

Thomas Olson v City of Hooper Bay, et al, Case No. S-13455

Appellant's Excerpt of Record  
Volume 1 of 2

Pages 1-70

IN THE SUPREME COURT OF THE STATE OF ALASKA

THOMAS OLSON,

Appellant,

vs.

CITY OF HOOPER BAY,  
OFFICER DIMITRI OAKS,  
OFFICER CHARLES SIMON, and  
OFFICER NATHAN JOSEPH,

Appellees.

Appellees.

Supreme Court No. S-13455

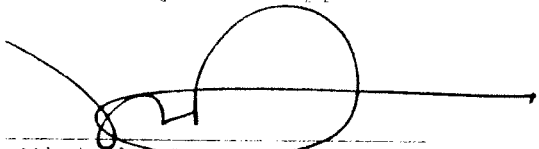
Trial Court Case No. 4BE-07-26 CI

APPEAL FROM THE SUPERIOR COURT  
FOURTH JUDICIAL DISTRICT AT BETHEL  
THE HONORABLE LEONARD R. DEVANEY PRESIDING

APPELLANT'S EXCERPT OF RECORD  
VOLUME 1 OF 2

POWER & BROWN, LLC  
Attorneys for Appellant

By: \_\_\_\_\_

  
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Filed in the Supreme Court  
of the State of Alaska, this  
21st day of July, 2010.

Clerk of the Court

  
Rob Lauriquet  
Deputy Clerk

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FILE COPY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

STATE OF ALASKA  
JUDICIAL DISTRICT

FOURTH JUDICIAL DISTRICT AT BETHEL

JAN 31 P 4: 11

CLERK OF DISTRICT COURTS

THOMAS J. OLSON, )  
 )  
 Plaintiff, )

vs. )

CITY OF HOOPER BAY, )  
 OFFICER DIMITRI OAKS, )  
 OFFICER CHARLES SIMON, and )  
 OFFICER NATHAN JOSEPH, )  
 Defendants. )

Case No. 4BE-07- 26 CI

**COMPLAINT FOR DAMAGES**

Plaintiff Thomas J. Olson, through his attorney, Michele Power of Power and Brown, LLC, brings this cause of action against Defendants City of Hooper Bay, Officer Dimitri Oaks, Officer Charles Simon, and Officer Nathan Joseph, alleging as follows:

1. Plaintiff Thomas J. Olson is a resident of Hooper Bay, Alaska, Fourth Judicial District.
2. Defendant City of Hooper Bay is an Alaska municipality in western Alaska, Fourth Judicial District.
3. At all times relevant to this action, Officer Dimitri Oaks, Officer Charles Simon, and Officer Nathan Joseph were residents of Hooper Bay, Alaska and employees of Defendant City of Hooper Bay's Police Department.
4. On or about December 26, 2006, Officer Dimitri Oaks, Officer Charles Simon,

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and Officer Nathan Joseph responded to a request for a welfare check at the Thomas J. Olson residence in Hooper Bay, Alaska.

5. When the officers arrived at the Olson residence, they found Mr. Olson asleep. Even though the officers were present in the residence to conduct a welfare check, they awakened Mr. Olson out of a deep sleep, rolled him over and handcuffed him behind his back.
6. As the officers escorted Mr. Olson out of the residence, they slipped and fell to the floor.
7. Thereafter, the officers repeatedly tazered Mr. Olson even though he was handcuffed and they outnumbered him three to one.
8. Throughout the encounter, the officers taunted Mr. Olson, attempting to incite him to resist.
9. As a direct result of the officers' use of unreasonable and unjustified force, Ms. Olson suffered serious physical and emotional injury.

**Count I - Excessive Force**

10. Plaintiff incorporates all preceding paragraphs of this complaint.
11. Officer Dimitri Oaks, Officer Charles Simon, and Officer Nathan Joseph used excessive force in restraining Mr. Olson.
12. As set forth above, the officers repeatedly tazered Mr. Olson, even though Mr. Olson's was handcuffed and outnumbered.

13. The actions of the officers constitute excessive force which was unreasonable and unnecessary under the circumstances and exceeds the scope of the officers' privilege codified in AS 11.81.370 and AS 12.25.070.
14. By exercising excessive force and exceeding the scope of their codified privileges, Officer Dimitri Oaks, Officer Charles Simon, and Officer Nathan Joseph caused Mr. Olson to suffer substantial injury and damages in an amount to be proven at trial, but in any event in excess of \$100,000, including but not limited to past and future medical and rehabilitation expenses, past and future pain and suffering, past and future lost wages, past and future inconvenience and past and future lost enjoyment of life.

**Count II - Assault and Battery**

15. Plaintiff incorporates all preceding paragraphs of this complaint.
16. Officer Dimitri Oaks, Officer Charles Simon, and Officer Nathan Joseph acted intending to cause a harmful or offensive contact with Mr. Olson.
17. Mr. Olson was put in imminent apprehension of a harmful or offensive contact and a harmful or offensive contact resulted.
18. Officer Dimitri Oaks, Officer Charles Simon, and Officer Nathan Joseph are thereby liable for an assault and battery.
19. As a result of the officers' actions, Mr. Olson suffered substantial injury and damages in an amount to be proven at trial, but in any event in excess of

\$100,000, including but not limited to past and future medical and rehabilitation expenses, past and future pain and suffering, past and future lost wages, past and future inconvenience, and past and future lost enjoyment of life.

**Count III - Vicarious Liability**

20. Plaintiff incorporates all preceding paragraphs of this complaint.
21. The officers' acts were within the scope of their employment and the officers were aided in accomplishing their acts by their positions with the City of Hooper Bay.
22. Further, the officers' actions were based on their "motivation to serve" the City of Hooper Bay.
23. Defendant City of Hooper Bay, as the employer of Officer Dimitri Oaks, Officer Charles Simon, and Officer Nathan Joseph, is vicariously liable for the intentional and negligent actions of the officers, as described herein.
24. As a result of the actions depicted above, Mr. Olson suffered substantial injury and damages in an amount to be proven at trial, but in any event in excess of \$100,000, including but not limited to past and future medical and rehabilitation expenses, past and future pain and suffering, past and future lost wages, past and future inconvenience, and past and future lost enjoyment of life.

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**Count IV - Punitive Damages**

25. Plaintiff incorporates all preceding paragraphs of this complaint.
26. The actions of Officer Dimitri Oaks, Officer Charles Simon, and Officer Nathan Joseph were outrageous and taken with reckless disregard to the rights of Mr. Olson.
27. As a result of the outrageous actions taken by Officer Dimitri Oaks, Officer Charles Simon, and Officer Nathan Joseph against Mr. Olson, he is entitled to punitive damages in an amount to be determined by the jury.

**Prayer for Relief**

**WHEREFORE**, Plaintiff requests the following relief:

1. Judgment against Defendants including compensatory damages in an amount as yet to be determined by the jury, but in any event greater than \$100,000.00;
2. Judgment against Officer Dimitri Oaks, Officer Charles Simon, and Officer Nathan Joseph for punitive damages;
3. Costs, interest, and attorney's fees incurred in bringing this action; and,
4. Such other relief as this Court may deem necessary and proper.

POWER AND BROWN, LLC  
Attorneys for Plaintiff

By: 

Michele Power  
ABA No. 9510047

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT BETHEL

THOMAS J. OLSON,

Plaintiff,

v.

CITY OF HOOPER BAY, OFFICER  
DIMITRI OAKS, OFFICER CHARLES  
SIMON, and OFFICER NATHAN JOSEPH,

Defendants.

POWER.

4BE-07-26 CI

ANSWER

The defendants, City of Hooper Bay, Officer Dimitri Oaks, Officer Charles Simon, and Officer Nathan Joseph, answer plaintiff's complaint as follows:

1. Defendants admit the allegations of paragraphs 1, 2 and 3 of the complaint.
2. In response to paragraph 4 of the complaint, defendants admit that Officers Oaks, Simon and Joseph were dispatched to the Thomas J. Olson residence in Hooper Bay on or about December 26, 2006. All other allegations of paragraph 4 are denied.
3. In response to paragraph 5 of the complaint, defendants admit that when the officers arrived at the residence they found the plaintiff and that, after investigating circumstances in the residence and determining that the plaintiff was endangering the welfare of the children present in that residence, they handcuffed the plaintiff. All other allegations of paragraph 5 are denied.
4. Defendants deny the allegations of paragraphs 6 through 9 of the complaint.

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*Olson v. City of Hooper Bay et al.*

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Exc .

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5. Paragraph 10 of the complaint merely reincorporates the allegations of preceding paragraphs and no separate response is therefore necessary.
6. Defendants deny the allegations of paragraphs 11 through 14 of the complaint.
7. Paragraph 15 of the complaint merely reincorporates the allegations of preceding paragraphs and no separate response is therefore necessary.
8. Defendants deny the allegations of paragraphs 16 through 19 of the complaint.
9. Paragraph 20 of the complaint merely reincorporates the allegations of preceding paragraphs and no separate response is therefore necessary.
10. Defendants admit the allegations of paragraph 21 of the complaint.
11. In response to paragraph 22, defendants admit that the officers' actions were based at least in part by their motivation to serve the City of Hooper Bay.
12. Paragraph 23 is a legal assertion which requires no separate response.
13. Defendants deny the allegations of paragraph 24 of the complaint.
14. Paragraph 25 of the complaint merely restates preceding allegations and no separate response is necessary.
15. Defendants deny the allegations of paragraphs 26 and 27 of the complaint.

#### AFFIRMATIVE DEFENSES

1. Plaintiff's injuries are a result, in whole or in part, of his own negligence or fault.
2. Plaintiff has failed to mitigate his damages, in whole or in part.
3. Plaintiff's claims are barred by public policy.

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4. Plaintiff's Complaint fails to state a claim upon which relief can be granted, either in whole or in part.

5. Plaintiff's Complaint is barred by the doctrine of qualified immunity.

#### PRAYER FOR RELIEF

Defendants request relief as follows:

1. That plaintiff's claim be dismissed, and that plaintiff take nothing thereby.
2. For an award of the defendants' costs and attorney's fees.
3. For such other and further relief as the court may deem just and proper.

DATED this 28<sup>th</sup> day of February, 2007.

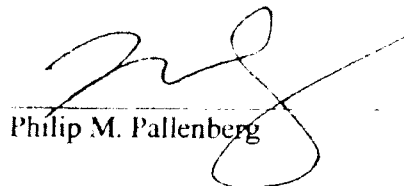


Philip M. Pallenberg  
AK Bar No. 8406044  
Attorney for Defendants

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 28 day of February, 2007, the undersigned caused a copy of the Answer to be sent via fax and first class mail, postage pre-paid, to:

Michele L. Power  
Power & Brown LLC  
P.O. Box 1809  
Bethel, AK 99559



Philip M. Pallenberg

Answer  
*Olson v. City of Hooper Bay et al.*

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT BETHEL APR 11 2008

THOMAS J. OLSON,

Plaintiff,

vs.

CITY OF HOOPER BAY, OFFICER DIMITRI, OAKS, OFFICER CHARLES SIMON, and OFFICER NATHAN JOSEPH,

Defendants.

Case No. 4BE-07-26 CI

**DEFENDANTS MOTION FOR SUMMARY JUDGMENT ON QUALIFIED IMMUNITY**

Pursuant to Alaska R. Civ. P. 56, defendants, through counsel, move for summary judgment on qualified immunity. In addition to seeking qualified immunity, Officer Demetri Oaks also moves for summary judgment because he never deployed a taser as alleged in the Complaint. The City also moves for partial summary judgment as to the allegations against Officer Oaks for the same reason.

These motions are supported by the attached Memorandum and the Affidavits of Officers Nathan Joseph, Charles Simon and Demetri Oaks. Proposed orders are attached for the Court's convenience.

DATED this 11 day of April, 2008, at Bethel, Alaska.

ANGSTMAN LAW OFFICE  
Attorneys for Defendants

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Motion for Summary Judgment  
Olson v. Hooper Bay, Case No. 4BE-07-26 CI

By: Matthew Widmer  
Matthew Widmer  
Bar No. 0605029

CERTIFICATE OF SERVICE

This is to certify that on April 11, 2008,  
a true copy of the foregoing document was  
placed in the court mailbox of:

Michele Power  
Power and Brown, LLC

By: Matthew Widmer

Angelman Law Office  
ATTORNEYS AT LAW  
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Motion for Summary Judgment  
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT BETHEL

THOMAS J. OLSON,

Plaintiff,

vs.

CITY OF HOOPER BAY, OFFICER DIMITRI,  
OAKS, OFFICER CHARLES SIMON, and  
OFFICER NATHAN JOSEPH,

Defendants.

