

APPENDIX TO SCJC REPORT: ADDITIONAL CASE LAW

Draper v. Reynolds, 369 F.3d 1270 (11th Cir. 2004). This is an Eleventh Circuit holding standing for the proposition that an officer's use of a taser, under certain circumstances, is objectively reasonable and, thus, not an excessive use of force. The factual record established at the trial level was that the officer pulled over the plaintiff for a traffic violation and asked the plaintiff to join him at the back of the plaintiff's truck. The plaintiff was hostile, belligerent, and uncooperative from the time the plaintiff went to the back of the truck. The plaintiff refused five requests on the part of the officer to retrieve documents from the truck cab. The plaintiff accused the officer of harassing him. The plaintiff used profanity, moved around and paced in agitation, and repeatedly yelled at the officer. The officer then struck the plaintiff with a taser gun one time, and for a single five-second shock. The plaintiff was unharmed. The court noted that being struck by a taser gun is "an unpleasant experience," but ruled that a single use of a taser gun causing a one-time shocking was reasonably proportionate to the need for force.

No other Court of Appeals has relied on *Draper* to uphold a police officer's use of a taser in a non-life threatening situation. The Ninth Circuit has not published any opinions that would provide the City of Mountain View with any guidance as to how it would rule under similar circumstances.

Stanley v. City of Baytown, Texas, Slip Copy, 2005 WL 2757370 (S.D.Tex. Oct. 25, 2005). A plaintiff's claim of excessive force was dismissed because he could only establish a *de minimus* injury. Plaintiff had suffered a few seconds of physical pain and some red marks that healed the same day as the incident. The case does not stand for anything in terms of the appropriateness of the taser usage. Only slip copy available and may not be published.

DeSalvo v. City of Collinsville, Ill., Slip Copy, 2005 WL 2487829 (S.D.Ill. Oct. 7, 2005). Court refused to grant an officer's motion for summary judgment on the basis of qualified immunity. The plaintiff stated in his complaint that the defendant officer had tased him in the neck because he persisted in asking why he was being arrested. The officer had claimed that he was entitled to qualified immunity because there is no clearly established case law providing citizens with a right not to be tased. The court rejected that argument outright, stating as follows:

"DeSalvo's right in this case, defined at an *appropriate* level of specificity, poses to the Court a broader question: does a restrained person have a right to be free from a significantly violent level of force if he is, while perhaps not fully compliant with an officer's orders, acting in an otherwise peaceable manner? In answering *this* question, the Court finds the fact that Krug used a taser to inflict pain upon DeSalvo, rather than some other weapon, is of diminished importance. A taser is capable of inflicting a great deal

of pain upon a person--shocking, burning, and even rendering numb its target--and is, in this sense, little different than a nightstick, mace, or any other weapon that a police officer might use against an adversary. A reasonable officer in the situation Krug confronted would have known that it would be unlawful to deliver a swift blow with a night stick to the back of DeSalvo's neck as he stood handcuffed at the rear of the squad car. A reasonable officer would also have known that spraying mace in the face of DeSalvo under the circumstances would be unlawful. So too, then, this Court finds, a reasonable officer in Krug's position would have known that it would be unlawful to tase DeSalvo under the circumstances of this case.”

This case is also available only in slip copy and may not eventually be published.

Nichols v. Davison, Slip Copy, 2005 WL 1950361 (W.D.Okla. July 26, 2005). This case *does* hold in an excessive force case that the actions of the officer in using a taser were objectively reasonable. Here, the subject was engaged in a physical altercation with his uncle and cousin. Officers responding to the scene used pepper spray in an attempt to separate the three individuals. The cousin and uncle complied, while the subject continued to actively resist arrest. He kicked one of the officers. The officers used pepper spray a second time, and the subject continued to actively resist. They used batons on him, and were still unsuccessful at obtaining compliance. Finally, they tased him five times. He eventually died at the hospital. The court held as a substantive legal matter that the officers’ use of a taser under those circumstances was appropriate. This case is available only in slip copy and may not eventually be published.

Rios v. City of Fresno, Slip Copy, 2005 WL 1829614 (E.D. Cal. July 25, 2005). The court denied defendant officer’s motion for summary judgment in plaintiff’s claim that the officer’s use of a taser constituted excessive force. The court held that the circumstances under which the taser was used constituted a question of fact and that summary judgment was therefore inappropriate. In this case, the plaintiff alleged that: he had been pulled over on the basis that a “tipster” had told police that he had conducted an unsafe lane change. The plaintiff complied with police requests that he exit the vehicle and provide a driver’s license. An officer then told plaintiff to sit down, plaintiff refused, the officer grabbed plaintiff’s hands and held it behind plaintiff’s back, and then tasered plaintiff. Plaintiff fell to the ground, hitting his head on the concrete. As stated above, the Court ruled that because the circumstances of the taser usage constitute a question of fact, the defendant officer was not entitled to summary judgment. This case is also available only in slip copy and may not eventually be published.