognized that the exigencies of domestic abuse cases present dangers that may override considerations of privacy where the alleged Fourth Amendment violation was a warrantless entry into a residence for the purpose of intervening in a domestic dispute, protecting the potential victim, and gaining control over a volatile situation that could endanger the officers. In this case, though, the alleged Fourth Amendment violation is the excessive use of force against the potential non-threatening victim of the domestic dispute whom the officers came to protect. Our previous reasoning for providing some Fourth Amendment leeway to officers who must enter a house without a warrant in response to domestic disputes does not extend to officers who use an intermediate level of force on the non-threatening victim of a domestic dispute whom they have come to protect--especially when the domestic dispute is seemingly over by the time the officers begin their investigation.

When weighing the governmental interests in a situation where someone is likely to get hurt--either a fleeing suspect or innocent bystanders-- it is appropriate to take into account relative culpability. Given the posture at this stage of the proceedings, we cannot say that Jayzel was culpable in this situation. Jayzel was unintentionally in the way when the officer tried to gain control over a potentially dangerous situation by arresting Troy, and we appreciate that police officers are often forced to make split-second judgments about the amount of force that is necessary in a particular situation.

We do not see any reasonableness in tasing the innocent wife of a large drunk, angry man when there is no threat that either spouse has a weapon, as a prudent way to defuse a

potentially, but not yet, dangerous situation. This unreasonableness is compounded by the officers' knowledge that there were children present in the home at the time.

Finally, the fact that the officer who tased Jayzel gave no warning to her before tasing her pushes this use of force far beyond the pale. A police officer's failure to warn, when he/she is able to, weighs in favor of finding a constitutional violation.

To summarize, the officer who tased Jayzel used intermediate force of a taser in dart-mode on Jayzel after he and the other officers arrived to ensure her safety. Her crime was minimal at most. She posed no threat to the officers. She minimally resisted Troy's arrest while trying to protect her own body and to comply with one officer's request that she speak to him outside, and she begged everyone not to wake her sleeping children. She bears minimal culpability for the escalation of the situation. The officers were faced with a potentially dangerous domestic dispute situation in which they reasonably felt that Troy could physically harm them if he chose to, but there was no indication that Troy intended to harm the officers or that he was armed. When the officer encountered slight difficulty in arresting Troy because Jayzel was between the two men, the officer tased her without warning. Considering the totality of circumstances, we fail to see any reasonableness in the use of the taser in dart-mode against Jayzel. She has alleged a Fourth Amendment violation. The jury could conclude that the officer's use of force against Jayzel was constitutionally excessive.

The officers are entitled to qualified Immunity (QI) because they did not violate clearly established law when they tased Mattos. The alleged violation in this case was not clearly established when the officer tased Jayzel Mattos. None of the three federal cases cited above dealing with tasers found a constitutional violation. The violation was not so obvious that we can rely on the factors that define the shape and content of clearly established law. Thus, the officers are entitled to QI and will not be required to stand trial.

(Editor's Note: Although police officers and courts in Pennsylvania are not bound by the court decision in this case since it is by the Ninth Circuit U.S. Court of Appeals which does not have binding jurisdiction over Pennsylvania, it may have persuasive authority with Pennsylvania

*courts if they determine that the law in that case is logical and reasonable and should be the law in Pennsylvania. Pennsylvania police officers may be denied qualified immunity in a Pennsylvania court if they are sued for damages for excessive force involving a taser if they use a taser in the same or similar circumstances as those in **Mattos**, because Pennsylvania courts, in deciding whether to grant qualified immunity to Pennsylvania police officers for the use of excessive force in the use of a taser, will look to **Mattos** and other decisions involving the taser in deciding if there was established law in other courts that indicated that the use of the taser by the officer was previously held by a court in the same or similar circumstances to be unreasonable so as to give notice to Pennsylvania police officers that their use of the taser was unreasonable and excessive. Thus, in order to avoid civil liability, Pennsylvania police officers should not use the taser on citizens in circumstances similar to the circumstances in which the taser was used on the citizens in the **Mattos** case.*

*I am drafting guidelines for use of the Taser by Pennsylvania police officers based on the rules and circumstances in **Mattos** and other court decisions and will publish them in the Bulletin when they are completed.)*

SHORT BRIEF

(This case will be briefed more fully in a future issue of the Bulletin)

**Commonwealth v McKellick
Superior Court of Pennsylvania (6/20/11)
No. 906 EDA 2010**

Trooper Joshua Miller stopped and arrested defendant for driving while under the influence. Trooper Miller activated his dashboard-mounted video camera which recorded the encounter between Trooper Miller and defendant. The video shows the sobriety tests of defendant. Trooper Miller was killed in the line of duty trying to rescue a child from a kidnapper after the arrest and before this case was called to trial. The videotape was authenticated through the testimony of a State Police Corporal. The video tape was played in court to help convict defendant and he appealed.

