

# Recent Case Report

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## **Bryan v. McPherson**

(9<sup>th</sup> Cir. 2009) 590 F.3d 767

### **Issue**

Under what circumstances may officers utilize a taser on a suspect?

### **Facts**

A Coronado police officer, Brian McPherson, stopped 21-year old Carl Bryan for a seatbelt violation. Bryan was highly agitated because, earlier that day, his girlfriend had accidentally taken the keys to his car (which necessitated an unpleasant trip from Camarillo to Los Angeles), and he later received a speeding ticket from a CHP officer. As Officer McPherson explained the reason for the stop, Bryan stared straight ahead and then “hit his steering wheel and yelled expletives to himself.” At some point, Bryan stepped from the car and Officer McPherson told him to get back inside. But Bryan testified he didn’t hear the command.

Now standing about 25 feet from the officer, Bryan—who was wearing only a pair of boxer shorts and tennis shoes—started “shouting gibberish, and more expletives,” and began “hitting himself in the quadriceps.” According to the officer, Bryan then took one step towards him, at which point the officer deployed his taser. As a result, Bryan fell to the ground, breaking four teeth and suffering facial contusions.

He later sued the officer for using excessive force. When the trial court ruled that Officer McPherson was not entitled to qualified immunity, he appealed.

### **Discussion**

The central issue on appeal was whether there was a triable issue of fact as to whether Officer McPherson’s use of a taser was objectively reasonable. At the outset, the court ruled that, although the shock resulting from a taser is not classified as deadly force, it results in such “high levels of pain, and foreseeable risk of physical injury” that it falls into the category of “intermediate force.”

For this reason, the court ruled that tasers may be employed only if the facts indicate that the suspect “poses an immediate threat to the officer or a member of the public.” The question, then, was whether it was debatable that Bryan presented such a threat.

Although the court acknowledged that his “volatile, erratic conduct could lead an officer to be wary,” it also noted that, because Bryan wearing only boxer shorts, it was apparent that he was unarmed. Further, he was standing about 25 feet from the officer “without advancing in any direction.” Said the court, “The circumstances here show that Officer McPherson was confronted by, at most, a disturbed and upset young man, not an immediately threatening one,” and thus, “there was simply no immediate need to subdue Bryan before Officer McPherson’s fellow officers arrived or less-invasive means were attempted.” As a result, the court ruled that McPherson was not entitled to qualified immunity. POV