Case No. 4BE-07-26 CI

**DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY  
JUDGMENT ON QUALIFIED IMMUNITY**

On December 26, 2006, at approximately 4:05 a.m., Hooper Bay police officers found Thomas "Boya" Olson endangering the welfare of his children, three toddlers and a newborn infant. Both Boya and his adult brother were intoxicated and passed out, while the four infants were nearby on a mattress lying on the floor. The front door and the door to the arctic porch had been left wide open with night-time temperatures of 5 degrees Fahrenheit. There was no sober adult to care for the children, including the newborn baby, a clear violation of AS 11.51.110. While one officer struggled with , two other officers attempting to escort a handcuffed Boya Olson out of the residence slipped and fell to the floor where Boya kicked the two officers in the chest, thigh and knee. After an extended struggle with the officers, with Boya kicking and attempting to bite, it took multiple deployments of the taser to subdue Boya and allow the officers to gain control of the situation. Under these facts, any use

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of the taser on a battling Boya Olson was within the reasonable range of force a police officer in this situation could decide to use. Officers Nathan Joseph, Charles Simon and Demetri Oaks are entitled to qualified immunity. Since the claims against the City of Hooper Bay are premised on the officers' use of force, the City is also entitled to summary judgment.

### FACTS

#### Alaska's "Endangering the Welfare of a Child"

Alaska reached a crisis in the late 1990s, when the state earned the tragic distinction of having the highest rate of child abuse and neglect among all 50 states. See Governor's Transmittal Letter concerning the enactment of ch. 99, SLA 1998 (SCS CSHB 375 (JUD)), 1998 House Journal 2201, *et seq.*<sup>1</sup> In 1997 alone, more than 15,500 reports of child abuse and neglect were filed in Alaska, with 38 substantiated cases for every 1,000 children in the State's population. *Id.* After Alaska became the state with the worst record concerning the safety of its children, the governor and the legislature tried to "break the cycle of abuse and neglect" by passing a comprehensive set of laws designed to address care providers' alcohol abuse and "to put children first." *Id.* While an adult with a drinking problem might feel he had the right to drink himself into oblivion in the presence of this minor child as long as he did so in the privacy of his own home, HB 375 put an end to that misguided and dangerous pattern of neglect and abuse.

HB 375 enacted AS 11.51.110, "Endangering the welfare of a child in the second

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<sup>1</sup>Available at:

[http://www.legis.state.ak.us/basis/get\\_single\\_journal.asp?session=20&date=19980202&beg\\_page=2197&end\\_page=2210&chamber=H&jm=2201](http://www.legis.state.ak.us/basis/get_single_journal.asp?session=20&date=19980202&beg_page=2197&end_page=2210&chamber=H&jm=2201)

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degree." That 1998 statute declared: "A person commits the crime of endangering the welfare of a child in the second degree if the person, while caring for a child under 10 years of age, . . . . is impaired by an intoxicant . . . and there is no third person who is at least 12 years of age and not impaired by an intoxicant present to care for the child." AS 11.51.110(a)(2). Under AS 11.51.110, "impaired means that a person is unconscious or a person is physically or mentally affected so that the person does not have the ability to care for the basic safety or personal needs of a child with the caution characteristic of a sober person of ordinary prudence." AS 11.51.110(b)(1).

In addition, "a person commits the crime of reckless endangerment if the person recklessly engages in conduct which creates a substantial risk of serious physical injury to another person." AS 11.41.250(a).

**Call Concerning the Safety of Her and Boya Olson's Children**

On December 26, 2006, at approximately 3:55 a.m., . . . . the girlfriend of 36-year-old Boya Olson, called the Hooper Bay Police Department to report that Boya was intoxicated and her kids were in Boya's care. Exhibit J, Hooper Bay Police Department Dispatch. . . . requested that police check on the welfare of the young children located at the Olson residence. Id. Sgt. Nathan Joseph and Officer Demetri Oaks were dispatched to perform the welfare check. Id.

**The Officers' Prior Knowledge of Boya Olson's Risk to Himself and Other Children**

This December 26, 2006 request for a welfare check was not Boya's first run-in with the Hooper Bay police. He is well-known by Hooper Bay Police officers for his heavy drinking.

See, e.g., Exhibit A, Arrest tape at 10:13 to 9:42. On June 26, 1998, Sgt. Joseph had previously arrested Boya for providing alcohol to six minors. Exhibit B. Thus, Sgt. Joseph had prior knowledge of Boya's felony conviction, his history of criminal acts involving intoxication, and prior endangerment of minors by providing them with alcohol. On May 12, 1994, Corporal Charles Simon investigated Boya's self-inflicted gunshot wound, an apparent suicide attempt. Exhibit C. Thus, Corporal Simon had prior knowledge of Boya's self-harm, his use of firearms, his capacity for sudden, impulsive, violent behavior, and his past mental health referral. On December 11, 2006, Officer Demetri Oaks investigated Boya's neighbor's 4:30 a.m. complaint about drunks. Exhibit D. As a result of this complaint, Boya was cited for disorderly conduct on December 11, 2006, and had already been served with a summons to appear in district court on December 28, 2006, for his disorderly conduct charge. Thus, Officer Oaks had prior knowledge of Boya's intoxication and his latest run-in with his neighbor.

**Boya's Endangerment of the Three Toddlers and the Newborn Infant on December 26, 2006**

On December 26, 2006, at approximately 4:05 a.m. in response to concerns about the safety of her children, Joseph and Oaks arrived at the Olson residence in Hooper Bay. The officers discovered the front door had been left wide open, as well as the door separating the arctic porch and the residence. Joseph Affidavit at 2 and 3. The temperature was 5 degrees Fahrenheit. Exhibit E. Sgt. Joseph loudly knocked on the open door approximately four times and heard a faint voice say come in. Joseph Affidavit at 4. Joseph and Oaks stepped into the residence and went upstairs. At the top of the stairs, Joseph knocked again and heard the same faint voice say come in. Joseph Affidavit at 4.

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At the top of the stairs, Sergeant Joseph saw 23-year-old Boya's brother, passed out on the couch. Nearby, Boya was passed out on a bed. Joseph Affidavit at 5. Near the couch was another mattress on the floor, where three toddlers ranging from one to four years in age and a newborn infant were laying or sitting. *Id.* at 5. Sgt. Joseph asked the oldest toddler, four-year-old C.O., where everyone was and C.O. answered they weren't there. Joseph asked C.O. if [redacted] was sober and C.O. replied that [redacted] wasn't sober. Joseph asked C.O. if [redacted] had been drinking and C.O. indicated that [redacted] had been drinking. *Id.* at 6; Exhibit A at 37:57. Joseph saw trash on the floor and observed the floor was slippery because of a slime on the floor, making it hard to walk in certain areas. Joseph Affidavit at 7.

Sgt. Joseph walked to the bed where Boya was passed out, woke Boya, and asked him where everyone was. Boya responded that he was "good" and wanted to know why the police were there. Joseph told Boya that the police were there to do a welfare check and had found both doors to the residence had been left wide open. Boya responded: "Really?" Joseph Affidavit at 8; Exhibit A at 37:34. Joseph asked Boya to stand up so he could do a quick sobriety test. Boya immediately got confrontational and accused the police of "trespassing." Continuing to argue and refusing to immediately stand up as instructed, Boya appeared to Joseph to be belligerent and aggressive. Consequently, Sgt. Joseph handcuffed Boya. Joseph Affidavit at 9. Sgt. Joseph then tried to determine the age of the newborn, but Boya wasn't responsive. *Id.*; Exhibit A at 36:04. Meanwhile, the police tried to wake [redacted], but [redacted] did not regain consciousness. Joseph Affidavit at 10; Exhibit A at 36:04. Suddenly and unexpectedly, Boya began yelling: "No more! No more! This is bullshit!" See Exhibit A at

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35:45. The officers tried to calm Boya down by telling him, "There's a baby in the house, Boya." Id.; Joseph Affidavit at 10. However, Boya continued to yell and rant, claiming the police had not knocked and Boya had not said "come in." "You walked into my fucking bed. You go in there and wake me up! Bullshit!" Exhibit A at 35:05. It is only after Boya's screaming tirade, lasting over a minute, that [redacted] finally regained consciousness. Id. at 34:02; Joseph Affidavit at 10. After four attempts to get [redacted] to sit up, an officer handcuffed [redacted], telling him the cuffs would come off when the police were done with their welfare check.

**Boya's Combativeness While Police Sought Assistance For the Children "ASAP"**

Boya's arguing was continuous and loud. When the officers responded to Boya's aggressiveness by calling for backup, Boya went into a frenzy. Yelling at the top of his lungs, with [redacted] egging him on, Boya screamed: "This is bullshit!" and bellowed "trespass!" and "motherfucker!" at the officers. Exhibit A at 32:54. In response, the police again used the radio to call for backup "ASAP" to "assist with the kids." Id. at 31:01 - 30:56; Joseph Affidavit at 11.

Boya's reaction was to just yell louder. Boya also told the police:

Boya: "You can get shot for trespassing! You can get shot for trespassing!"

Officer: "Are you threatening me?"

Boya: "No. I'm telling you!"

Exhibit A at 29:35; Joseph Affidavit at 11. As Boya continued yelling at the police, the officers made their third call for backup in five minutes. See id. at 32:54 and 31:00 and 27:48; Joseph Affidavit at 12. Right after this third call for help, [redacted] tried to get up and approach Boya.

Exhibit A at 27:03. The officer instructed [redacted] to "Have a seat" and "Stay right there," in order to keep both brothers separated.

The Officers' Falls to the Floor and Boya's Kicking and Attempting to Bite

Less than three minutes after the last call for backup, Cpl. Charles Simon arrived. Sgt. Joseph gave the order to "Get him [Boya] out of here." Id. at 24:40. Cpl. Simon observed Boya's high degree of intoxication. Simon Affidavit at 4.

Simon and Oaks tried to get Boya to stand, telling Boya he was under arrest. However, Boya wrapped his legs around a pillar inside the house and refused to let go. Oaks Affidavit at 4. Boya was instructed several times to let go, but Boya continued to cling to the pillar. Simon Affidavit at 5. Cpl. Simon placed his hand on Boya's arm to help him stand, but Boya tried to bite Simon's hand. Id. at 5. When Oaks tried to unwrap Boya's legs from around the pillar, Boya kicked Oaks in the knee and leg, and Boya also kicked Simon. Oaks Affidavit at 4; Simon Affidavit at 6. As Boya was kicking at Simon and Oaks, Simon and Oaks slipped on the trash and fell to the ground alongside Boya. With Oaks and Simon on the ground, Boya continued to kick furiously, striking Simon in the chest and on the left thigh. Simon Affidavit at 6; Oaks Affidavit at 5. Meanwhile, Joseph struggled with [redacted] both on the couch and the floor until Joseph gained control of [redacted]; holding [redacted]'s legs together so that [redacted] would not kick. Joseph Affidavit at 13.

At this point, Boya intensified the physical struggle with the officers, prompting Cpl. Simon to warn: "Boya, if you don't comply I'm going to drive stun you. Let go of the pole."

Exhibit A at 23:09 - 23:04, Simon Affidavit at 7.

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Each of Boya's words are hard to pick up on the arrest tape since [redacted] is also yelling at the same time, but Boya's is still defiant after the verbal warning and the tasing, yelling contemptuously, as if the taser had little effect on him: "Is that all you got? . . . Motherfucker . . . Feels like a vibrator!" Exhibit A at 23:04 through 22:47.

While Boya taunted the officers, [redacted] tried to scheme with one of the children, saying: "You want to help your Dad? You know what to do! . . . Pliers . . . Pliers," as if [redacted] was trying to incite the child to find a weapon or find a method to break the restraint. See Exhibit A at 22:38-29.

Boya kept fighting after the taser was used, yelling "You son of a bitch!" over and over again. Id. at 21:59, 21:56, 21:49 and 21:45. During Boya's continued struggle, Simon had to do additional two-second drive stuns on Boya's back and collar bone. Cpl. Simon also told Boya: "Stop trying to kick; stop trying to bite and comply!" Id. at 20:28; Simon Affidavit at 8. Boya still continued fighting, while the officers tried to get Boya to "stop resisting." Simon Affidavit at 8.

Meanwhile, [redacted] was still struggling with Sgt. Joseph. See Exhibit A at 21:17. These passages are just one example of how quickly events were unfolding as the officers tried to establish order and control over the Olson brothers.