One of defendant's claimed errors was the identification of defendant was not sufficient to prove his identity on the dash-cam and he was denied the right to confront the witness against him.

The appeal court affirmed his conviction ruling that the videotape had been sufficiently authenticated and his right to confrontation of witnesses was not violated. The court also ruled that the evidence was sufficient to prove him guilty of driving while under the influence. The court ruled that the videotape was sufficient evidence establishing the defendant's identity.

UPDATE ON THE URGENCY OF ARMING POLICE OFFICER FIRST RESPONDERS WITH BALLISTIC FACE SHIELDS

The following two incidents increased the murders of police officers to 914 since 1974. In 2011 62 officers were killed by gunfire and 32 of those were shot in the head while not wearing a ballistic face shield. 50 per cent of the officers killed by firearms in 2011 were killed by head shots. I am (just guessing) if all of those 32 officers had lived out their expected lives, the total number of years lost by those officers would be 32 x 39 years (72 life expectancy minus average age of officer 33 = 39 years)

**1,248 years of life lost by all 32 police officers.
1,248 years.**

913. Police Officer Arnulfo Crispin, 25, Lakeland, FL, PD, responded 12/18/11, to report of suspicion males. He asked the males for permission to pat them down for weapons and drugs and one of the suspects shot him in the head. The officer was not wearing a ballistic face shield. Before leaving his cruiser to confront the men by himself, had he put a ballistic face shield/helmet on his head (assuming he knew facts that indicated they may have been dealing with narcotics, and that he intended to pat them down for weapons, which would have constituted a high risk shot to the head. If an officer suspects a person is armed and dangerous, this is a high risk situation shot to the head and the officer should put a face shield on to prevent being shot in the head. If he is wrong and they do not shoot, nothing has been lost except the inconvenience of putting it on for several minutes, but if he did not put one on, and he is wrong and they do shoot him in the head, he has lost more than 70 years of living and enjoying family, (children) friends,

fellow officers. When you weigh the cost of the inconvenience of putting a face shield/helmet on against the inconvenience of being shot in the head unprotected by a face shield, it is obvious which inconvenience is the greater. My hope is that the political leaders of Lakeland city and the Lakeland Chief of Police immediately find money and buy every police patrol officer in the Department a ballistic face shield/helmet to put on in high risk situations, so that Arnulfo's death was not in vain. If his death motivates city officials to buy face shields for the living officers, he will be happy, and if one of the officer's life is saved by one of those face shields, he will be even more happy. **70 years.**

914. Police Officer Scott Richardson, 33, Aiken, SC PD, on 12/22/2011, stopped a car, and a suspect got out and shot the officer in the face, and shot his partner in the chest who was saved by his vest. Had Officer Richardson been wearing a ballistic face shield it is probable that he would have been saved. It is not known what facts the officers knew before the stop. Richardson lost 33 years or more of living. **33. A total of 109 years of living lost by Scott and Arnulfo.**

United States v. Morales
United States Court of Appeals, 3rd Circuit
(6/30/2004)

Facts

Two police officers stopped a car in which Morales was a passenger. Morales got out of the car. Because of certain aspects of Morales behavior, one officer suspected that he was carrying a concealed firearm. The officer tried to stop Morales from walking away from the scene but was not

successful initially. But, by use of a Taser, the officer incapacitated Morales. The officer rolled Morales over, searched him, and found a firearm, and he was arrested. During these events, the officer was wearing a vest marked "police." Morales was convicted and he appealed.

Issue

Whether the alleged illegal use of the Taser on Morales, even if true, is sufficient to justify suppression of the firearm?

Decision

No. Affirmed.

Reasoning

Regardless of whether the use of the Taser and methods used in the later search constituted unreasonable uses of force, the pat down search was justified. Thus, the possible illegality concerning the use of force did not invalidate the otherwise lawful discovery of the firearm on Morales.

Thus, Morale's excessive use of force argument is not important and does not support his claim that the evidence should have been suppressed. The officer making the stop wore a vest marked "police".

Legal Updates

1. In the July 2011 Bulletin, in **Borough of Duryea v. Guarnieri** change No. 09-1476 to 131 S.Ct. 2488, and in **McKenny v. Harrison**, change No. 10-1407 to 635 F.3d 3545.

2. In the August 2011 Bulletin, in **Commonwealth v. McDonald**, change No. 768 to 2011 Pa Super 77.

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