

Title: Legal Bulletin re: Fourth Circuit Court decision in *Armstrong v. Village of Pinehurst*
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Disclaimer: This Legal Bulletin is for informational purposes only and should not be construed as legal advice.

We are concerned with the recent Fourth Circuit Court decision in the case of *Armstrong v. Village of Pinehurst*¹ that requires officers to put themselves at potentially greater risk of injury while seizing suspects who are noncompliant with police directives and are only exhibiting non-violent physical resistance. We don't agree with the Court's statement that this resistance does not create "a continuing threat to the officers safety" or "a risk of immediate danger."

We are disappointed that the Court failed to consider the risk benefits of Conducted Electrical Weapons (CEWs) where hundreds of medical and safety studies have confirmed the general safety of CEWs and report of significant decreases in officer injuries, suspect injuries, worker compensation expenses, claims and complaints, escalation of force, and use of lethal force when a CEW is used. This decision actually promotes the notion that officers should go "hands on" with non-violent physically resisting subjects rather than utilize the TASER CEW to overcome resistance and facilitate capture, control, and restraint of the person. One of the TASER CEW's best attributes is the proven reduction of officer and suspect injuries by allowing control to be effected more safely without officers having to go hands on.

Court of Appeals Holding: "Where, during the course of seizing an out-numbered mentally ill individual who is a danger only to himself, police officers choose to deploy a taser [sic] in the face of stationary and non-violent resistance to being handcuffed, those officers use unreasonably excessive force. While qualified immunity shields the officers in this case from liability, law enforcement officers should now be on notice that such taser [sic] use violates the Fourth Amendment." In other words, "taser [sic] use is unreasonable force in response to resistance that does not raise a risk of immediate danger."

Precedent: "Our precedent, then, leads to the conclusion that a police officer may only use serious injurious force, like a taser [sic], when an objectively reasonable officer would conclude that the circumstances present a risk of immediate danger that could be mitigated by the use of force."

While the use of force in this case was a TASER CEW used in drive-stun mode as a pain compliance tool, the holding applies to other "serious injurious force" used by law enforcement.

Practical Application: Do not use "*serious injurious force*" (CEW in any mode, pepper spray, punch, grounding, tackling, wrestling maneuver) *to gain compliance* from a person, who is exhibiting only *minimally risky physical resistance*, and who is *not a serious threat* or *posing some risk of immediate danger to officers or others* (not just himself).

Smart Use Guidelines: This decision reflects a trend we have seen in courts where they are moving toward applying a use of force standard similar to the United Nation's standard of using

¹ It should be noted that TASER was originally named and sued in this lawsuit but was dismissed early in the proceedings.

the minimal force necessary to achieve lawful law enforcement objectives. We have actually been teaching this in our TASER training as a smart use guideline for several years:

If a person is not an immediate threat or flight risk:

- Do not immediately resort to a CEW without first attempting to use negotiation, commands, or physical skills
- Avoid using a CEW on a person who is actually or perceived to be mentally ill
- Avoid using a CEW on elevated risk population member, unless necessary and justifiable
- Do not use pain compliance if circumstances dictate that pain is reasonably foreseeably ineffective (usually due to drug, alcohol, or mental illness cause elevation of pain tolerance)

Detailed Case Analysis: Attached please find a detailed case analysis by Mike Brave, LAAW International, LLC.