

# Claims Brief

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## “Not Early and Not Often” Case Studies on Taser Use in the Fourth Circuit

### Introduction

In 2013 and 2016, the United States Court of Appeals for the Fourth Circuit (“the Fourth Circuit”) decided two police excessive force cases involving the use of conducted energy devices, commonly known as “tasers.” The first case originated in Maryland, the second in North Carolina. The first case involved the death of a mentally ill man after police were dispatched to his home via a 911 call. The second involved the death of a mentally ill man who refused police efforts to return him to a hospital emergency room. To learn from these cases, it is important to understand both their similarities and differences, as well as what conduct met with the court’s approval and what did not. Only in this way can law enforcement agencies make informed decisions as to how to use tasers in ways that do not violate the Fourth Amendment.

Since the federal district court and appellate decisions were rendered at summary judgment, and not at trial, the court viewed the facts in the light most favorable to the plaintiffs, and those are the facts essentially set forth below.

### First Case Study – *Meyers v. Baltimore County, Md.*, 713 F.3d 723 (4<sup>th</sup> Cir. 2013)

#### 1. The Suspect’s Mental Health History

Ryan Meyers (“Ryan”) was forty years old at the time of his death. He had been diagnosed with bipolar disorder at the age of fifteen, and struggled with this mental illness throughout his adulthood. He “dropped out” of school after the ninth grade,

and lived with his parents his entire life. Prior to the night of Ryan’s death, the Meyers family had contacted law enforcement authorities on five occasions to have Ryan forcibly detained and transported to a mental health facility for psychiatric evaluation, including three times during the previous ten years.

#### 2. The 911 Call and Police Response

On the evening of March 16, 2007, Mrs. Meyers placed a telephone call to a “911 operator” to report that Ryan and his brother, William Meyers, Jr. (Billy), were engaged in a fight. When the 911 operator attempted to obtain additional information from Mrs. Meyers, she did not respond. However, the 911 operator heard screaming in the background. Based on this telephone call, officers from the Baltimore County Police Department (“the Department”) were dispatched to the Meyers’ residence (“the residence”).

Officer Vincent Romeo (“Officer Romeo”) was the first officer to arrive at the residence, where he found Mr. Meyers and Billy in the front yard. Mr. Meyers was holding a towel against his face to cover a laceration on his nose, which also was swollen. Mr. Meyers informed Officer Romeo that Ryan was inside the home, and that Mrs. Meyers had fled and would not return until the police had removed Ryan from the premises. From his vantage point on the porch of the residence, Officer Romeo could see that Ryan was pacing inside the house carrying a baseball bat.

Before attempting to enter the residence, Officer Romeo spoke with Billy about the events that



had occurred. Billy stated that when he arrived at the house that evening, he heard his mother exclaim, “Stop, Ryan. You are hurting me!” Billy responded by punching Ryan, and a fistfight ensued, causing Mrs. Meyers to contact the police. Billy also told Officer Romeo that Ryan “has problems upstairs and he’s bipolar.”

Officer Karen Gaedke (“Officer Gaedke”) later arrived at the residence in response to Officer Romeo’s request for additional assistance. Officer Gaedke was familiar with Ryan’s mental illness, having recently arrested him following an incident at a nearby convenience store. After Officer Gaedke arrived at the residence, she and Officer Romeo began speaking with Ryan to convince him to surrender peacefully, but he rebuffed their efforts, stating, “No, you’re going to kill me.”

Officer Romeo concluded that Ryan would not voluntarily leave the residence, that he was in an “agitated state,” and that he posed a threat to the officers’ safety because he was carrying a baseball bat. Accordingly, Officer Romeo contacted a police dispatcher, asking that an officer trained to use a taser be sent to the residence. Officer Stephen Mee (“Officer Mee”), who was authorized by the Department to use a taser, responded to the scene. Upon arriving at the residence, Officer Mee unsuccessfully engaged in a dialogue with Ryan in an attempt to have him surrender voluntarily. Thereafter, Officer Mee, Officer Romeo, Officer Gaedke, and Officer Andrew Callahan, IV, who also had responded to the scene, (collectively, “the officers”) gained access to the home by using a key provided by Billy. Billy entered the home at the same time and was a witness to the events described below.

