IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

ANN J. HERRERA, TARSHORA RANSOM, and CHRISTON RIDGEWAY,

Plaintiffs,

v.

THE CITY OF LAGRANGE, GEORGIA, CHAD DANIEL, ANTWANE ROBINSON, and LOUIS M. DEKMAR,

Defendants.

CIVIL CASE NO.
3:06-CV-103-JTC

O R D E R

This matter is currently before the Court on Defendants' motion for summary judgment [#33]. Defendants move for summary judgment in this civil rights case on the grounds that Defendants are immune from Plaintiffs' claims. The Court agrees and grants Defendants' motion.

I. Background[1]

This dispute arises out of an incident involving the police that resulted in the death of Greshmond Gray. On November 2, 2004, at 5:48 p.m., Chrisy Ridgeway made a 911 emergency call to the LaGrange, Georgia 911 Center.

[1] The Court views the facts in the light most favorable to Plaintiffs, as the nonmovants, and draws all reasonable inferences in Plaintiffs' favor. United States v. Four Parcels, 941 F.2d 1428, 1437 (11th Cir. 1991).

(Defs.' Stmt. of Facts ("DSF") ¶ 1; Pls.' Resp. to DSF ¶ 1.)[2] Ms. Ridgeway stated that a man named Grashmond Gray was at her apartment and would not leave. (Id.) Defendant Chad Daniel ("Officer Daniel"), a police officer with the City of LaGrange Police Department ("LPD"), responded to the call. (DSF ¶ 2; Pls.' Resp. to DSF ¶ 2.)

Upon arriving at the scene, Officer Daniel saw Gray outside the apartment cooking meat on a small portable charcoal grill. (DSF ¶ 3; Pls.' Resp. to DSF ¶ 3.) Gray was upset that Ms. Ridgeway wanted him to leave, claiming that he paid all of the bills at the apartment. (DSF ¶ 4; Pls.' Resp. to DSF ¶ 4.) Gray was drinking beer and cursing at this time. (Id.)

Ms. Ridgeway came out of her neighbor's apartment, where she had made the 911 call, and went with Officer Daniel into her apartment to discuss the situation. (DSF ¶ 6; Pls.' Resp. to DSF ¶ 6.) Ms. Ridgeway told Officer Daniel that Gray was fired from his job and that Gray was in a very bad mood. (DSF ¶ 7; Pls.' Resp. to DSF ¶ 7.) She said that Gray was not on the lease and that she wanted Gray to go home. (Id.)

Gray then came into the apartment where Daniel and Ms. Ridgeway

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[2] Contrary to Plaintiffs' misunderstanding of the local rules, Plaintiffs are required to respond to Defendants' statement of material facts. See N.D. R. 56.1B(2). Failure to properly respond to the movant's statement of material facts will result in the Court deeming such facts as admitted. Id.

were talking. (DSF ¶ 8; Pls.' Resp. to DSF ¶ 8; Ridgeway Aff. ¶ 20.) Officer Daniel told Gray that because he was not on the lease he needed to leave the apartment. (Ridgeway Aff. ¶ 20.) Gray was annoyed with Ridgeway, calling her various curse words, and Gray again told Officer Daniel that he did not want to leave because he paid the rent. (Id. at ¶¶ 20, 25.)

At this point, Defendant Antwane Robinson ("Officer Robinson") arrived on the scene. (DSF ¶ 10; Pls.' Resp. to DSF ¶ 10.) Officer Daniel turned on his "body-pack," which was a small microphone and camera located in Officer Daniel's automobile. (Id.) Although all of the events that transpired are not shown in the video, the audio accurately represents what happened. The following is a summary of the accounts depicted on the video:

- 18:00:25: Officers Daniel and Robinson urged and begged Gray to leave. (DSF ¶ 11; Pls.' Resp. to DSF ¶ 11.)
- 18:00:38: Officer Daniel again told Gray to get a plate, wrap up the meat he was cooking, and finish cooking it somewhere else. (DSF ¶ 12; Pls.' Resp. to DSF ¶ 12; Ridgeway Aff. ¶ 27.)
- 18:00:43: Officer Daniel tells Gray "you gonna have to leave here;"
- 18:00:54: Gray tells the officers that if he is arrested he will make bond and come right back to the apartment complex;
- 18:01:03: Gray raises his voice and again promises to be "right back;"
- 18:01:10: Gray twise calls Ms. Ridgeway a "dumb ass bitch;"