#### Boya Continued His Kicking and Combativeness Notwithstanding the Taser

Sgt. Joseph observed Boya kicking at Simon and Oaks some more and saw Boya move aggressively toward Oaks. In response, Sgt. Joseph deployed his taser. The prongs landed on Boya's right shoulder on the lining of his jacket, but apparently failed to make contact with

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Boya's skin. Joseph Affidavit at 15. At 19:30 during the sounds of an intense struggle, Boya was still arguing: "God damn it! Fuck you!" Exhibit A at 19:30. Then at 19:18, the sound of arcing is audible on the tape as if the taser is not making proper contact because of the struggle. Id. at 19:18; see Exhibit F at page 6. Sgt. Joseph believed he deployed his taser two times, but he could not feel the cycle working because of lack of sufficient contact with Boya. Joseph Affidavit at 15. As Boya continued to fight, Boya kicked towards Cpl. Simon again. Id. at 16. Joseph again deployed his taser, only to get kicked in the chest by Boya. Id. During the sound of arcing, the officers instructed Boya: "Stop. Boya, stop. Stop resisting. Stop resisting. Cooperate. Stop resisting. Are you going to comply? Are you going to comply, Boya? Are you going to comply? Stand up. Stand up, Boya." Exhibit A at 18:37.

At this point in the struggle, the radio dispatch interrupted, and one of the officers, obviously frustrated in the heat of the struggle at the speed and unexpectedness of the unfolding events, declared in frustration that he was "too busy to answer the phone; I just deployed a taser!" Exhibit A at 17:31-23. During this momentary interruption, Boya started yelling again. Id. at 17:03. An officer responded: "You going to comply?," but Boya continued arguing. Id. at 16:32. The officer continued to try to reason with Boya saying: "You can make everything a lot easier. Stand up. Stand up . . . just comply. . . . Stop fighting it. . . . Stand up. Are you going to stand up and comply? Are you going to stand up and comply? Stand up." Id. at 15:34. Finally, Boya said, "I'll sue you for trespass," and one of the officers mildly responded: "Okay." Id. at 15:04. An officer then asked Boya another six times whether he was going to comply and

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stand up, but Boya took several minutes to do so before finally allowing himself to be escorted out of the house. Id. at 13:47.

On the way to the police station, Boya twice said: "I want a drink from fighting you with guys." Id. at 12:34 and 12:25. After reaching the police station, the officer politely asked if Boya was going to continue to resist, reminding Boya, "You were kicking at us." Boya replied: "I was resisting." Id. at 10:13 to 9:47. Thus, Boya admits to both "fighting" with police officers and "resisting."

**Between the First and Last Taser Deployments it Still Took Two Officers Over Five Minutes to Control Boya's Kicking and Active Resistance**

The first tasing happened around the time Boya yelled "fuck you" at 23:37 on the arrest tape. The last tasing occurred around 18:30. Thus, it took the officers roughly five minutes and seven seconds to subdue Boya so that he stopped attacking the officers even with the multiple taser deployments. See Exhibit A. Even after 18:30, the last of the taser deployments, Boya continued to refuse to stand up so he could be escorted from the house for another almost five minutes. Id. at 18:30 through 13:47. During this last five minutes before Boya was walked to the police station, officers had to verbally seek his compliance and instruct him to stand up another twenty-eight times before they got him out of the house. See id.

**ARGUMENT**

**I. Qualified Immunity Is an Entitlement Not to Stand Trial and Is Often Resolved on Summary Judgment.**

Qualified immunity is an entitlement by a police officer or the police department "not to stand trial" for a police officer's supposed violation of a citizen's constitutional rights. See

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generally, Crawford v. Kemp, 139 P.3d 1249, 1256 (Alaska 2006) (“[p]rotecting the exercise of judgment of local officials from undue influence caused by the threat of litigation is necessary to promote the public interest.”). Qualified immunity is not a “mere defense to liability.” *See, e.g., Saucier v. Katz*, 533 U.S. 194, 200, 121 S.Ct. 2151 (2001). Accordingly, qualified immunity is a threshold affirmative defense to avoid the expense of a trial and the disruption a trial causes law enforcement and society at large. *Id.* 533 U.S. at 200-201. The “goal of qualified immunity [is] to ‘avoid excessive disruption of government and permit the resolution of many insubstantial claims on summary judgment.’” *Id.* 533 U.S. at 202 (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727 (1982)).

Superior Court Judge Ben Esch, applying federal precedent and Alaska’s recently “clarified” qualified immunity standards under Sheldon v. City of Ambler, found that a police officer’s use of a taser on a handcuffed, but resisting, suspect “was within the range of force a reasonable police officer in [the same] position could decide to use.” Exhibit I, March 20, 2008 Order, 1. Therefore, under the standards in Sheldon v. City of Ambler, \_\_\_ P.3d \_\_\_ (Slip opinion 6238, March 14, 2008), the court granted qualified immunity to the arresting officer and the City of Kotzebue, dismissing the taser/excessive force claims on summary judgment. *See generally, Crawford*, 139 P.3d 1249 (“If the law did not put the officer on notice that his conduct would be clearly unlawful, summary judgment based on qualified immunity is appropriate,” quoting Anderson v. Creighton, 483 U.S. 635, 639, 107 S.Ct. 3034 (1987)).

**II. Except in those Circumstances Where a Reasonable Police Officer Would Know the Law “Clearly Established” His Conduct Was Unlawful, the Officer and his Employer Are Entitled to Qualified Immunity.**

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"[Q]ualified immunity operates . . . to protect officers from the sometimes 'hazy border between excessive and acceptable force' . . . and ensure that before they are subject to suit, officers are on notice their conduct is unlawful." Saucier, 533 U.S. at 206; Sheldon v. City of Ambler, \_\_\_ P.3d \_\_\_ at \*8 (If the officer reasonably believed that his actions were legal, the officer is entitled to immunity.).

Thus, the relevant, dispositive inquiry for qualified immunity is whether a reasonable officer would know the law "clearly established" his conduct was unlawful. Id.; Saucier, 533 U.S. at 202. Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341, 106 S.Ct. 1092 (1986).

As the Alaska Supreme Court recently clarified in Sheldon, qualified immunity is also broad enough to protect police officers from claims arising from "reasonable mistakes" as to the appropriateness of police officer's use of force. The Court in Sheldon explains: "[T]here may be behavior that is objectively unreasonable but that nonetheless an officer might have reasonably believed was reasonable. If this is the case, then the officer should be entitled to qualified immunity for his behavior. As the Supreme Court wrote, '[t]he concern of the immunity inquiry is to acknowledge that reasonable mistakes can be made as to the legal constraints on particular police conduct. . . . If the officer's mistake as to what the law requires is reasonable . . . the officer is entitled to the immunity defense.' In other words, a reasonable but mistaken belief can confer immunity on an officer even after it has been established that the officer violated a constitutional right by behaving unreasonably." Sheldon v. City of Ambler,

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\_\_\_ P.3d \_\_\_ at \*8. Thus, when a police officer reasonably believed that his use of force was lawful and not excessive, the police officer is immune from suit. Id. at \*16.

In short, the immunity analysis asks: Would a reasonable officer in the same position have been "on notice" that his particular use of force would be unlawful? Id. at \*8. To determine "notice," the court can consider cases, laws, or regulations in or outside the jurisdiction which would suggest that the type of action taken by the officer is considered unlawful. Id. at \*14. The court's focus is whether there is any "clear" notice. Id. at \*15; Saucier, 533 U.S. at 208, 209 (since there was no "clearly established rule prohibiting the officer from acting as he did," the officer was entitled to immunity). If the officer reasonably believed that his actions were legal, the officer is entitled to immunity. Id. at \*8; Saucier, 533 U.S. at 202 ("If the law did not put the officer on notice that his conduct would be clearly unlawful, summary judgment based on qualified immunity is appropriate.").

**III. Demetri Oaks Never Deployed a Taser During this Incident, So He Is Clearly Entitled to Summary Judgment.**

The January 31, 2007 Complaint incorrectly alleges that all of the named officers "repeatedly tasered" Boya Olson. Demetri Oaks stated in his discovery requests that he never deployed a taser during the December 26, 2006 incident with Boya. Oaks' March 24, 2008, response to plaintiff's first discovery requests at request for admission nos. 1 and 2. Moreover, Oaks was not even armed with a taser during the welfare check at the Boya residence. City of Hooper Bay's March 24, 2008, response to plaintiff's first discovery requests at request for production 14. *See also* Oaks' Affidavit at 7.

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Since plaintiff's damage theory is premised on the officers tasing Olson, and Oaks never used a taser (or was even carrying a taser) during the incident in question, Oaks should be granted summary judgment. To the extent the claims against the City are premised on Oaks' conduct, the City is entitled to partial summary judgment.

**IV. The Officers Reasonably Believed Their Use of Force Was Lawful and Not Excessive, Entitling Defendants to Qualified Immunity.**

The qualified immunity analysis is rather simple after Sheldon v. City of Ambler. The court need not even "reach the further question of whether there is a genuine issue of material fact over whether" an officer's behavior "was 'objectively reasonable.'" Sheldon, \_\_\_ P.3d \_\_\_ at \*16. As long as the officers "could have reasonably believed that [their] use of force was lawful and not excessive," the defendants are "immune on this ground." Id. In this case, Officer Oaks, Sgt. Joseph and Cpl. Simons could have reasonably believed their use of force was lawful and not excessive, entitling them to qualified immunity, for the following reasons:

**A. The Officers Were Trained that Tasers Would Cause "No Injury" and Were an Objectively Reasonable Use of Force.**

Plaintiff will argue that a taser inflicts "50,000 volts," but it is never the volts which are dangerous, it is the amperes. The static electricity from a door knob can be 35,000 to 100,000 volts. Exhibit F at page 4, 5. A static electricity machine that will make fair-goers hair stand on end can be 1 to 20 million volts. Id. at 4. So, it is not the volts which are dangerous. A taser model X26 discharges less than .004 amps or 0.36 joules. Id. at 5. Compare that with a cardiac defibrillator, which we would all consider a "safe shock." A defibrillator discharge is

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greater than 150-400 joules per pulse, well over a hundred times stronger than a taser pulse. *Id.* at 5. See Joseph Affidavit at 18; Simon Affidavit at 15 and Oaks Affidavit at 11.

The X26 and M26 tasers used by the officers are third and fourth generation devices designed to override the central nervous system and cause muscle contractions to momentarily stun or incapacitate a person. Officers are trained to expect that as a result of a taser, suspects may fall to the ground as they momentarily lose control of their muscles or they may freeze in place with legs locked. Exhibit F at page 6. Officers are taught that the greater injury risk from tasers is the risk associated with a suspect falling down, rather than the taser deployment itself.

Hooper Bay Police Department officers are instructed that when escorting a suspect out of a building fails and a compliance technique is required, "The Taser or OC [pepper spray] weapons are generally the first non-lethal weapons used in the [force] continuum. Neither will cause injury or long lasting effect on the person." Exhibit G, Hooper Bay PD General Order 2-6 at page 3, "Compliance Techniques" (emphasis added).<sup>2</sup> See also Joseph Affidavit at 19; Simon Affidavit at 12 and Oaks Affidavit at 11.

The Hooper Bay officers were further instructed: "The use of a Taser stun device . . . is designed to confuse the signals going from the brain to the voluntary muscles and thereby achieve incapacitation without harming the human body." Exhibit H (emphasis added). See also Joseph Affidavit at 19; Simon Affidavit at 12 and Oaks Affidavit at 11. Under the Hooper

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<sup>2</sup>Defendants cite to the Hooper Bay PD General Order to show what these arresting officers were instructed as to what was objectively reasonable, an issue relevant to the court's immunity analysis. However, Defendants do not concede that the General Order was in any way intended to create a standard of care. See Exhibit H, "Note" and "policy" at page 1.

Bay Police Department procedures, officers are instructed that "The use of the Taser non-lethal weapon/Stun Device is objectively reasonable . . ." Exhibit G at page.

Officers are ordered to use a "full five second deployment" "without interruption to create the safest 'window of opportunity' for the apprehension of a subject." Exhibit G at page 9. These Hooper Bay Police Department standards also assure officers that a taser can be used on a "restrained or controlled suspect," when "the actions of the suspect present an immediate threat of death or great bodily harm or substantial physical struggle that could result in injury to themselves or any other person including the deploying officer." Exhibit G at 8.

**B. Under the Circumstances, the Officers Reasonably Believed the Use of the Taser Was Lawful and Reasonable.**

Based on how the officers were trained and instructed, the officers could have reasonably believed their use of force was lawful and not excessive.

First, the officers were instructed the taser would not "harm the human body" or "cause injury."

Second, Olson put up a substantial physical struggle in active resistance to the officers' efforts to escort him from the building, placing Olson and the officers at risk of great bodily harm. For example:

--When Cpl. Simon placed his hand on Boya's arm to help him stand, Boya tried to bite Simon's hand. Simon Affidavit at 5.

--When Officer Oaks tried to unwrap Boya's legs from around the pole, Boya resisted by kicking Oaks in the knee and leg, causing Oaks pain. Oaks Affidavit at 4.