### **3. The Taser Deployments and the Suspect’s Death**

Upon entry, Officer Mee ordered Ryan to drop the baseball bat. According to Billy, Officer Mee deployed his taser almost immediately

after ordering Ryan to drop the bat, without giving Ryan time to comply with the officer’s command. However, it is undisputed that Ryan was holding the bat when he first was struck by the taser’s probe, and that Ryan may have taken a step toward the officers immediately before the probe made contact with his body.

During Officer Mee’s first four deployments of the taser, the device was in “probe mode,” during which two probes attached to thin electrical wires were fired from the taser, causing an electric shock to be delivered to Ryan upon contact.

The taser probe fired by Officer Mee struck Ryan on his upper body, registering a shock that lasted five seconds. Ryan, who was about six feet in height and weighed about 260 pounds, did not drop his bat or fall to the floor in response to the first taser shock. Officer Mee stated that, after the first taser shock, Ryan was still holding the baseball bat and took two more steps toward the officers. According to Billy, however, Ryan went into convulsions and exclaimed, “I give up. I give up. Stop. Stop. I give up.”

Officer Mee again discharged his taser, still in probe mode at Ryan, resulting in an additional shock that lasted five seconds. This second taser shock caused Ryan to drop his bat, but he remained standing and again advanced toward the officers. Officer Mee discharged his taser at Ryan a third time, delivering another shock that lasted five seconds and caused Ryan to fall to the ground.

After Ryan fell, Officer Mee, Officer Callahan, and one other officer sat on Ryan’s back. While the other officers remained seated on Ryan’s back, Officer Mee discharged his taser a fourth time in probe mode. Officer Mee thereafter changed the taser’s mode to “stun mode” and, during a period slightly exceeding one minute, delivered six additional shocks to Ryan, which each lasted between two and four seconds.

After Officer Mee's tenth use of the taser on Ryan, the officers observed that Ryan appeared to be unconscious. Thereafter, an ambulance, which had been requested after Officer Mee first used the taser, arrived at the residence. The responding paramedics found Ryan in a state of cardiac arrest, and they were unable to revive him.

#### **4. The Lawsuit and Outcome in the United States District Court**

In the complaint filed in the United States District Court for the District of Maryland ("the district court") against Baltimore County and Officers Mee, Romeo, and Gaedke (collectively, "the defendants"), the plaintiffs raised a claim under 42 U.S.C. § 1983 alleging excessive force in violation of the Fourth Amendment, as well as several claims under Maryland law. The defendants filed a motion for summary judgment, contending that the officers were immune from suit under the doctrine of qualified immunity. The district court granted the motion. In granting the defendants' motion, the district court concluded: (1) that the officers' warrantless entry into the residence and their initial seizure of Ryan were objectively reasonable because those actions were supported by probable cause; (2) that Officer Mee's first three uses of his taser, during the period in which Ryan remained standing, were objectively reasonable and did not constitute the use of excessive force; and (3) that the evidence did not support the need for delivering the seven additional taser shocks, but that those acts did not violate clearly established law. Therefore, Officer Mee was entitled to qualified immunity. The district court also absolved the remaining officers on grounds of qualified immunity.

The plaintiffs filed a notice of appeal.

#### **5. The Appeal and Outcome in the United States Court of Appeals for the Fourth Circuit**

The Fourth Circuit reversed the district court's ruling in favor of Officer Mee. In denying Officer Mee qualified immunity, the Fourth Circuit concluded that: (1) the officer's use of the taser was not objectively reasonable *after* Ryan ceased actively resisting arrest; and (2) a reasonable person in the officer's position would have known that the use of a taser in such circumstances violated clearly established constitutional rights. The Fourth Circuit closely scrutinized Officer Mee's taser use, deployment by deployment. As to the first three deployments, the court found that they did not amount to unreasonable or excessive force. During the first three deployments, Ryan was acting erratically, was holding a baseball bat that he did not relinquish until after he received the second shock, and was advancing toward the officers until the third shock caused him to fall to the ground. Under these circumstances, Ryan posed an immediate threat to the officers' safety, and was actively resisting arrest.

As to the seven additional deployments, the court reached a far different conclusion. The Fourth Circuit said that even if the level of force used at the beginning of the encounter was justified, it became excessive just seconds later when the justification for the initial force was eliminated. After the first three deployments, Ryan dropped the baseball bat and fell to the floor. At that point, several officers sat on Ryan's back, and he was only able to move his legs. Moreover, according to Officer Gaedke, Ryan was silent and "stiffened" his body, keeping it rigid while he was on the ground. In short, at that point, Ryan was no longer actively resisting arrest, and did not pose a continuing threat to the officers' safety. Nevertheless, Officer Mee continued to use his taser until he rendered Ryan unconscious.

