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Deputy's Three Taser Jolts to Handcuffed Motorist Not Excessive, Says Split 11th Circuit

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A divided federal appellate panel has ruled that a Florida deputy did not use excessive force when he shocked a motorist three times with a Taser after the man refused to sign a traffic citation and then sat on the ground crying rather than enter the patrol car.

In an unpublished opinion released Sept. 9, the split panel reversed the lower court ruling of a Florida district judge and remanded the case for dismissal. In the panel's majority opinion, J.L. Edmondson, chief judge of the 11th U.S. Circuit Court of Appeals, held that Deputy Jonathan Rackard's repeated use of a Taser on a handcuffed Jesse Daniel Buckley was not an unconstitutionally excessive use of force.

U.S. District Judge Beverly B. Martin of Georgia's Northern District, sitting by designation with the 11th Circuit panel, strongly dissented, writing, "[T]he Fourth Amendment forbids an officer from discharging repeated bursts of electricity into an already handcuffed misdemeanant -- who is sitting still beside a rural road and unwilling to move -- simply to goad him into standing up.

"I also conclude that at the time of the incident, Deputy Rackard was on fair notice that his conduct was unconstitutional," Martin's dissent continued. "Not only did Deputy Rackard unnecessarily discharge his Taser gun against Mr. Buckley three times, but each time he did so, he repeatedly prodded Mr. Buckley's body with the stun gun's live electrodes -- inflicting additional pain and leaving Mr. Buckley with 16 burn scars."

In a separate, single-paragraph concurrence with Edmondson, 11th Circuit Judge Joel F. Dubina disagreed with the chief judge, finding that Rackard's third application of the Taser was most likely unconstitutional. But like Edmondson, Dubina agreed that Rackard should be shielded from prosecution by the doctrine of qualified immunity because the constitutional violation "was not clearly established" at the time it occurred.

John W. Jolly Jr., a Tallahassee lawyer representing Rackard, on Wednesday said he is "pretty pleased with the outcome."

"I was pretty sure after the oral arguments that it was going to be a reversal," he continued. "Judge Edmondson from the bench ... gave a pretty clear indication that he was not convinced that the deputy's actions were unreasonable."

Tallahassee lawyer James V. Cook, who represented plaintiff Buckley, could not be reached for comment.

The appellate ruling stems from a 2004 traffic stop at night on a dark, two-lane highway in Washington County, Fla. Financially destitute and homeless, Buckley began sobbing after Rackard pulled him over and gave him a speeding ticket, which Buckley refused to sign, according to Edmondson's account of the events in question.

After warning Buckley twice to sign or he would face arrest, Buckley said, "Arrest me." Still in his vehicle, he allowed Rackard to cuff him, then exited his car. But as Rackard began walking the still distraught Buckley to the patrol car, Buckley dropped to the ground, crossed his legs and remained there, still sobbing.

Rackard asked Buckley several times to stand up, then attempted unsuccessfully to lift Buckley to his feet, according to Edmondson's opinion. When that effort failed, he warned Buckley that he would use his Taser if Buckley refused to cooperate.

When Buckley shouted, "I don't care anymore. Tase me," Rackard applied the Taser's electrodes to Buckley's back and chest and fired a five-second burst. When Buckley still refused to get up, Rackard discharged his Taser a second time.

Rackard then walked to his patrol car and radioed for backup. When he returned, he again ordered Buckley, who had remained on the ground, to stand up, then attempted a second time to lift the 180-pound, 6-foot-2-inch Buckley to his feet. When that effort failed, Rackard used his Taser on Buckley a third time.

When Rackard's backup arrived, the two officers escorted Buckley to the patrol car without incident. Buckley suffered 16 small burn marks on his back from the Taser. Buckley later pleaded no contest to one count of refusal to sign a speeding ticket and one count of resisting arrest without violence. He then sued Rackard, alleging an unconstitutional use of excessive force.

Edmondson found that Rackard's use of the Taser was "not outside the range of reasonable conduct under the Fourth Amendment" because the traffic stop occurred at night on the side of a highway "with considerable passing traffic," Buckley resisted arrest, and Rackard used the Taser "only after trying to persuade [Buckley] to cease resisting and warned him the Taser would be used.