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--Olson kicked Oaks twice on the leg, causing Oaks to fall down on the ground nearby, where Olson continued to struggle. Joseph Affidavit at 15; Oaks Affidavit at 4 and 5. Sgt. Joseph deployed his taser as a result of observing this assault on Oaks and after Olson started moving aggressively toward Oaks after he had fallen. Joseph Affidavit at 15.

--After the officers had slipped on trash and fallen to the floor alongside Olson, Olson continued to kick at Oaks and Simon, causing Simon to attempt to tase Olson. During this struggle, Simon was kicked in the chest and on his left thigh. Simon Affidavit at 6.

--When Joseph joined the struggle with Boya, after gaining compliance, Joseph got kicked in the chest by Boya, prompting Joseph to deploy the taser in an effort to stop Olson from fighting. Joseph Affidavit at 16.

These instances show that the use of the taser was prompted by the officers' attempts to stop Boya from attempting to bite and to stop Boya kicking all three officers. The taser deployments included a point in the struggle where the officers had fallen on the floor alongside a combative suspect. The taser deployments occurred when the three officers had two belligerent and kicking suspects to control. The tasers were used either in self-defense or in defense of other officers.

Third, Boya was highly intoxicated and his bursts of anger and violence were sudden and unpredictable. Given the slime on the floor and the trashy mess in the living area, Officer Oaks and Corporal Simon fell to the floor alongside a combative, volatile, furious Boya. Boya took advantage of the officers' fall, by kicking furiously and striking both Oaks and Simon with his

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kicks. While Boya struggled with Oaks and Simon, Joseph had his hands full dealing with

It is more than reasonable to conclude that in the heat of the moment, not knowing how Boya's violence could escalate and being confronted with two actively resisting suspects and with injured officers falling to the floor and physically grappling with Boya, use of a taser was necessary and appropriate.

Fourth, despite repeated taser deployments, the officers' tasing of Boya was not working. If the first tasing happened shortly after Boya's "fuck you" at 23:37 and the last tasing occurred at 18:30, it still took the officers roughly 5 minutes, 7 seconds, to subdue Boya so that he stopped attacking the officers with his kicking. The tasing was not working on Boya. The tasing did not stop Boya from continuing to kick the officers, kicking them in the chest, knee, and leg. Boya was doing so much struggling that the officers could not make sufficient contact with Boya to cause the taser to have an effect. The sound of the taser arcing on the arrest tape is evidence that the arc was shorting out and the taser was not effective.

**Exhibit F** at page 7.

Fifth, the police officers clearly tried to employ the minimum force on the battling Boya. For example, instead of the full five second deployment of the taser, Cpl. Simon only used two second deployments. Simon Affidavit at 8. In addition, the arrest tape clearly documents efforts by officers to give verbal warnings, prior to the taser deployments. *See, e.g.*, Simon Affidavit at 7 and 8. The taser was deployed when Boya refused to comply with officers' repeated verbal instructions and while Boya was fighting. *Id.* Moreover, after seeing that the taser was not working on Boya, Cpl. Simon considered using pepper spray on Boya, but refrained from using

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the pepper spray to avoid any indirect injury to the newborn, who was also in the house. *Id.* at 10. Finally, even after 18:30, after the last of the taser deployments, Boya continued to refuse to stand up so he could be escorted from the house for almost another five minutes. Nevertheless, the officers did not continue to use the taser after 18:30, but instead tried to talk to Boya to get him to stand up. During this last five minutes, officers had to verbally seek his compliance and instruct Boya to stand up another *twenty-eight* times before officers finally escorted him from the house. See Exhibit A. The officers' choice to stop tasing and talk Boya out of his final five minutes of resistance is further evidence these officers tried to minimize their use of force.

**C. The Officers Had No Clear Notice that the Use of a Taser Under these Circumstances Was Unlawful and Excessive.**

In Sheldon, the Alaska Supreme Court declared that statutes such as AS 11.81.370 and AS 12.25.070 are "general statutes only" and "[s]uch statutes cannot purport to give notice to officers that specific actions taken in specific circumstances may or may not be reasonable." Sheldon, \_\_\_ P.3d \_\_\_ at \*14. Therefore, the "clear notice" officers must have that their particular conduct is unlawful must be based on some other source than a general prohibition against "excessive force."

As previously noted, Judge Ben Esch recently ruled in Page v. City of Kotzebue, that the use of a taser on a resisting suspect was within the range of force a reasonable police officer could decide to use under the circumstances. Exhibit I at page 1. Judge Esch reasoned that since the handcuffed arrestee was "actively resisting" there was no clear notice the use of a taser was unlawful. *Id.* Accordingly, Judge Esch granted summary judgment to the police officer and the City on the grounds of qualified immunity. *Id.*, 2. A similar result is appropriate in this case.

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There is no "clear notice" that the use of a taser on a person attempting to bite or actively kicking police officers in the chest, knee and legs is unlawful. In fact, the City of Hooper Bay specifically authorizes the use of a taser to prevent a "substantial physical struggle that could result in injury" to any person including the deploying officer. Exhibit G at page 8. There is no "clear notice" that the multiple deployments of a taser are excessive when a struggling suspect breaks the effective contact between himself or when the taser has no apparent effect in subduing a fighting and combative suspect.

Even if Boya was not actively kicking the officers or attempting to bite them, it would have been appropriate to use a taser to stop Boya from clinging to the pillar and resisting police efforts to escort him from the dwelling. *See, e.g., Schumacher v. Halverson*, 467 F.Supp.2d 939, 952 (D. Minn. 2006) (grabbing onto pole of a basketball backboard to prevent officer from escorting suspect to a patrol car was "active resistance" justifying the use of a taser and entitling officer to qualified immunity).

### CONCLUSION

was highly argumentative and threatened to kick Sergeant Joseph, but was not tased because Sergeant Joseph managed to constrain so that he would not kick. Only Boya was tased, but only after he attempted to bite Cpl. Simon and only after Boya started kicking the officers multiple times. Ultimately, Boya managed to kick all three officers either in the chest, knee, or leg. The injuries to the officers could have been even worse if the taser had not been used. Even with the taser use, it took over five minutes and multiple taser deployments to subue Boya so he stopped physically attacking the officers. Even after the last taser

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deployment following another flurry of kicking by Boya, it took the officers at least another five minutes of verbal instructions to get Boya to stand up so that he could be escorted out of the dwelling. Under these particular circumstances, the officers had no clear notice that their use of a taser was unlawful or unreasonable. In fact, the taser deployments were reasonable and the officers actively tried to minimize the use of force on Boya. Defendants ask the Court to grant summary judgment on qualified immunity.

DATED this 11 day of April, 2008, at Bethel, Alaska.

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Bar No. 0605029

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT BETHEL

THOMAS J. OLSON,

Plaintiff,

vs.

CITY OF HOOPER BAY, OFFICER DIMITRI,  
OAKS, OFFICER CHARLES SIMON, and  
OFFICER NATHAN JOSEPH,

Defendants.

Case No. 4BE-07-26 CI

**ORDER GRANTING SUMMARY JUDGMENT FOR DEMETRI OAKS & PARTIAL  
SUMMARY JUDGMENT FOR THE CITY AS TO THE CLAIMS AGAINST OAKS**

Plaintiff's complaint is premised on the assumption that Officer Demetri Oaks deployed a taser on December 26, 2006. Officer Oaks has satisfied his burden on summary judgment by showing that he never deployed a taser and was not even armed with a taser at the Thomas "Boya" Olson residence on December 26, 2006.

Accordingly, the Court grants summary judgment in favor of Demetri Oaks on plaintiff's claims. For the same reasons, the City is granted partial summary judgment against plaintiff to the extent plaintiff's claims against the City were premised on Demetri Oaks' conduct.

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

Hon. Leonard R. Devaney, III  
Superior Court Judge

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT BETHEL

THOMAS J. OLSON,

Plaintiff,

vs.

CITY OF HOOPER BAY, OFFICER DIMITRI,  
OAKS, OFFICER CHARLES SIMON, and  
OFFICER NATHAN JOSEPH,

Defendants.

Case No. 4BE-07-26 CI

**ORDER GRANTING SUMMARY JUDGMENT ON QUALIFIED IMMUNITY**

Defendants have jointly moved for summary judgment on qualified immunity. Based on the record, the court FINDS as follows:

- (1) Sgt. Nathan Joseph's use of force on Thomas Boya Olson on December 26, 2006, was within the range of force a reasonable police officer could have decided to use, given the circumstances, including Boya Olson's active resistance, his assault on the officers, and efforts to kick police officers;
- (2) Cpl. Charles Simon's use of force on Thomas Boya Olson on December 26, 2006, was within the range of force a reasonable police officer could have decided to use, given the circumstances, including Boya Olson's active resistance, his assault on the officers, his attempt to bite Charles Simon, and efforts to kick police officers;
- (3) Officer Demetri Oaks' use of force on Thomas Boya Olson on December 26, 2006, was within the range of force a reasonable police officer could have decided to use, given the circumstances, including Boya Olson's active resistance, his assault on the officers, and efforts to kick police officers;
- (4) Given the circumstances detailed in defendants' briefing and the record, Officers Joseph, Simon and Oaks had no clear notice that their use of force, including Joseph and Simon's use of a taser was unlawful, unreasonable or excessive.

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Defendants' motion for summary judgment on qualified immunity is granted. In addition, since the City of Hooper Bay's supposed liability was premised on the liability of the officers, the City is entitled to summary judgment on plaintiff's claims.

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Hon. Leonard R. Devaney, III  
Superior Court Judge

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT BETHEL

THOMAS J. OLSON,

Plaintiff,

vs.

CITY OF HOOPER BAY, OFFICER DIMITRI,  
OAKS, OFFICER CHARLES SIMON, and  
OFFICER NATHAN JOSEPH,

Defendants.

Case No. 4BE-07-26 CI

Affidavit of Nathan Joseph

1. My name is Nathan Joseph. I am a sergeant with the City of Hooper Bay Police Department.
2. On December 26, 2006, \_\_\_\_\_ called the Hooper Bay Police Department saying that Thomas "Boya" Olson was drunk and her young children were alone with him at his house. She asked the police department to check the children to see if they were safe at Boya's house.
3. Corporal Oaks and I arrived at the Olson house about 4:05 a.m. to conduct the welfare check. We discovered the front door of the Olson residence had been left wide open. We also saw that the door separating the arctic porch and the house had been left open. It was freezing outside.
4. I loudly knocked on the open door about 4 times and heard a faint voice say come in. Corporal Oaks and I stepped into the Olson house and went upstairs. At the top of the stairs I knocked again and heard the same voice say come in.
5. At the top of the stairs, I saw \_\_\_\_\_, Boya's brother, passed out on the couch. Nearby Boya was passed out on the bed. Near the couch was another mattress on the floor where there were three toddlers and a newborn infant. The toddlers looked to be between 1 and 4 years old.
6. I asked the oldest toddler, O.C., where everyone was and he said they weren't there. I asked the toddler if \_\_\_\_\_ was sober and he said he wasn't. I asked the toddler if \_\_\_\_\_ had been drinking, and the toddler indicated \_\_\_\_\_ had been drinking.

Affidavit of Nathan Joseph  
Olson v. Hooper Bay, Case No. 4BE-07-26 CI

7. In the living area I saw trash on the floor and the floor was slippery because of a slime on the floor, making it hard to walk in certain areas.

8. I walked to the bed were Boya was passed out, woke Boya, and asked him where everyone was. Boya wanted to know why the police were there. I told Boya we were there to do a welfare check. I told Boya we had found both doors had been left wide open. Boya answered: "Really?"

9. I asked Boya to stand up so he could do a quick sobriety test. Boya started arguing and accused us of "trespassing." Boya refused to stand up as instructed and he appeared as if he was going to attack, so I put handcuffs on him. I also tried to determine the age of the newborn baby, but Boya won't tell me the baby's age.

10. I tried to wake up , but remained passed out. All of a sudden, Boya began yelling and Officer Oaks and I tried to calm Boya down saying, "There's a baby in the house, Boya." But Boya wouldn't calm down and yelled some more. Boya got so loud that finally regained consciousness. The noise it took to wake up confirmed my impression that was drunk and had been passed out.

11. Because of how much Boya was fighting, we called for backup ASAP to assist with the kids. This caused Boya to yell even louder. Boya then threatened us, saying "You can get shot for trespassing!" When I asked Boya if he was threatening us, Boya yelled: "No, I am telling you!"

12. After Boya continued to yell and scream, Corporal Oaks and I made our third call for backup. We did not know what Boya would do because Boya was so excited and mad.

13. When Officer Charles Simon arrived, I instructed the officers to escort Boya from the house. Boya reacted by struggling with Simon and Oaks and wrapping himself around a pillar. During the struggle, both Simon and Oaks fell to the floor. Then seemed like he was getting ready to kick me, so I struggled to control .