- 18:01:55: Gray says "I'm not going to walk away with no raw meat. I'd go to jail before doing that. I'm telling y'all;"
- 18:02:13: Gray turned around and put his hands together and said "I bow down; I bow down; I bow down; here I go; I bow down, man." (DSF ¶ 16; Pls.' Resp. to DSF ¶ 16);
- 18:02:19: Gray says "no, no, hell no;"
- 18:02:22: Officer Daniel tells Gray to turn around;
- 18:02:23: Gray says "Hell naw;"
- 18:02:24: Officer Daniel again tells Gray to turn around;
- 18:02:25: Gray says "Hell naw;"
- 18:02:26: Officer Daniel again tells Gray to turn around;
- 18:02:28: Gray says "I'm going to go out there and clean the shit up. I'll clean the shit up. Clean the shit up. Where do you want me to take it to?"
- 18:02:30: Officer Daniel says "Turn around Greshmond, turn around."

Officers Daniel and Robinson state that, at this point, Gray jerked away and spun around back towards the charcoal grill. (Daniel Dep. 53-54.) Officer Daniel states that he pulled his taser from his holster and pointed it at Gray, hoping that this would calm Gray down. (Daniel Aff. ¶ 14.) Officer Daniel then claims that Gray "moved and picked up the charcoal grill containing hot charcoals in a manner that I feared that he might be throwing those burning coals on me and Officer Robinson." (Daniel Aff. ¶ 15.) Because

he feared that Gray might throw the coals on the officers, Officer Daniel states that he fired the taser at Gray. (Id.)

Emory Crowe[3], a third party who states that he saw and heard the incidents at the apartment that day, says that Gray never bent down towards the grill, never picked up the grill, and never tried to throw, dump, or kick the grill onto the officers. (Crowe Aff. ¶ 13.) (Id.) Crowe further states that Gray never jerked away from, ran towards, spun or lunged at the officers, even in the moments just before Officer Daniel fired the taser. (Id. ¶ 14.)

Officer Daniel states that, upon shooting Gray with the taser the first time, Gray did not fall to the ground and was not immediately incapacitated. (Daniel Aff. ¶ 16.) Officer Daniel states that Gray ran for approximately sixteen seconds, during which time Daniel had the taser trigger continuously depressed. (Id. ¶ 17.) After sixteen seconds, Gray fell to the ground and landed face down with his hands under his torso. (Id. ¶ 18.) Officer Daniel then released the trigger for approximately eleven seconds and repeatedly gave Gray verbal commands to place his hands behind his back. (DSF ¶ 30; Daniel Aff. ¶¶ 17-18.)

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[3] Defendants object to the affidavits of Crowe and Ridgeway on the grounds that they are inconsistent with prior statements they made to the police. However, at the summary judgment stage, the court may not weigh conflicting evidence nor make credibility determinations. Hairston v. Gainesville Sun Publ'g Co., 9 F.3d 913, 919 (11th Cir. 1993), reh'g denied, 16 F.3d 1233 (1994) (en banc).

Because Gray did not respond to these commands by placing his hands behind his back, Officer Daniel fired the taser a second time. (DSF ¶ 31; Video 18:02:59.) This taser burst lasted approximately five seconds. (Daniel Aff. ¶ 22.) The officers again saw no reaction from Gray, so they again repeatedly told Gray to place his hands behind his back for another twenty-eight seconds. (Id. ¶ 23.) After twenty-eight seconds of commands, Officer Daniel deployed the taser for a third time. (Id. ¶ 24.) After the third taser deployment, Officer Daniel approached Gray and placed him in handcuffs. (DSF ¶ 36.)

Crowe states that Gray was lying on the ground motionless after the first taser shot took Gray down. (Crowe Aff. ¶ 18.) Gray "was not moving and he was not talking." (Id.) Crowe says he heard the officers yelling for Gray to put his hands behind his back, and that Officer Robinson then told Officer Daniel to "hit him again." (Id. ¶ 19.) Crowe says that he saw and heard Officer Daniel fire the taser two more times, all while Gray was motionless on the ground. (Id. ¶ 20.) "Gray never tried to stand up the entire time he was lying on the ground." (Id. ¶ 24.)

