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January 11, 2016

Fourth Circuit Court of Appeals

(Note: You may access the court's opinion by clicking on the case name)

Court Holds That Officers Used Excessive Force Under Fourth Amendment By Inappropriately Using Taser to Execute Involuntary Commitment Order Against Person Named in Order, But Officers Were Entitled to Qualified Immunity In Civil Lawsuit Brought By Person's Estate

[Estate of Armstrong v. Village of Pinehurst](#), ___ F.3d ___, 2016 WL 105386 (4th Cir. Jan. 11, 2016).

Armstrong suffered from bipolar disorder and paranoid schizophrenia. On April 23, 2011, he had been off his prescribed medication for five days and was poking holes through the skin on his leg "to let the air out." His sister convinced him to go with her to Moore Regional Hospital in Pinehurst, North Carolina. He checked in, but during the mental health evaluation he fled from the hospital. The examining doctor found him to be a danger to himself and issued involuntary commitment papers to compel his return. Three Pinehurst officers responded to a call and found Armstrong at an intersection near the hospital. He was acting strangely (eating grass, chewing on a gauze-like substance, and putting cigarettes out on his tongue) while the officers waited for the commitment order. Once the commitment papers were complete, the officers surrounded Armstrong, who by then had wrapped himself around a post that was supporting a stop sign. They could not pry him from the post (he was 5'11" tall and weighed 262 pounds). Two hospital security officers arrived to help, and his sister was present, pleading with her brother to return to the hospital. Thirty seconds or so after officers told Armstrong that his commitment order was final, one officer drew his taser, set it to "drive stun mode," and announced that if Armstrong did not let go of the post, he would be tased. The warning had no effect, so the officer employed the taser five separate times over a period of about two minutes. But the tasing actually increased his resistance. The five officers removed him from the post and handcuffed and shackled his legs. He was left face down in the grass, his skin turned blue, and died shortly thereafter.

The estate of Armstrong sued under 42 U.S.C. § 1983 and alleged that the officers used excessive force in violation of Armstrong's constitutional rights. The federal district court granted summary judgment to the officers on the ground that they had qualified immunity. The fourth circuit held that the officers used excessive force under the Fourth Amendment by inappropriately using the taser on Armstrong, but also affirmed the district court's summary judgment ruling.

Qualified immunity protects officers who commit constitutional violations but who, in light of clearly established law, would reasonably believe that their actions were lawful. A qualified immunity analysis typically involves two inquiries: (1) whether the plaintiff has established the violation of a constitutional right, and (2) whether that right was clearly established at the time of the alleged violation. An appellant's case (here, the estate of Armstrong) survives summary judgment only if an appellate court answers both questions in the affirmative.

The court held that the plaintiff established a violation of the Fourth Amendment by showing that the defendant officers used excessive force in executing the commitment order under the objective reasonableness standard of *Graham v. Connor*, 490 U.S. 386 (1989). The court concluded that an officer may only use serious injurious force, like a taser, when an objectively reasonable officer would conclude the circumstances present a risk of immediate danger that could be mitigated by the use of force. Here, when during the course of seizing an out-numbered mentally ill person who was a danger only to himself, officers chose to deploy a taser in the face of stationary and non-violent resistance to being handcuffed, they used unreasonably excessive force. However, the court also held that Armstrong's

right not to be tased under these circumstances was not clearly established by case law on April 23, 2011, the date of the tasing in this case. Thus, the district court's entry of summary judgment for the officers was correct.