14. Boya would not listen to Corporal Simon's instructions and continued to struggle, so Corporal Simon warned Boya he would be drive stunned if he did not comply. In response to the taser drive stun, it sounded to me at that time like Boya yelled out: "Is that all you got--Bitch!"

15. Even after being drive stunned, Boya still fought and refused to comply. When Boya started kicking again, I saw Officer Oaks get kicked twice in the leg and fall down. Then Boya started moving towards Officer Oaks, so I shot my taser. The prongs from the taser landed on Boya's right shoulder, with one prong caught on Boya's jacket. I did not think my taser shot made contact with Boya's skin. I deployed two cycles, but I couldn't feel the cycle working on Boya. Boya continued to resist.



16. After stopped struggling with me, I went to help with Boya. Boya kicked towards Corporal Simon again and Boya kicked me in the chest. We managed to get Boya onto his belly, but we had to use the taser again as Boya continued to struggle and refused to stop. Boya was repeatedly instructed by Corporal Simon to stop resisting during this time, but it still took all of our efforts before Boya stopped fighting.

17. Boya and were intoxicated and passed out when we showed up. The doors had been left wide open creating a dangerous situation for the kids. I charged Boya with 4 counts of reckless endangerment. Because Boya kicked Officer Simon in the chest, the thigh and the shin and kicked Officer Oaks twice in the leg and kicked me in the chest, I charged Boya with three counts of assaulting police officers. Boya was also charged with resisting arrest.

18. I believe that the use of the tasers and other force required to arrest Boya on December 26, 2006, was reasonable because of how much Boya was fighting and because he was kicking us.

19. I remember during my training I was told that a taser wouldn't cause injury or have an effect for more than a few seconds. I was trained that a taser had low "amps" so it won't permanently hurt somebody.

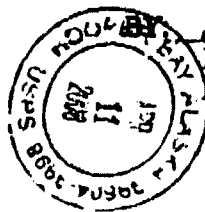
20. I believe if we hadn't used the tasers on December 26, 2006, the injuries could have been a lot worse. Boya managed to kick all three officers. A policeman can be seriously hurt if he is kicked in the knee, leg, chest or elsewhere. Boya could have kicked us more if we hadn't tased him. Boya was so hard to predict and so mad and so drunk he could have fought us even more if we'd not used force to restrain him.

DATE: 4-11-08

BY: [Signature]  
Nathan Joseph

SUBSCRIBED AND SWORN TO before me a Notary Public for the State of Alaska.

DATE: 4/11/2008



Chick Fubky, Postmaster  
Notary Public  
My commission expires if employment

Affidavit of Nathan Joseph  
Olson v. Hooper Bay, Case No. 4BE-07-26 CI

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT BETHEL

THOMAS J. OLSON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CITY OF HOOPER BAY, OFFICER DIMITRI, )  
 OAKS, OFFICER CHARLES SIMON, and )  
 OFFICER NATHAN JOSEPH, )  
 )  
 Defendants. ) Case No. 4BE-07-26 CI  
 )  
 )

Affidavit of Charles Simon

1. My name is Charles Simon. I am a corporal with the City of Hooper Bay Police Department.
2. On December 26, 2006, I was called to backup Sgt. Joseph and Officer Oaks at Boya Olson's house during a welfare check on Olson's kids.
3. When I arrived at the Olson residence, I observed three toddlers and a newborn baby. The floor was also messy and full of trash, making the floor inside the house very slippery.
4. Boya Olson appeared to be very drunk when I observed him on December 26, 2006. He staggered when he walked and swayed when he stood. Boya was also fighting and uncooperative when Officer Oaks and I tried to escort him outside.
5. Officer Oaks and I tried to get Boya to stand up and come with us, but Boya refused. Boya wrapped his legs around a pillar and refused to stand up. I instructed Boya several times to let go of the pillar, but Boya continued to cling to the pillar. Officer Oaks and I tried to get Boya to stand, telling him he was under arrest and he had to come with us. When I placed my hand on Boya's arm to help him stand, Boya tried to bite me.
6. Boya then started kicking at Officer Oaks and me. Oaks and I slipped on trash, falling to the floor. I saw Boya kick Officer Oaks several times. When I approached Boya and tried to make him stop kicking, Boya kicked me in the chest and on the left thigh and again on my leg. Boy's kick on my thigh really hurt.

Affidavit of Charles Simon  
Olson v. Hooper Bay, Case No. 4BE-07-26 CI

7. Prior to attempting to drive stun Boya, I warned him: "Boya, if you don't comply, I'm going to drive stun you. Let go of the pole." Boya refused to let go of the pole. Boya continued to fight.

8. Boya kept fighting after my deployment of the taser, yelling "You son of a bitch!" over and over again. When Boya continued to struggle and wouldn't follow my instructions, I had to deploy additional 2-second drive stuns on Boya's back and just above the collarbone. The tasing did not make Boya follow my instructions. I told Boya: "Stop trying to kick. Stop trying to bite and comply!" But Boya still continued to fight and resist, while Officer Oaks I continued to tell Boya: "Stop resisting."

9. Boya started to kick at Officer Oaks and me again, so Sgt. Joseph deployed his taser. The taser was deployed several times while Boya continued to struggle. Even after the last taser deployment Boya continued to resist for several minutes while we tried to calm him down.

10. I would have used my pepper spray when the taser didn't stop Boya from fighting, but I didn't because there was a newborn in the house.

11. It was reasonable to use the force we used on Boya, including the tasers, because of how much Boya was fighting, because he was kicking us and trying to bite, and because he wouldn't follow our verbal instructions. Officer Oaks and I were also in tough position to defend ourselves when we fell to the floor and Boya kicked at us. Sgt. Joseph couldn't immediately help us since [redacted] was also struggling and yelling.

12. I was trained that a taser wouldn't cause injury or have an effect more than a few seconds. I was trained that a taser had low "amps" so it won't permanently hurt somebody.

13. I believe if we hadn't used the tasers on December 26, 2006, the injuries could have been a lot worse. Boya kicked me and Officer Oaks and Sgt. Joseph. An officer can be seriously hurt if he is kicked in the knee, leg, or chest like we were. Boya could have kicked us more if we hadn't tased him. Boya was so mad and drunk he could have fought us even more if we'd not used force to restrain him.

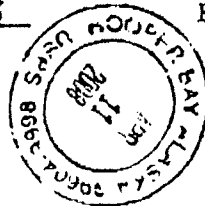
DATE: 4-11-08

BY: [Signature]  
Charles Simon

SUBSCRIBED AND SWORN TO before me a Notary Public for the State of Alaska.

DATE: 4/11/2008

BY: [Signature] Notary Public  
My commission expires 10/15/2010



Affidavit of Charles Simon  
Olson v. Hooper Bay, Case No. 4BE-07-26 CI

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT BETHEL

THOMAS J. OLSON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CITY OF HOOPER BAY, OFFICER DIMITRI, )  
 OAKS, OFFICER CHARLES SIMON, and )  
 OFFICER NATHAN JOSEPH, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

Case No. 4BE-07-26 CI

**Affidavit of Demetri Oaks**

1. My name is Demetri Oaks. I am an officer with the City of Hooper Bay Police Department.
2. On December 26, 2006, I assisted Sgt. Joseph. asked the police to check on the welfare of small children Boya Olson was caring for. believed Boya was intoxicated and alone with the kids. It is my understanding that Boya and are the children's parents.
3. I observed that Boya Olson was very drunk the evening of December 26, 2006, when I did the welfare check with Sgt. Joseph.
4. Office Simon and I tried to get Boya to stand up and go outside with us, but Boya refused. Boya wrapped his legs around a floor to ceiling pole inside the house and wouldn't let go. I tried to loosen Boya's legs from around the pole, but Boya kicked me in the knee and leg, hurting me. I also saw Boya kick Officer Simon.
5. During our struggle with Boya, Officer Simon and I slipped on the slick floor and fell down. While Corporal Simon and I were on the floor, Boya kicked us some more.
6. When Corporal Simon tased Boya to try to stop him from fighting, Boya just fought more.
7. During the incident in the Boya residence, I was not armed with a taser, and I did not deploy a taser.

Affidavit of Demetri Oaks  
Olson v. Hooper Bay, Case No. 4BE-07-26 CI

8. While Boya was escorted from the residence, I stayed behind with the toddler and newborn until additional help arrived. When Simon returned, I brought to the police department.

9. I thought Officers Joseph's and Simon's use of tasers on December 26, 2006, was reasonable. The tasers were used because Boya was kicking us and wouldn't let go of the pillar and wouldn't stand so we could escort him outside.

11. The City of Hooper Bay Police Department instructed us officers that a taser wouldn't cause injury or have an effect more than a few seconds. I was trained that a taser had low "amps" so it won't permanently hurt somebody.

12. If the tasers hadn't been used on December 26, 2006, the injuries could have been a lot worse or Boya could have kicked us even more.

DATE: 4/11/08

BY: Demetri Oaks  
Demetri Oaks

SUBSCRIBED AND SWORN TO before me a Notary Public for the State of Alaska.

DATE: 04/11/2008

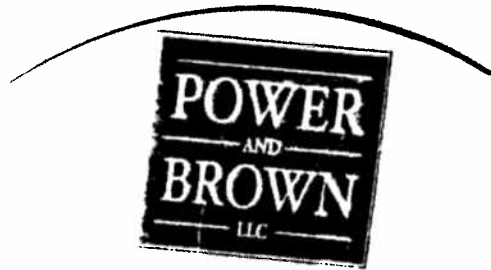
BY: Mark Fultz, Post Master  
Notary Public

My commission expires: w/employment



Affidavit of Demetri Oaks  
Olson v. Hooper Bay, Case No. 4BE-07-26 CI

**Audio Recording of the Arrest of Thomas J. Olson**  
**(Exhibit A to Motion for Summary Judgment)**



Thomas Olson  
v.  
City of Hooper Bay, et al.  
S-13455  
Trial Ct. 4BE-07-00026 CI  
Appellant's Exc. 42

**STATE OF ALASKA  
DEPT. OF PUBLIC SAFETY**

CASE NO.

17 201 (INV. REPORT) SHORT FORM

INVESTIGATING AGENCY <b>Hooper Bay Public Safety</b>		DETACHMENT <b>C</b>	DATE REPORTED <b>6-26-98</b>	TIME REPORTED <b>06:00</b>	DATE OCCURRED <b>06:00</b>	APPT. TIME COLUMBUS	OFF.
OFFENSE CODE <b>9931</b>	UCR NO. <b>22</b>	TYPE OF OFFENSE <b>Furn Alcl to Minors</b>	LOCATION OF OFFENSE/ACTIVITY <b>Hooper Bay</b>		PATROL FORM		
RELATIONSHIP OF VICTIM TO OFFENDER		ALCOHOL OR DRUGS INVOLVED <b>A</b>	WEAPON CAUSE	SITUATION CODE	VIOLENT CRIME DOMESTIC VIOLENCE NOTICE GIVEN		
PARISH <b>I</b>	RELIGION <b>D</b>	NAME <b>Thomas J. Olson</b>	IDENTIFICATION NO.		TYPE OF IDENTIFICATION		STATE
HOME PHONE <b>None</b>		WORK PHONE <b>None</b>	DATE OF BIRTH <b>11-24-76</b>	SOCIAL SECURITY NO.	SEX <b>M</b>	RACE <b>I</b>	HT. WT. HAIR EYES <b>5'11" 160 BLK BRO</b>
RESIDENCE ADDRESS <b>Hooper Bay</b>			MAILING ADDRESS <b>Hooper Bay</b>		COMPANYPHONE ADDRESS/OCCUPATION		
DATE INTERVIEWED	ADVISED OF RIGHTS	STATEMENT TAKEN	CRIMINAL RECORD	PREP. RECORD	SHOOP ALCOHOL PERMITS		
CHARGED WITH	OFFENSE CODE <b>9931</b>	UCR NO. <b>22</b>	CHARGED BY	P	W	S	SUMMONS NO.
VEHICLE	LICENSE PLATE NO.	STATE	VEHICLE IDENTIFICATION NO.	VEH. YR.	MAKE	MODEL	BODY STYLE
COLOR	NUMBER OF OCCUPANTS	EVIDENCE FOUND IN VEHICLE	EVIDENCE SEIZED	VEHICLE IMPOUNDS	PHOTOS TAKEN	NO PHOTOS	
PROPERTY LOSS / RECOVERY VALUES		TYPE	TYPE	TYPE	TOTAL \$ LOSS		TOTAL \$ RECOVERED
<b>SYNOPSIS:</b>							
<p align="center">On 6-26-98 Thomas Jan Olson furnished Alcohol to minors B.O. Sr., B.S. Sr., J.O., L.O., M.U., and S.U. Thomas is also on felony probation, he was also drinking and highly intoxicated requesting for an arrest warrant.</p>							
CASE CLERK	AGENT	PROP. JUDGE	UNDOUBTED	NO DELAY	EXCEPTION	CASE REP.	APPROVED TO
APPROVED BY <b>Nathan Joseph</b>		FORM NO. <b>WJ-7</b>	REVIEWED & APPROVED BY:		TERM. CHGT.	DATE CLERKED	PAGE 1 OF 1