Based on these facts, the court announced a guiding principle in this circuit: “It is an excessive and unreasonable use of force for a police officer repeatedly to administer electrical shocks with a taser on an individual who no longer is armed, has been brought to the ground, has been restrained physically by several other officers, and no longer is actively resisting arrest.” The use of taser in such circumstances is “unnecessary, gratuitous, and disproportionate force.” And the principle is not limited just to tasers. Whether the force be from a taser or from a gun, baton, pepper spray, or other weapon, is of no consequence. The key is that the suspect be unarmed and secured at the time the additional force is applied. Going forward, agencies and officers are on notice that the Fourth Circuit will view such repeated applications of force as an effort to punish or intimidate, and not protected by the Fourth Amendment.

**Second Case Study – *Estate of Armstrong ex rel v. Village of Pinehurst, et al.*, 810 F.3d 892 (4<sup>th</sup> Cir. 2016)**

**1. The Suspect’s Mental Health History**

The case arose from the death of Ronald Armstrong (“Armstrong”) during police efforts to return him to a hospital emergency room from which he had fled. Armstrong suffered from bipolar disorder and paranoid schizophrenia. On April 23, 2011, he had been off his prescribed medications for five days and was poking holes through the skin on his leg “to let the air out.” His sister, Jinia Armstrong Lopez (“Lopez”), worried by his behavior, convinced Armstrong to accompany her to Moore Regional Hospital in Pinehurst, North Carolina. Armstrong willingly went to the hospital and checked in. During his evaluation, however, he became frightened and ran from the emergency department. The doctor who had been evaluating Armstrong deemed him to be a danger to himself and issued involuntary commitment papers to compel his return. The

doctor did not designate Armstrong a danger to others although he could have.

**2. The 911 Call and Police Response**

The Pinehurst police were called as soon as Armstrong fled from the hospital. Three officers immediately responded. Officer Arthur Gatling (“Officer Gatling”) arrived first, followed by Sergeant Tina Sheppard (“Sergeant Sheppard”) and Lieutenant Jerry McDonald (“Lieutenant McDonald”). Officer Gatling located Armstrong near the hospital’s main entrance where he was found wandering across the roadway that intersects the hospital’s driveway. Cars had to swerve to avoid Armstrong, and Officer Gatling finally convinced him to move to the roadside. There, Armstrong proceeded to eat grass and dandelions, chew on a gauze-like substance, and put lit cigarettes out on his tongue. At this point, the commitment order had not yet been finalized. Consequently, Officer Gatling and Sergeant Sheppard conversed with Armstrong, and, although Armstrong was still acting strangely, everything was calm at this point.

After approximately twenty minutes, the officers were informed that the commitment papers had been completed. They immediately told Armstrong they were going to return him to the hospital. The officers surrounded Armstrong and moved toward him. That is when the trouble began. Armstrong sat down and wrapped himself around a four-by-four post that was supporting a nearby stop sign. Armstrong, who was 5’ 11” tall and weighed 262 pounds, refused to budge. The officers tried prying his arms and legs from the post, but were unsuccessful. Lopez, who was standing nearby, pleaded for Armstrong to let go and just return to the hospital. Two hospital security guards were also standing close by.



### **3. The Taser Deployments and the Suspect's Death**

Thirty seconds passed and Armstrong refused to comply. Lieutenant McDonald then instructed Officer Gatling to prepare to tase Armstrong. Officer Gatling unholstered his taser, set it to drive stun mode (direct contact as opposed to firing darts), and warned Armstrong that if he didn't let go of the post, he would be tased. Armstrong ignored him. Officer Gatling deployed the taser – approximately five separate times over a period of two minutes. The tasing produced more resistance from Armstrong instead of less. When the tasing was ineffective, the two hospital security guards moved in to help the officers pull Armstrong off of the post. During the struggle, Armstrong said that he was being choked, but no chokeholds were used. Finally, after much effort, the officers and security guards managed to pull Armstrong from the sign. Lieutenant McDonald and Sergeant Sheppard pinned Armstrong face down on the ground by placing a knee on his back and standing on his back, respectively. Armstrong was handcuffed while on the ground, but, even so, he continued to kick at Sergeant Sheppard. Because of the kicking, the officers shackled Armstrong's legs too.