After handcuffing Gray, Officer Robinson rolled Gray over. (DSF ¶ 37; Pls.' Resp. to DSF ¶ 37.) This was the first time the officers recognized that there was a problem with Gray's condition. (Id.) Officer Daniels attempted to

administer CPR, and further attempts at resuscitation were made when two additional officers arrived on the scene. (DSF ¶¶ 38-39; Pls.' Resp. to DSF ¶¶ 38-39.) These attempts at resuscitation failed, and Gray died. (Id.)

II. Legal Standard

Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. The substantive law applicable to the case determines which facts are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). "The district court should 'resolve all reasonable doubts about the facts in favor of the non-movant,' . . . and draw 'all justifiable inferences . . . in his favor . . . .'" United States v. Four Parcels, 941 F.2d 1428, 1437 (11th Cir. 1991). The court may not weigh conflicting evidence nor make credibility determinations. Hairston v. Gainesville Sun Publ'g Co., 9 F.3d 913, 919 (11th Cir. 1993), reh'g denied, 16 F.3d 1233 (1994) (en banc).

When, as is the case here, the non-moving party bears the burden of proof at trial, the moving party is not required to support its motion with affidavits or other similar material negating the opponent's claim. Fitzpatrick v. City of Atlanta, 2 F.3d 1112, 1115 (11th Cir. 1993). Instead, the moving party may point out to the district court that there is an absence

of evidence to support the non-moving party's case. Id. The non-moving party must then respond with sufficient evidence to withstand a directed verdict motion at trial. Fed. R. Civ. P. 56(e); Hammer v. Slater, 20 F.3d 1137, 1141 (11th Cir. 1994) (citations omitted).

III. Analysis

Plaintiffs brought three claims[4] against Defendants: (1) excessive force against Defendants Daniel and Robinson; (2) supervisor liability against Defendant Louis Dekmar, the Chief of the LPD; and (3) municipal liability against Defendant City of LaGrange. Plaintiff brings each of these claims under the United States Constitution via 42 U.S.C. § 1983. For the following reasons, none of Plaintiffs' claims present a genuine issue of fact for the jury.

A. Count 1: Excessive Force

Defendants argue that qualified immunity bars Plaintiffs' excessive force claims against Daniel and Robinson. "Qualified immunity offers complete protection for government officials sued in their individual capacities if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Vinyard v. Wilson, 311 F.3d 1340, 1346 (11th Cir. 2002). To be entitled to

[4] Plaintiffs also brought state law negligence claims against Defendants, but have since amended their complaint to withdraw those claims.

qualified immunity, a defendant must first show that he or she was acting within the scope of discretionary duty. Id. Once the defendant shows this, the burden shifts to the plaintiff to show that qualified immunity does not apply. Id. The court must ask "whether the plaintiff's allegations, if true, establish a constitutional violation." Id. (citing Hope v. Pelzer, 536 U.S. 730, 122 S. Ct. 2508 (2002)). If the plaintiff establishes a constitutional violation, the court must then ask "whether the right was clearly established." Id.

The parties do not dispute that Officers Daniel and Robinson were acting within the scope of their discretionary duties. Therefore, the burden is on Plaintiff to show that qualified immunity should not apply in this case.

1. Whether Plaintiffs Established a Constitutional Violation

When considering an argument of qualified immunity, courts must first ask the "threshhold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?" Saucier v. Katz, 533 U.S. 194, 201, 121 S. Ct. 2151, 2156 (2001). In the context of excessive force claims, courts should pay "careful attention to the facts and circumstances of each particular case." Graham v. Connor, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872 (1989). The question is whether the force used was "objectively reasonable." Id. at 388, 109 S. Ct. at 1867-68.

In determining whether the force used was objectively reasonable, courts should look to factors such as (1) the severity of the crime; (2) whether the arrestee poses an immediate threat to the safety of the officer or others; and (3) whether the arrestee is actively resisting or attempting to evade arrest. Id. "If an officer reasonably, but mistakenly, believed that a suspect was likely to fight back . . . the officer would be justified in using more force than in fact was needed." Saucier v. Katz, 533 U.S. 194, 205, 121 S. Ct. 2151, 2158 (2001). Taking Plaintiffs' allegations as true, Officers Daniel and Robinson used excessive force in effectuating Gray's arrest.