Exhibit B  
Page 1 of 1

40  
STATE OF ALASKA  
DEPT. OF PUBLIC SAFETY

CASE NO  
94-19477

12-201 (INV. REPORT) SHORT FORM

INVESTIGATING AGENCY AST/NPSO	DETACHMENT D	UNIT Beta	DATE REPORTED 4-1-94	TIME REPORTED 0155	DATE OCCURRED 4-1-94	APPE 0155	FILE OCCURRED X	APPR	
OFFENSE CODE 5543	UCR NO	TYPE OF OFFENSE Attempt Suicide/inflicted self	LOCATION OF OFFENSE/ACTIVITY At Eric Olson res.			PATROL ZONE RESA			
RELATIONSHIP OF VICTIM TO OFFENDER AA	ALCOHOL OR DRUGS INVOLVED None	WEAPON CAUSE RT	SITUATION CODE A	VIOLENT CRIMES/DOMESTIC VIOLENCE NOTICE GIVEN		VC	DC	JUV ORDP	
PERPETRATOR T	ROLE V	NAME Thomas J Olson	IDENTIFICATION NO. AP-10100320	TYPE OF IDENTIFICATION		STATE			
HOME PHONE NONE	WORK PHONE	DATE OF BIRTH	SOCIAL SECURITY NO.	SEX M	RACE I	HT	WT	HAIR DK	EYES BRN
RESIDENCE ADDRESS Egan Hill Hopper Bay, Ak	MAILING ADDRESS Gen Del		COMPANY/WORK ADDRESS / OCCUPATION UNemployed						
DATE INTERVIEWED 5-12-94	ADVISED OF RIGHTS X	STATEMENT TAKEN X	CRIMINAL RECORD Y	PNP RECORD Y	BLOOD ALCOHOL RESULTS				
CHARGED WITH	OFFENSE CODE	UCR NO	CHARGED BY	P	W	B	BUSINESS NO.		
VEHICLE	LICENSE PLATE NO.	STATE	VEHICLE IDENTIFICATION NO.	VEH. YR.	MAKE	MODEL	BODY STYLE		
COLOR	NUMBER OF OCCUPANTS	EVIDENCE FOUND IN VEHICLE	EVIDENCE SEIZED	VEHICLE IMPOUNDED	PHOTOS TAKEN	NO PHOTOS			
PROPERTY LOSS / RECOVERY VALUES	TYPE	TYPE	TYPE	TOTAL \$ LOSS		TOTAL \$ RECOVERED			
<p>SYNOPSIS: ON 4-1-94 at approximately 0155 hrs VPO Lacy + VPO Simon informed VPSO Nukusink that Thomas J. Olson had shot himself.</p> <p>At the Eric Olson res. the health aides, Linda Matchian and Ruth Ingalian were treating T. Olson for a gunshot wound on the left shoulder. Eric Olson Sr stated that Thomas "Boya" Olson had been playing loud music but told his dad not to go out and showed him his gunshot wound. E. Olson Sr had not heard a gunshot due to loud music and that T. Olson had been acting strange after coming back from Chevak like girlfriend problem. E. Olson Sr stated T. Olson has a girlfriend in Chevak.</p> <p>When Thomas Olson was asked why he shot himself, Olson stated he shot himself mainly due to girlfriend problems.</p>									
<p>205/20/04 01</p>									
CASE CLOSURE	INDEXED	PROB DECL	UNFOUNDED	NO CHARGE	EXCEPTION X	CASE REF	REFERRED TO	COPIES TO Mentel Health	
REPORTING OFFICER JDC	PERM IO	REVIEWED & APPROVED BY	TEAM LEAD	DATE CLOSED					

Exhibit C  
Page 1 of 1





# STATE OF ALASKA DEPT. OF PUBLIC SAFETY

Case No.  
**HPB-06-4029**

Offense  
**"C"**

Unit  
**RESA**

Reporting Officer  
**Demetri Oaks**

Permit  
**DO10**

Investigating Agency  
**Hooper Bay Police Department**

Date Reported  
**12/11/06**

Time Reported  
**0430**

12-301 (REV 4-03)

ACT #	Activity Code	UCR No.	Statute / Regulation	Type of Activity	Date Occurred	Time Occurred
1	5311	23	11.61.100	Disorderly Conduct	12/11/06	0430hrs

Location of Activity  
**Gen. Del. Hooper Bay AK. 99604**

N: \_\_\_\_\_ W: \_\_\_\_\_

Patrol Zone  
**RESA**

Dist. Vial  
\_\_\_\_\_

Alcohol or Drugs Involved  
**A**

ACT #	Activity Code	UCR No.	Statute / Regulation	Type of Activity	Date Occurred	Time Occurred
2						

Location of Activity  
N: \_\_\_\_\_ W: \_\_\_\_\_

Patrol Zone  
\_\_\_\_\_

Dist. Vial  
\_\_\_\_\_

Alcohol or Drugs Involved  
\_\_\_\_\_

Part No.	Role(s)	Name	Sex	Race	Ht	Weight	Hair	Eyes	D.O.B. / Approx. Age
1	DI	Thomas J. Olson (Boys)					BLK	BRO	

Residence Address  
**Gen. Del. Hooper Bay AK. 99604**

Residence / Cell Phone  
**NA**

Driver's License No.  
\_\_\_\_\_

State  
\_\_\_\_\_

Place of Employment  
**NA**

Work Phone  
\_\_\_\_\_

Occupation  
**LABOR**

VCCB  
\_\_\_\_\_

APSN ID No.  
**6515602**

Social Security No.  
\_\_\_\_\_

ATN / NCIC / Other ID No.  
**110090178**

Charged With  
**1P**

Susp. Act. No.  
\_\_\_\_\_

Juv. Dispo.  
\_\_\_\_\_

Part No.	Role(s)	Name	Sex	Race	Ht	Weight	Hair	Eyes	D.O.B. / Approx. Age
2	WI		F	I			BLK	BRO	

Residence Address  
**Gen. Del. Hooper Bay AK. 99604**

Residence / Cell Phone  
**NA**

Driver's License No.  
\_\_\_\_\_

State  
\_\_\_\_\_

Place of Employment  
**NA**

Work Phone  
\_\_\_\_\_

Occupation  
**LABOR**

VCCB  
\_\_\_\_\_

APSN ID No.  
\_\_\_\_\_

Social Security No.  
\_\_\_\_\_

ATN / NCIC / Other ID No.  
\_\_\_\_\_

Charged With  
\_\_\_\_\_

Susp. Act. No.  
\_\_\_\_\_

Juv. Dispo.  
\_\_\_\_\_

NUMB.	REGISTRATION NO.	STATE	VIN / SERIAL NO.	COLOR	YEAR	MAKE	MODEL
1							

BODY STYLE / TYPE	ADF&Q NUMBER	NAME OF WATERCRAFT	Length

SYNOPSIS / DETAILS:

That on 12/11/06 at approximately 0430 hours Thomas J. Olson committed the offense of Disorderly Conduct by playing loud music at a very loud volume and was told to turn it down and all he did was give me the middle finger and turn up the music and kept on waving his middle finger at me. He was weaving back and fourth and was intoxicated. would not turn down music when told to.

CASE CLOSURE <b>CR</b>	COPIES TO <b>District Attorney's Office</b>	REVIEWED AND APPROVED <i>[Signature]</i>	Permit <b>DO10</b>	DATE CLOSED _____
---------------------------	--	---	-----------------------	----------------------



12-202 (REV 1002)

# STATE OF ALASKA DEPT. OF PUBLIC SAFETY

Case No.	
HPB-06-4029	
Date Investigated	
12/11/2008	
Detach	UnitID
*C*	HB PD

Reporting Officer	PermID	Investigating Agency
Demetri Oaks	DO10	Hooper Bay Police

INFORMATION:

That on 12/11/08 at approximately 0430 hours M S called the Hooper Bay Police Department and stated that there was a couple of drunks making noise outside of her residence. I respond to check on the drunks outside of her residence.

OBSERVATION:

I observed that there was no drunks outside of M S residence but I heard loud music coming from Thomas [Boya] Olsons residence and that no one was around.

INFORMATION:

I went and knocked on Thomas [Boya] Olsons door several times and no one would answer the door because he was blasting his music and could not hear me knocking on his door. I then went to the window where he was standing playing his music loud and flashed my flash light at him and he looked at me and gave me the middle finger when I told him to turn down his music and he just turned it louder and kept on waving his middle finger back and fourth and that he was swaying back and fourth as he stood. he would not turn down his music.

INVESTIGATION:

Investigation revealed that Thomas Olsons was intoxicated in his residence swaying back and fourth blasting his music and and giving me the middle finger and would not turn it down when told to.

INFORMATION:

That Thomas was intoxicated and swaying back and forth and would not turn down his music when told to he would just give me the middle finger and wave it back and forth. A summons was requested thru Chevak District Court and that he has a court on December 28, 2008 at Chevak District Court. The summons was served on December 11,2008.

REVIEWED AND APPROVED BY	PermID	Date
<i>[Signature]</i>	JOC1	12-26-08

PAGE

Exhibit   D    
Page   2   of   2  

Exc. 46

U.S. Department of Commerce  
National Oceanic & Atmospheric Administration

QUALITY CONTROLLED LOCAL  
CLIMATOLOGICAL DATA  
(final)  
HOURLY OBSERVATIONS TABLE  
HOOPER BAY AIRPORT (26661)  
HOOPER BAY, AK  
(12/2008)

National Climatic Data Center  
Federal Building  
151 Patten Avenue  
Asheville, North Carolina 28601

Elevation: 0 ft. above sea level  
Latitude: 61.524  
Longitude: -166.147  
Data Version: VER2

Date	Time (LST)	Station Type	Sky Conditions	Visibility (SM)	Weather Type	Dry Bulb Temp		Wet Bulb Temp		Dew Point Temp		Rel Humid %	Wind Speed (MPH)	Wind Dir	Wind Gusts (MPH)	Station Pressure (in. hg)	Pres Tend	Net 3-hr Chg (mb)	Sea Level Pressure (in. hg)	Report Type	Precip. Total (in)	Altimeter (in. hg)
						(F)	(C)	(F)	(C)	(F)	(C)											
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
28	0050	O	OVC012	10.00		7	-14.0	5	-14.0	-4	-20.0	80	8	290		29.63		M	AA		29.55	
28	0150	O	OVC012	10.00		7	-14.0	8	-14.3	3	-18.0	83	10	300		29.54		M	AA		29.68	
28	0250	O	OVC012	10.00		5	-18.0	4	-15.4	1	-17.0	83	11	280		29.56		M	AA		29.67	
28	0350	O	OVC012	10.00		6	-18.0	3	-18.2	-11	-24.0	47	13	310	17	29.58	2	010	M	AA	29.57	
28	0450	O	OVC012	10.00		5	-18.0	3	-16.1	-8	-22.0	54	7	300		29.58		M	AA		29.57	
28	0550	O	OVC012	10.00		5	-18.0	8	-15.0	8	-15.0	100	8	270		29.58		M	AA		29.58	
28	0650	O	OVC014	10.00		5	-18.0	8	-15.0	8	-15.0	100	8	270		29.58	2	003	M	AA	29.58	
28	0750	O	OVC018	10.00		7	-14.0	8	-16.1	-8	-21.0	68	7	250		29.57		M	AA		29.59	
28	0850	O	OVC018	10.00		7	-14.0	8	-16.1	-8	-21.0	68	7	250		29.57		M	AA		29.59	
28	0950	O	OVC018	10.00		7	-14.0	8	-16.1	-8	-21.0	68	7	250		29.57		M	AA		29.59	
28	1050	O	OVC018	10.00		7	-14.0	7	-13.8	7	-14.0	100	0	000		29.58	2	007	M	AA	29.60	
28	1150	O	OVC018	10.00		7	-14.0	6	-14.8	-2	-18.0	88	0	000		29.60		M	AA		29.62	
28	1250	O	OVC018	10.00		7	-14.0	8	-14.5	1	-17.0	78	3	110		29.61		M	AA		29.63	
28	1350	O	OVC018	10.00		7	-14.0	8	-14.3	3	-18.0	83	8	110		29.62	2	014	M	AA	29.64	
28	1450	O	OVC018	10.00		7	-14.0	8	-14.3	3	-18.0	83	8	110		29.63		M	AA		29.65	
28	1550	O	OVC014	10.00		5	-18.0	4	-15.3	-0	-18.0	80	9	070		29.64		M	AA		29.66	
28	1650	O	OVC012	10.00		5	-18.0	4	-15.3	-0	-18.0	80	10	080		29.65	2	010	M	AA	29.67	
28	1750	O	OVC010	10.00		3	-18.0	3	M	M	M	M	10	080		29.66		M	AA		29.67	
28	1850	O	SCT001 OVC014	10.00		3	-18.0	3	M	M	M	M	10	080		29.66		M	AA		29.68	
28	1950	O	FEW001 OVC012	10.00		3	-18.0	1	-17.0	-8	-22.0	80	14	040		29.67		M	AA		29.68	
28	2050	O	FEW002 OVC060	10.00		3	-18.0	1	-17.3	-10	-28.0	42	13	050		29.68		M	AA		29.68	
28	2150	O	OVC048	10.00		1	-17.0	-1	-18.2	-15	-28.0	48	17	050		29.68	2	007	M	AA	29.70	
28	2250	O	CLR	10.00		3	-16.0	1	-17.3	-10	-26.0	42	18	030		29.69		M	AA		29.70	
28	2350	O	CLR	10.00		3	-16.0	1	-17.3	-10	-26.0	42	17	030		29.69		M	AA		29.71	
28	2350	O	CLR	10.00		1	-17.0	-1	-18.0	-11	-24.0	58	23	040		29.69	2	003	M	AA	29.71	

