



FAIRFIELD POLICE DEPARTMENT ELECTRONIC BULLETIN

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Use of Taser Can Be Ruled Unconstitutional

This Training Bulletin is being generated as the result of two cases that were recently decided by the Ninth Circuit U. S. Court of Appeals. In both of these two cases, which were combined in the court's decision, the court ruled that the use of a Taser, or Electronic Control Device (ECD), was both excessive and unconstitutional. The cases in question are Mattos v. Agarano, and Brooks v. City of Seattle.

This bulletin is an update and reminder of the January 2010 bulletin on the same topic.

In the above cases, the court ruled that the officers were entitled to qualified immunity from civil liability. This is due to the inference that reasonably trained officers would not have known that such use of the Taser was improper. Since this decision has now been published, ***officers will no longer be given the benefit of the doubt*** and may face criminal and federal civil liability.

It is worth reading the facts of both of these cases, which will not be repeated here. In summary, the 'Brooks' case involved a woman who was 7-months pregnant and who refused to sign a citation. She was tasered via drive-stun three times. The 'Mattos' case involved the arrest of a domestic violence *victim* who stood near the arrested person and who put her arms out when she thought the officer might bump into her. Both cases involve the deployment of a Taser without any warning given, a component the court found significant. In neither of these cases did the officer report that he felt he or someone else was at immediate risk of harm. This potential for immediate threat was established as being justification for the deployment of a Taser in Bryan v. MacPherson in December 2009 by the U.S. Court of Appeals.

Both new cases can be summarized by saying that the application of the Taser constituted excessive force due to the fact that there was no immediate threat to the officers in either case. The court stated that this was "the most important single element" of the government interests at stake. Of particular concern for FPD Officers is that we may be held personally liable for civil damages for Taser deployment in contradiction to the above standards.

The recommended necessary elements to be considered prior to activation of the Taser are:

1. Are you or another person at immediate risk of harm?
2. Will you be able to articulate the objective factors that justify such risk in court?
3. Have you given a verbal warning (when practical)?

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