If Gray had picked up the grill in a threatening manner, the officers would have been reasonable in believing that Gray posed an immediate threat to their safety and the safety of others. Even Plaintiffs expert admit that the use of the taser would have been appropriate under those circumstances. (Klinger Aff. ¶ 6.) However, the parties dispute whether Gray in fact reached for or picked up the grill. Emory Crowe, a third party who states that he saw and heard the incidents at the apartment that day, says that Gray never bent down towards the grill, never picked up the grill, and never tried to throw, dump, or kick the grill onto the officers. (Crowe Aff. ¶ 13.) Crowe further states that Gray never jerked away from, ran towards, spun or lunged at the officers, even in the moments just before Officer Daniel

fired the taser. (Id. ¶ 14.)

In addition, if Gray were trying to run away from the officers after they informed him that he was under arrest, the officers would have been reasonable in believing that Gray was actively resisting and attempting to evade arrest. However, these facts are also contested. Crowe states that Gray was lying motionless on the ground after the first taser shot, and that "Gray never tried to stand up the entire time he was lying on the ground." (Id. ¶¶ 18, 24.) Crowe also states that after the first taser shot, Gray was "stumbling away" rather than running, from which the jury could infer that the taser stunned Gray and was working properly. (Crowe Aff. ¶ 16.) Thus, while the initial taser deployment may have been reasonable in light of Gray's refusal to leave,[5] the two additional taser deployments while Gray laid motionless on the ground were not objectively reasonable.

If a jury found Crowe's testimony more credible than that of the officers, then the jury could conclude that Gray was not threatening the officers or attempting to evade arrest and that the officers repeated use of the taser was unreasonable. Thus, taking Plaintiffs' allegations as true, Defendants Daniel and Robinson used excessive force while arresting Gray.

2. Clearly Established

[5] See Draper v. Reynolds, 369 F.3d 1270, 1278 (11th Cir. 2004).

However, the qualified immunity analysis does not end with the finding of a constitutional violation. Once the plaintiff establishes a constitutional violation, the court must then ask "whether the right was clearly established." Vinyard, 311 F.3d at 1346. Therefore, the question becomes: At the time of Gray's arrest, was it clearly established that the repeated use of a taser amounted to excessive force when the suspect was neither threatening the officers nor attempting to run away? The answer is no.

In order for a constitutional right to be clearly established, "the contours of the right must be sufficiently clear that a reasonable officer would understand that what he is doing violates that right." Bates v. Harvey, 518 F.3d 1233, 1247-48 (11th Cir. 2008) (internal citation and quotation omitted. To show that a right is clearly established, a plaintiff "need not show that the officer's conduct specifically has been held unlawful." Id. at 1248. Rather, a plaintiff need only show that, under the law as it existed at that time, the unlawfulness of the officer's conduct was apparent. Id. Courts must ask whether "the state of the law at the time the officers acted gave them fair warning that their conduct was unconstitutional." Id. (citation omitted).

When looking to case law to determine whether the law is clearly established, this Court must look to decisions of the United States Supreme Court, the United States Court of Appeals for the Eleventh Circuit, and the

Georgia Supreme Court. Id. n.17. The law which clearly establishes the violation must be in effect at the time of the alleged violation. McClish v. Nugent, 483 F.3d 1231, 1237 (11th Cir. 2007).

The law can give an officer "fair and clear" notice that his conduct is unconstitutional in one of three ways. Id. First, the constitutional provision may be "specific enough to establish clearly the law applicable to the particular conduct and circumstances." Id. (citing Vineyard, 311 F.3d at 1350). Second, "a broad principle found in the case law can establish clearly the law applicable to a specific set of facts facing a government official when the principle is set forth with obvious clarity to the point that every objectively reasonable government official facing the circumstances would know that the official's conduct" violated constitutional law. Id. (internal citation and quotation omitted). Third, if there is no case law with a broad holding that is not tied to particularized facts, courts look at precedent that *is* tied to the specific facts of the case. Id.

In this case, Plaintiffs failed to show that the law was clearly established under any of the three standards. Plaintiffs cite several cases involving the use of pepper spray, police dogs, and electric shields, but none of the cases set forth broad principals with obvious clarity and none of the cases are tied to the specific facts of this case. In addition, "the general principle of

law must be specific enough to give the officers notice of the clearly established right" and "the principle that officers may not use excessive force to apprehend a suspect is too broad a concept to give officers notice of unacceptable conduct." Mercado v. City of Orlando, 407 F.3d 1152, 1159 (11th Cir. 2005). Thus, Plaintiffs cannot rely on broad excessive force principles to satisfy the clearly established requirement.