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Exhibit E  
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U.S. Department of Commerce  
National Oceanic & Atmospheric Administration

QUALITY CONTROLLED LOCAL  
CLIMATOLOGICAL DATA  
(final)  
HOURLY OBSERVATIONS TABLE  
HOOPER BAY AIRPORT (28851)  
HOOPER BAY, AK  
(12/2006)

National Climatic Data Center  
Federal Building  
181 Peltan Avenue  
Asheville, North Carolina 28801

Elevation: 0 ft. above sea level  
Latitude: 61.524  
Longitude: -166.147  
Data Version: VER2

Date	Time (LST)	Station Type	Sky Conditions	Visibility (SM)	Weather Type	Dry Bulb Temp		Wet Bulb Temp		Dew Point Temp		Rel Humid %	Wind Speed (MPH)	Wind Dir	Wind Gusts (MPH)	Station Pressure (in. hg)	Press Tend	Sea Level Pressure (in. hg)	Report Type	Precip. Total (in)	Altimeter (in. hg)
						(F)	(C)	(F)	(C)	(F)	(C)										
25	0058	0	OVC028	10.00		14	-10.0	12	-10.0	7	-14.0	74	7	210				M	AA		29.42
25	0158	0	OVC021	10.00		14	-10.0	13	-10.0	10	-12.0	84	0	000				M	AA		29.41
25	0258	0	OVC028	10.00		16	-9.0	14	-9.7	10	-12.0	77	0	180			7	010	M	AA	29.39
25	0358	0	OVC028	10.00		16	-9.8	14	-9.8	9	-13.0	74	7	180				M	AA		29.38
25	0458	0	SCT001 BKN017 OVC022	10.00		16	-9.8	14	-9.8	8	-13.0	74	7	180				M	AA		29.38
25	0558	0	SCT001 OVC012	10.00		10	-12.0	10	-12.0	8	-16.0	80	0	080			7	007	M	AA	29.36
25	0658	0	BKN017 OVC022	10.00		10	-12.0	10	-12.0	9	-13.0	88	0	080				M	AA		29.36
25	0758	0	SCT001 SCT018 OVC023	10.00		10	-12.0	10	-12.0	7	-14.0	88	0	080				M	AA		29.36
25	0858	0	FEW001 SCT008 OVC028	10.00		9	-13.0	9	-13.0	7	-14.0	81	0	030			2	007	M	AA	29.35
25	0958	0	FEW015 BKN036	10.00		10	-12.0	10	-12.0	8	-13.0	88	0	000				M	AA		29.35
25	1058	0	SCT001 OVC011	10.00		9	-13.0	9	-13.0	7	-14.0	81	0	020				M	AA		29.35
25	1158	0	OVC038	10.00		7	-14.0	7	-14.1	5	-18.0	81	7	360			2	010	M	AA	29.41
25	1258	0	FEW001 OVC075	10.00		5	-18.0	4	-18.0	2	-19.0	72	0	000				M	AA		29.41
25	1358	0	BKN022	9.00		5	-18.0	5	-18.0	1	-19.0	100	0	000				M	AA		29.42
25	1458	0	FEW001 BKN032 BKN048	10.00		5	-18.0	5	-18.0	3	-21.0	88	0	070			2	007	M	AA	29.43
25	1558	0	BKN022 OVC028	10.00		7	-14.0	7	-13.8	7	-14.0	100	0	000				M	AA		29.44
25	1658	0	FEW001 SCT009 OVC028	10.00		7	-14.0	5	-14.8	2	-19.0	89	3	020				M	AA		29.45
25	1758	0	SCT001 BKN051 OVC044	10.00		5	-18.0	5	-18.2	0	-18.0	81	0	000			2	007	M	AA	29.46
25	1858	0	OVC001	10.00		7	-14.0	5	-14.8	4	-20.0	83	0	340				M	AA		29.47
25	1958	0	FEW002 SCT060	10.00		5	-18.0	5	-18.1	1	-18.0	100	7	340				M	AA		29.48
25	2058	0	FEW001 FEW050 SCT070	10.00		5	-17.0	4	-17.0	0	-18.0	87	0	340			2	010	M	AA	29.48
25	2158	0	SCT014 BKN020	10.00		5	-18.0	1	-17.0	0	-23.0	87	0	340				M	AA		29.51
25	2258	0	FEW001 OVC012	10.00		9	-13.0	7	-14.0	4	-20.0	85	14	320				M	AA		29.52
25	2358	0	OVC014	10.00		9	-13.0	8	-13.0	4	-20.0	85	0	320			2	017	M	AA	29.54

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Exhibit E  
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# TASER INTERNATIONAL® Saving Lives Everyday

User Certification Course • TASER® X26 Non-Lethal Weapon  
Version 12.0 Released November 2004

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Exhibit F  
Page 1 of 7

Exc. 49

# Definition: Non-Lethal

U.S. Department of Defense ~~non-lethal weapons~~ non-lethal weapons as "weapon systems that are explicitly designed primarily employed so as to incapacitate personnel or material, ~~without~~ minimizing fatalities, permanent injury to personnel, and undesired damage to property and the environment. . . ."

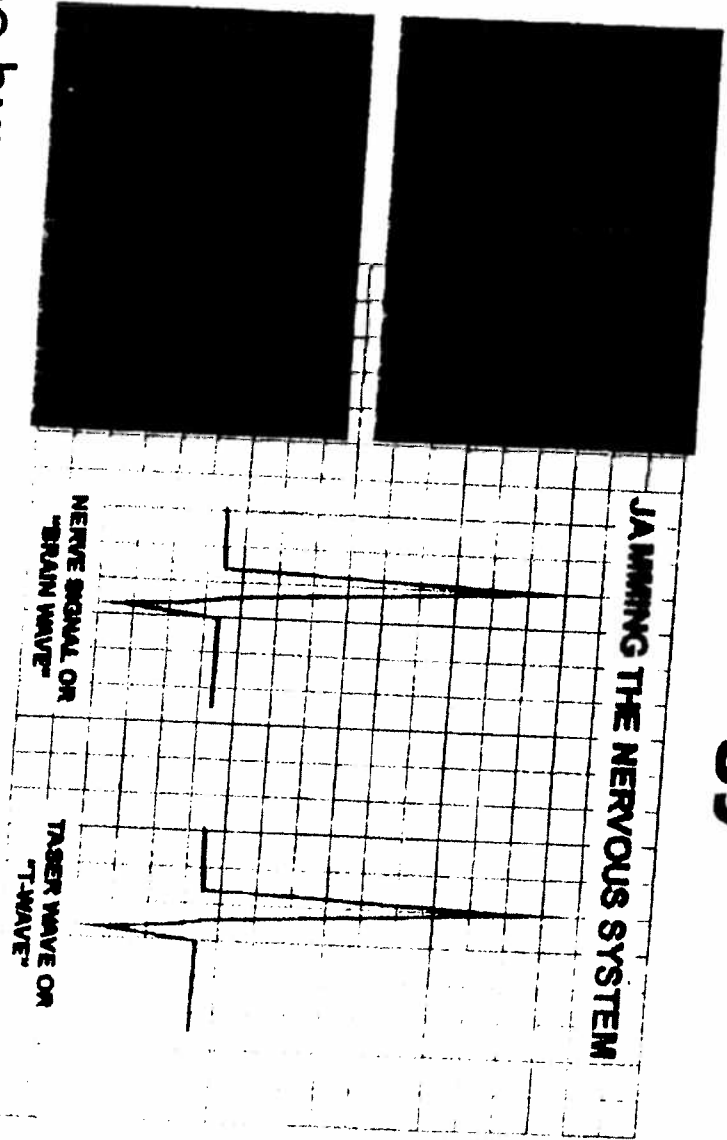
It is important to note that Department of Defense policy does not require or expect non-lethal weapons "to have a zero probability of producing fatalities or permanent injuries." Rather, non-lethal weapons are intended to significantly reduce the probability of such fatalities or injuries as compared with traditional military weapons which achieve their effects through the physical destruction of targets.

**- Joint Concept for Non-lethal Weapons  
United States Marine Corps**

Exhibit F  
Page 2 of 7

Exc. 50

# Technology



- The human nervous system communicates with simple electrical impulses
- The TASER technology uses similar electrical impulses called TASER-Waves

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# Myth: High Voltage is Dangerous



Mother and daughter  
experience 20 million volt  
Van De Graaff Generator at  
Science Museum

- Van De Graaff Generator  
1.2 ~~20~~ million volts
- Static discharge - door knob  
35,000 to 100,000 volts
- TASER systems:  
• 50,000 volts

“It’s ~~not~~ the volts that are  
dangerous,  
it’s the amperes”



# Electrical 101

- "It's not the volts, it's the amps that are dangerous..."
- High voltage: 50,000 volts
- Low Amperage: X26 < 0.004 amps
- Safe energy: X26 = 0.36 joules per pulse
  - Cardiac defibrillators are greater than 150-400 joules per pulse
- High voltage + Low Amperage = Safe & Effective weapon

Exhibit F  
Page 5 of 7

Exc. 53

# Common Effects of EMD

- Subject can fall immediately to the ground
- Yell or scream
- Involuntary muscle contractions
- Subject may freeze in place with legs locked
- Subject may feel dazed for several seconds/minutes
- Potential vertigo
- Temporary tingling sensation
- May experience critical stress amnesia
- May not remember any pain

Exhibit F  
Page 6 of 7

Exc. 54

# “Silence is Golden”

- The TASER device's electrical current is relatively quiet in actual human use
- Practice targets are loud since the energy is arcing in the air
- If electrical current is loud during field hit and the subject is not reacting, the energy is most likely shorting out and may not be effective -- reload and fire second shot at alternate area

Exhibit F  
Page 7 of 7

Exc. 55

**General Order**

**Hooper Bay Police Department**

<b>HOOPER BAY POLICE DEPARTMENT      GENERAL ORDERS</b>	
<b>SUBJECT: USE OF FORCE</b>	<b>NUMBER: 2-6</b>
<b>EFFECTIVE DATE: 2-11-02</b>	<b>REVIEW DATE: 6-15-05</b>
<b>AMENDS/SUPERSEDES: GO 2-6, Issued 6/88</b>	<b>APPROVED: _____ Chief of Police</b>
<b>CALEA STANDARDS: 1.3, 41.2</b>	

**NOTE:**

This general order is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

**INDEX WORDS:**

Choke holds	Force (cont'd)
Firearms	Vehicles (firing at/from)
Qualification	Oleoresin capsaicum (OC)
Force	Pepper spray
Deadly	ASP Baton
Excessive	Shotguns
Non-deadly	Tear gas
Prohibited acts	Weapons
Reporting use of	Off-duty
Use of (general)	on-duty

This policy is for departmental use only and does not apply in any criminal or civil proceeding. This policy should not be considered as establishment of a higher legal standard or conduct for officers in case of third party claims. Violations of this policy will only form the basis for departmental administrative sanctions. Violations of law will form the basis for civil and/or criminal sanctions in a recognized judicial setting.

**General Policy**

- A. Sworn officers of the Hooper Bay Police Department will use that force which is objectively reasonable to control a situation, effect an arrest or investigatory detention, overcome resistance to arrest, or defend themselves or others from harm.