"Although, as the district court observed, the underlying offense of refusing to sign a traffic citation was relatively minor, we nevertheless credit the government with a significant interest in enforcing the law on its own terms, rather than on terms set by the arrestee," Edmondson wrote.

"The government has an interest in arrests being completed efficiently and without waste of limited resources: police time and energy that may be needed elsewhere at any moment. Even though [Buckley] was handcuffed, he still refused repeatedly to comply with the most minimal of police instructions -- that is, to stand up and to walk to the patrol car."

In a footnote, Edmondson added, "That plaintiff did not attack or menace the deputy does not shield plaintiff from the use of force, even if it might result in pain."

Edmondson also rejected the Florida district court's rationale that if Rackard had simply waited for backup, both officers could have carried Buckley to the patrol car without any use of force.

"A single officer in the deputy's situation confronting a non-compliant arrestee like [Buckley] need not -- as a matter of federal constitutional law -- wait idly for backup to arrive to complete an otherwise lawful arrest that the officer has started," Edmondson wrote. "The federal courts must not dictate through their interpretation of the Constitution how the police should allocate their limited resources. In most circumstances where an arrestee is resisting, a single officer can constitutionally effectuate an otherwise lawful arrest by resorting to the use of moderate, nonlethal force. No constitutional basis exists for requiring two or more officers to make routine arrests, even if deploying more officers might result in less force actually being used."

In a separate, 17-page dissent, Martin wrote that the key issue in the Buckley case "is whether a Taser gun may be used repeatedly against a peaceful individual as a pain-compliance device -- that is, as an electric prod -- to force him to comply with an order to move."

Rackard's use of the Taser on Buckley, Martin concluded, "was a wholly disproportionate response to the need to remove Mr. Buckley from the roadside and transport him to the police station."

Martin also challenged Edmondson directly, writing, "Chief Judge Edmondson emphasizes the state interest in roadside safety and efficiency in single-officer arrests in concluding that Deputy Rackard's use of force was constitutionally reasonable. However, the individual interests protected by the Fourth Amendment do not so easily give way. Many police encounters occur on the roadside at night, and each carries risks that could theoretically be reduced if police officers were authorized to inflict pain as a way to expedite their law-enforcement efforts."

Jolly insists that "The Edmondson view was the correct view."

"This deputy," he added, "is unfailingly polite" and was "not out of control."

"He can't think of more ways to try to persuade this guy to simply take his traffic ticket and go about his business," Jolly said. "You've got to understand, this guy is out there by himself in the dark, working without a net."

Jolly conceded that using the Taser on an individual who is passively resisting arrest may well be "one of those issues that exists in that weird gray area. It's not completely clear who is right. But for cops, if it's not completely clear, if it's a rough, gray area, law enforcement wins."

Gerald R. "Gerry" Weber Jr., a longtime Atlanta civil rights lawyer, said after learning of the ruling from the Daily Report, "It's a bit shocking that the 11th Circuit would suggest that Taser force, which can be deadly force, can be applied to a person who is not a threat to anyone."

Nonviolent demonstrators, including those who annually picket the Army's Western Hemisphere Institute For Security Cooperation, formerly known as the School of the Americas, at Fort Benning in Columbus, traditionally employ similar tactics of sitting down and going limp when police attempt to arrest them, Weber said.

"That is the Ghandian, [Martin Luther] King method that is utilized in those cases by the protesters," he said, "and law enforcement is more than able to deal with those situations without

utilizing a Taser, without utilizing excessive force, without using any force except to lift the person and put the person in a police car."

"The normal practice of law enforcement in situations where a person is not a threat to themselves or others and is, essentially, lying down is that you call in backup. It's a simple task, short of utilizing force. Utilizing a Taser is the opposite extreme. You arguably are using deadly force on a person who is not a threat to the officer and is not a threat to anyone else."

The case is *Buckley v. Rackard*, No. 07-10988.

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