In addition, less than six months prior to this incident, the Eleventh Circuit Court of Appeals issued its decision in Draper v. Reynolds, in which the court held that a police officer's use of a taser gun was *not* excessive force. 369 F.3d 1270, 1278 (11th Cir. 2004). In Draper, Deputy Sheriff Reynolds stopped a tractor trailer truck driven by Draper. Id. at 1272. Upon Reynolds and Draper meeting at the back of the truck, Draper began shouting and complaining about Reynolds shining his flashlight in Draper's eyes. Id. at 1273. During the encounter, Draper "was belligerent, gestured animatedly, continuously paced, appeared very excited, and spoke loudly." Id. Reynolds repeatedly asked Draper to stop yelling and informed Draper that he would be arrested if he did not calm down. Id. During the encounter, no less than five times did Reynolds ask Draper to retrieve documents from the truck cab, and each time Draper refused to comply. Id. Then, without first informing Draper that he was under arrest, Reynolds discharged his taser gun at

Draper's chest. Id. Draper fell to the ground and was handcuffed.

The Eleventh Circuit Court of Appeals held that Reynolds use of the taser gun did not constitute excessive force. Id. at 1278. Importantly, the court held that "starting with a verbal arrest command was not required" because "a verbal arrest command accompanied by attempted physical handcuffing . . . may well have, or would likely have, escalated a tense and difficult situation into a serious physical struggle in which either Draper or Reynolds would be seriously hurt." Id.

Under the facts and holding of Draper, the state of the law at the time of the incident in question did not give Officer Daniel and Officer Robinson fair warning that their conduct was unconstitutional. Thus, although Plaintiffs established a constitutional violation, Officer Daniel and Officer Robinson are entitled to qualified immunity because the law was not clearly established, and Defendants' motion for summary judgment is **GRANTED** with respect to Count 1.

B. Count 2: Supervisor Liability

Defendants also argue that Dekmar cannot be held liable as Daniel and Robinson's supervisor. Supervisors cannot be held liable under Section 1983 solely on the basis of respondeat superior or vicarious liability. Battiste v. Sheriff of Broward County, No. 06-14958, 2008 WL 63700, at *1 (11th Cir.

Jan. 7, 2008) (citing Brown v. Crawford, 906 F.2d 667, 671 (11th Cir. 1990)). A supervisor can be held liable only if the supervisor personally participates in the alleged constitutional violation or when a causal connection exists between the actions of the supervising official and the alleged constitutional deprivation. Braddy v. Fla. Dep't of Labor and Employment Sec., 133 F.3d 797, 802 (11th Cir. 1998). Plaintiffs do not allege that Dekmar personally participated in Gray's arrest. Therefore, Plaintiffs must show a causal connection between Dekmar's actions and the officers' use of excessive force.

A causal connection can be established "when a history of widespread abuse puts the responsible supervisor on notice of the need to correct the alleged deprivation" or "when the supervisor's improper custom or policy . . . resulted in deliberate indifference to constitutional rights." Battiste, 2008 WL 63700, at *1 (quoting Gonzalez v. Reno, 325 F.3d 1228, 1234 (11th Cir. 2003)). "The deprivations that constitute widespread abuse . . . must be obvious, flagrant, rampant, and of continued duration, rather than isolated occurrences." Braddy, 133 F.3d at 802. "The standard by which a supervisor is held liable in her individual capacity for the actions of a subordinate is *extremely rigorous*." Id. (emphasis added).

Plaintiffs argue that the disproportionate use of tasers prior to the incident in question combined with the number of citizen complaints alleging

excessive force put Dekmar on notice of the need to correct the taser use policy.[6] One of Plaintiffs' experts, Dr. David Klinger, stated that he reviewed the LPD files and data which indicated that the year prior to Gray's death officers used tasers to effectuate arrests more than any other force option. (Klinger Add. ¶ 16.) Klinger also stated that, in 2004, citizens leveled 10 separate complaints of excessive force against LPD officers, all involving tasers (Id.).