When the officers stood up to collect themselves, Lopez noticed that Armstrong wasn't moving and asked the officers to check on him. They did, and when they flipped him over, his skin was bluish in color and he was not breathing. Sergeant Sheppard and Lieutenant McDonald administered CPR, and Lieutenant McDonald called for EMS. EMS responders quickly transported Armstrong to the emergency department, but he was pronounced dead shortly after admission.

### **4. The Lawsuit and Outcome in the United States District Court**

Lopez, as administrator of Armstrong's estate, filed a lawsuit in the United States District

Court for the Middle District of North Carolina ("the district court") alleging that the officers had violated Armstrong's Fourth Amendment rights by using excessive force. The district court granted summary judgment to the officers reasoning that it was highly doubtful that the evidence established a constitutional violation at all, but assuming it did, the defendants were entitled to qualified immunity." Plaintiff filed a notice of appeal.

### **5. The Appeal and Decision in the Fourth Circuit**

The Fourth Circuit first decided the issue of whether the officers had used excessive force. It concluded that excessive force had been used based on three pivotal facts: First, immediately preceding the taser use, Armstrong had not committed any crime nor was there probable cause for his arrest. Even the argument that Armstrong had failed to obey lawful orders did not persuade the court because of its conclusion that the sheer level of force used was unjustified.

Second, the court determined that the officers did not have a sufficient basis to believe that Armstrong posed a threat to them or to others. Unquestionably, he was mentally ill and such diminished capacity must be taken into account by the officers on the scene. But he was an unarmed, emotionally distraught individual, and not an armed and dangerous criminal who had recently committed a serious offense. So, recognizing that some degree of force was necessary to, at a minimum, prevent Armstrong from harming himself, the issue was whether the degree of force used was excessive. In ruling that it was, the court emphasized that at the moment force was applied, Armstrong was stationary, seated, clinging to a post, and refusing to move. He was also outnumbered and surrounded by police officers and security guards. Thus, the Fourth Circuit concluded that the degree of force necessary to prevent Armstrong's flight was quite limited.

Third, although Armstrong concededly was “resisting” the police by refusing to let go of the post, his resistance was “passive,” not “active,” and thus did not justify the level of force used. The Fourth Circuit decided that almost immediately tasing a non-criminal, mentally ill individual, who seconds before had been conversational, was simply not a proportional response.

The court next turned to the issue of whether or not the officers were entitled to qualified immunity. Certainly, if they had violated clearly established law by using the level of force against Armstrong that had been used, the Fourth Circuit would have been required to deny the defense. It did not. Although determining that excessive force had been used, the court ultimately acknowledged that its conclusion that Armstrong had a right not to be tased while offering stationary and non-violent resistance to a lawful seizure was “not so settled” at the time the officers acted. Thus, they were shielded by qualified immunity. But the principle established by the Fourth Circuit is clear: A taser may only be deployed when a police officer is confronted with an exigency that creates an immediate safety risk and that is reasonably likely to be cured by using the taser. The subject of a seizure does not create such a risk simply because he is doing something that can be characterized as resistance – even when that resistance includes physically preventing an officer’s manipulations of his body.

## **Conclusion**

Despite the teachings of these two cases, the objective reasonableness of the use of tasers will continue to pose difficult challenges for law enforcement agencies and courts alike. The law is evolving slowly, but it is evolving. It is clear that the Fourth Circuit views skeptically the use of tasers in stun mode, and essentially has prohibited the repeated use of such applications as a pain compliance technique. The court is also skeptical of officers resorting

to taser use early in an encounter, absent some immediate danger to the officer or others. This is especially true in encounters with persons who are known or suspected to be mentally ill or diminished in some other way. Third, resorting to taser use in the face of stationary or non-violent resistance, where no immediate threat is posed to the officer’s safety, is unacceptable. In sum, taser use “early” in an encounter and “often” after the encounter begins, will be carefully reviewed, and, if found to be disproportionate, deemed unconstitutional. Consequently, officers are best guided by not resorting to taser deployment first, and to discontinue taser use, especially in stun mode, where it is having no effect or, in fact, escalating the conflict.

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