However, Plaintiffs do not explain the allegations contained in each of these citizen complaints. Rather, Plaintiffs cite to Dr. Klinger's affidavit, which contains no citations to evidence or attached records. In order to put Dekmar on notice that officers were using their tasers in an unconstitutional manner, the prior complaints must be "obvious, flagrant, rampant, and of continued duration." Braddy, 133 F.3d at 802. The mere fact that ten complaints were filed in 2004 would not put Dekmar on notice unless those complaints all involved the flagrant use of tasers. Because the burden is on Plaintiffs to show a history of widespread abuse, and because the filing of complaints alone is insufficient to establish widespread abuse, Defendants'

[6] Plaintiffs also point to the policy change that occurred after Gray's death and the resulting decrease in citizen complaints. However, any subsequent remedial measures taken by Defendants after Gray's death cannot be offered to prove Defendants' culpability. Fed. R. Evid. 407.

motion for summary judgment is **GRANTED** with respect to Count 2.

C. Count 3: Municipality Liability

Defendants also assert that the City of LaGrange is immune from constitutional claims brought under 42 U.S.C. § 1983. While § 1983 does apply to cities, "[a] municipality cannot be held liable under § 1983 on a respondeat superior theory." Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 166, 113 S. Ct. 1160, 1162 (1993). A person may directly sue a local governing body only where the allegedly unconstitutional action of that body implements an official rule or policy or where the action is pursuant to governmental custom. Monell v. Dept. of Soc. Servs., 436 U.S. 658, 690 (1978). See also McDowell v. Brown, 395 F.3d 1283, 1289 (11th Cir. 2004). Here, Plaintiffs offer two theories to support municipal liability.

First, Plaintiffs argue that the City's policy of placing the Taser immediately after voice commands on the use of force continuum is unconstitutional. (Am. Compl. ¶¶ 68-69.) Plaintiffs cite several non-binding cases from other districts and circuits to support the proposition that the taser was placed too low on the use of force continuum. (Pls.' Resp. at 38.) However, in Draper the Eleventh Circuit Court of Appeals found the use of a taser immediately after the failure to follow voice commands constitutional,

even absent a verbal arrest command. Draper, 369 F.3d at 1278. In light of the Eleventh Circuit's holding in Draper, it could not be per se unconstitutional at the time of Gray's death to place tasers immediately after voice commands on the use of force continuum.

Second, Plaintiffs allege that the City inadequately trained their police officers in the use of tasers. (Am. Compl. ¶ 70.) A municipality is only liable under § 1983 for failure to train if "the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." Gold v. Miami, 151 F.3d 1346, 1350 (11th Cir. 1998) (quoting Canton v. Harris, 489 U.S. 378, 388 (1989)). To establish indifference, a plaintiff must show that the "municipality knew of a need to train and/or supervise . . . and made a deliberate choice not to take any action." Id. at 1351.

Plaintiffs argue that, although Defendants trained officers concerning *how* to use the taser, Defendants never trained officers *when* to use the taser, which resulted in deliberate indifference to the rights of persons who those officers arrest. However, the record reflects that Officer Daniel and Officer Robinson received taser training. (See OPS Report, Tab 9, attached to Defs.' Mot. Summ. J.) Both officers completed the training, and they each were issued certificates acknowledging the completion of their training. (Id.) The taser training program offered by the LPD consists of the lesson plans and

support materials provided by TASER International, the manufacturer of the tasers used by the LPD. (See OPS Report, Tab 12.) Plaintiffs offer no evidence that these extensive training materials are inadequate. Nor have Plaintiffs established that LaGrange knew of a need for additional training and deliberately chose to ignore that need.

Plaintiffs cannot show that LaGrange's use of force policy was unconstitutional, nor can they show that the LPD's taser training was inadequate. Therefore, Defendants' motion for summary judgment is **GRANTED** with respect to Count 3.

IV. Conclusion

For these reasons, Defendants' motion for summary judgment [#33] is **GRANTED**. Plaintiffs' motion for leave to file surreply [#55] is **DENIED**.[7] Plaintiffs' motion for oral argument [#56] is **DENIED**. The Clerk is **DIRECTED** to **CLOSE** the case.

SO ORDERED, this 23rd day of June, 2008.

JACK T. CAMP

[7] "No authorization exists in the Federal Rules of Civil Procedure or the local rules . . . for parties to file surreplies." Garrison v. Ne. Ga. Med. Ctr., Inc., 66 F. Supp. 2d 1336, 1340 (N.D. Ga. 1999) (O'Kelly, J.). Because Plaintiff's do not assert that Defendants raised new issues or made new arguments in their reply brief, Plaintiffs' motion is denied.

UNITED STATES DISTRICT JUDGE