## General Order

### Hooper Bay Police Department

- B. When the use of force is objectively reasonable the degree of force employed should generally be in direct relationship to the amount of resistance employed by the person or the immediate threat the person poses to the officer or others.
- C. The use of force by officers of the department will generally be progressive in nature. This force may be in the form of advice, warnings, persuasion, verbal encounters, passive control, use of chemical agents, physical contact, baton or other non-lethal weapons, or the use of deadly force.
- D. Officers must weigh the circumstances of each case and employ only that amount of force which is objectively reasonable to control the situation or persons.
- E. Officers shall not use techniques that restrict or stop the flow of blood to the brain except, when the use of deadly force is objectively reasonable.

#### Use Of Force Continuum

The dynamics of all encounters are different, making it extremely difficult to attempt to categorize and define the levels of force appropriate in any given situation. It is, however, possible to categorize the levels of force that may be used, to various degrees, in any situation. When officers determine that the use of force is objectively reasonable they shall, to the extent possible, utilize an escalating level of force as described in the Use of Force Resistance/Response model contained in this policy. However, nothing in this order requires an officer to start at the bottom of the continuum. Officers must use a level of force that they feel will be effective and is objectively reasonable.

#### Officer Response(s) Categories

A. Cooperative Controls

The police officer arriving on the scene is the first use of force. The mere presence of a uniformed police officer will move on or break up a crowd; often that is all the force that is necessary. After arriving on the scene, you may have to move to the next level of force by trying to persuade the subject to comply with your commands. Telling the subject "Stand over there" or "Let me see your driver's license" are verbal commands. These also include controls designed to preserve officer safety and security. (Includes communications skills, and handcuffing)

B. Contact Controls

Light subject control is considered a passive control measure. This is the first step in seeking compliance with your commands. Escorting an intoxicated subject out of

**General Order**

**Hooper Bay Police Department**

a bar would be a good example of passive control. This may require some light inoffensive physical touching or compliant escort techniques (countermeasures designed to guide or direct the subject).

**C. Compliance Techniques**

Include resistant countermeasures designed to counter the subject's enhanced degree of resistance. The Taser or OC weapons are generally the first non-lethal weapons used in the continuum. Neither will cause any injury or long lasting effect on the person. This would also include unarmed control and restraint tactics (such as; Non-compliant Escort, Arm Bar takedowns, Wristlocks, etc.) and the impact weapon used for compliance.

**D. Defensive Tactics**

Impact weapon strikes, empty hand strikes designed to cease the subject's non-lethal assault on the officer or others, regain control, and assure continued compliance. (i.e. Blocks, Strikes, or Kicks, designed to have non-lethal effects)

**E. Deadly Force**

Countermeasures designed to cease an assault, which are lethal or could cause great bodily harm to the officer or others. These tactics could include; firearms, vehicle, neck restraint, impact weapons, or other techniques that have the likelihood of causing death or serious bodily injury.

1. The use of deadly force by officers of the Hooper Bay Police Department is prohibited except as follows:
  - a. When in defense of human life, including the officer's;
  - b. When an Officer has the objectively reasonable belief that the use of deadly force is in the defense of any person, including the officer, who is in immediate danger of death or serious bodily injury.

**Training**

- A. All sworn personnel shall be issued a copy of this G.O., Use of Force, and receive classroom training on its contents prior to being authorized to carry a firearm or non-lethal weapon. This training will be conducted annually.
- B. Only officers demonstrating proficiency, as determined by the firearms training section, through a prescribed course of fire, in agency authorized firearms will be allowed to carry such firearms.

**General Order**

**Hooper Bay Police Department**

- C. All officers will qualify at least semi-annually with the firearms and ammunition they carry on, or off duty. This training will be conducted by certified firearms instructors.
- D. Officers who fail to receive a passing score with their duty weapon(s) in accordance with department testing procedures shall be relieved of their police powers and immediately reassigned to non-enforcement duties. Remedial training will be given to the officer as soon as possible by the firearms training division. This remedial training will be documented in writing and kept by the firearms training division.
- E. An officer shall not be permitted to carry or use a weapon unless they have been trained and qualified in its proficient use as determined by training procedures. This training and qualification will be documented and kept by the Support Services Division Manager.
- F. An officer who has taken extended leave or suffered an illness or injury that could affect his firearms ability will be required to re-qualify before returning to full enforcement duties.
- G. An officer carrying an off-duty firearm must show proficiency by completing and passing a course of fire with the department's firearms training personnel.
- H. All officers will be trained and certified in the use of O.C. spray and shall demonstrate their proficiency on an annual basis.
- I. All officers will be trained and certified in the use of either a side handle baton or expandable baton and shall demonstrate their proficiency on an annual basis.
- J. In the event that an officer is unable to certify or re-certify in the use of a non-lethal weapon, the officer will be unable to carry that weapon. The officer will undergo remedial training by an instructor of that weapon until he/she is able to certify and show proficiency in the use of that weapon.
- K. All officers will be trained and certified in the use of the Taser non-lethal weapon/Stun device and shall demonstrate their proficiency in its use on an annual basis either through a written or practical examination.

**Authorized Weapons**

A weapon that is intended for use in the performance of duty by a trained and sworn officer of this department shall first be reviewed, inspected and approved for use prior to being carried by the officer. Inspections of non-lethal weapons will be done by a certified instructor or armorer for that weapon.

**Firearms**

**General Order**

**Hooper Bay Police Department**

**A. On Duty**

1. The firearms training section will recommend for the Chief's approval, types and calibers of firearms and ammunition, authorized for use by members of the Hooper Bay Police Department.
2. In lieu of a department issued firearm, officers may elect to carry their own personal firearm. Officers electing to do this must use ammunition that is authorized by the department and the firearm must be approved by the firearms training committee.

**B. Off Duty**

1. An officer carrying an off-duty firearm must show proficiency by completing and passing a course of fire with the department's firearms training personnel.
2. An officer carrying an off-duty firearm must also carry their department issued identification card and badge.
3. In order for the firearm to be approved by the firearms training personnel, it must meet the specifications recommended by the Firearms Training Committee and approved by the Chief of Police.

**Non-Lethal**

**A. On Duty**

1. Non-lethal weapons carried by officers will only be issued in accordance with the provisions of this G.O. and established department training standards.
2. All officers will be issued O.C. spray. (See Appendix B for Specifications)
3. Officers will be issued either a side handle or expandable baton. (See Appendix B for Specifications)
4. All officers will be issued a Taser non-lethal weapon/ Stun device.

**Secondary/Personal Weapons**

- A. Officers may carry personal firearms and ammunition, on duty, in lieu of issued firearms and ammunition. All personal firearms must meet the specifications recommended by the Firearms Training Committee and approved by the Chief of Police. Officers will be required to qualify with their personal firearm and ammunition prior to being allowed to carry it on or off duty.**



## General Order

### Hooper Bay Police Department

- B. Officers may carry a second defensive firearm in addition to the standard duty firearm. This firearm must be registered with and approved by the firearms training division and the officer must qualify with the firearm prior to carrying it. This defensive firearm must be carried in a concealed manner and used only when the primary (duty) firearm is inaccessible.
- C. Officers are allowed to carry a small utility knife on their belt as long as it is in a black case. This knife must be approved by the Chief of Police.

#### Prohibited Weapons Firearms

- A. Any firearm that has not been approved by Chief of Police shall be prohibited from being worn on duty.
- B. Any officer carrying a NON-APPROVED firearm while on off duty status, will be considered a civilian and not an officer representing the Hooper Bay Police Department. Officers with NON-APPROVED firearms are considered to be acting as private citizens not covered by Hooper Bay Police Department rules and regulations.

#### Non-Lethal

- A. Officers are only authorized to carry those non-lethal weapons as outlined in Appendix B of this General Order.

#### Handcuffing

- A. All officers of the Hooper Bay Police Department upon placing handcuffs on a subject will, as soon as reasonably possible, check the handcuffs for proper fit and double lock them for safety. (See General Order PR-332)

#### Safety/Restrictions

- A. Restrictions on the use of firearms:
  - 1. Warning - When officers are about to invoke deadly force, they will, when possible and/or practicable, issue a verbal warning to the suspect. In this warning officers will identify themselves as police officers and instruct the suspect to cease or stop whatever action that has caused the officer to consider the use of deadly force.
  - 2. Shoot to stop - Officers will fire their weapons to stop and incapacitate an assailant from completing a potentially deadly act as described in this order.

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3. At or from moving vehicles - Officers will not discharge a firearm at or from a moving vehicle except when all other reasonable means have been exhausted and it is necessary for the defense of the officer's life or the life of another person, or the officer has probable cause to believe that the officer or others are in immediate danger of death or serious bodily injury.
4. Risk to innocent bystanders - When officers are about to discharge their firearm, they will be cognizant of their field of fire and will not unnecessarily create a substantial risk of harm to innocent persons.
5. Warning shots - Officers will not discharge their firearm for the purpose of a warning shot.
6. While under the influence of alcohol or drugs - Officers will not carry or use any firearm while under the influence of alcohol or drugs.
7. To destroy animals - The killing of an animal is justified for:
  - a. self defense
  - b. to prevent substantial harm to the officer or others
  - c. when the animal is so sick or badly injured that humanity requires its relief from further suffering.
8. Domestic Violence Restriction - Officers who have a valid court order in effect against them shall not possess a firearm while off duty. The officer will be allowed to wear his firearm on duty. The firearm will be left at the station when the officer has completed his tour of duty.

Upon any conviction of a Domestic Violence offense, the Chief of Police shall recover, from the officer involved, any issued firearm that he/she has in their control.

- B. Except for general maintenance, storage or authorized training, officers will not draw or exhibit their firearm unless circumstances create a strong suspicion to believe that it may be necessary to lawfully use the firearm in conformance with other sections of this policy.
- C. Officers will not point or direct their firearm at a person unless circumstances create the objectively reasonable belief that it may be necessary to lawfully use the firearm in conformance with other sections of this policy.

**General Order**

**Hooper Bay Police Department**

- D. An accidental discharge barrel will be used for loading and unloading of firearms. The muzzle of the firearm will be pointed into the sand when chambering or ejecting a live round.
- E. Officers will secure and store firearms, on and off duty, in such a way as to insure no unauthorized person will have access to or gain control over the firearm.
- F. Officers may discharge their firearm for the purpose of practice on the police department or other established shooting range.
- G. Officers will exercise all normal safety precautions and obey all appropriate rules or directives while practicing on the department range or any other established range.

**TASER/Electronic Device**

- A. The use of the Taser non-lethal weapon/ Stun Device is objectively reasonable in accordance with the policy as set forth above. The following procedures and restrictions will apply:

A display of the unit's "Spark Test" is permitted to gain compliance in an arrest situation where resistance is anticipated. The actual use of the Taser will normally require that an arrest be made.

**Restricted Uses of the Advanced TASER;**

1. The Advanced Taser shall not be used on subjects exhibiting compliant or passive behavior.
2. The Advanced Taser shall not be used on a restrained or controlled subject unless the actions of the subject present an immediate threat of death or great bodily harm or substantial physical struggle that could result in injury to themselves or any other person including the deploying officer.
3. The Advanced Taser shall not be used when the presence of flammable fumes, liquids or gases are known or likely.
4. The Advanced Taser should not be used on women known to be pregnant unless all other means short of lethal force have been used.
5. The Advanced Taser shall not be used on minors or elderly unless the actions of the subject present an immediate threat of death, great bodily harm or substantial physical struggle that could result in injury to themselves or any other person including the deploying officer.

**General Order**

**Hooper Bay Police Department**

**Documentation:**

1. Depending on the penetration and location of the darts and the sex of the subject, officers must make every reasonable effort to have any dart impact areas on the subjects person photographed. If the subject is of the opposite sex of the officer taking the photographs, same sex arrangements must be made.
2. Officers are required to fully document the Advanced Tasers use and results, in a narrative report.
3. Officers must also complete an "Advanced Taser M26 Use Report" form for the Chief of Police
4. Officers shall log the expended cartridges into evidence.

**Training:**

1. All Officers that wish to carry and deploy the Advanced Taser must be trained by a Certified Advanced Taser trainer,
  2. Trained officers must qualify once a year with the Advanced Taser if they wish to carry and/or deploy the Advanced Taser.
- B. Each officer will secure their assigned Taser so that it is not left unattended while operable. If it must be left in an insecure, the external power magazine (battery) must be removed and kept with the officer so that the unit can not be used. This method is also recommended for storage while in the officer's home.
- C. A full five second cycle deployment should be applied without interruption to create the safest "window of opportunity" for the apprehension of the subject. If active resistance continues an additional cycle or cycles may be applied until the resistance is overcome.
- D. Though the Taser is safe for use on people of all ages, caution should be used when choosing whether or not to deploy it on the very young or the very old.

**Inspections**

- A. All firearms will be inspected on a periodic basis by the Chief of Police to insure that all firearms are in good working order. A firearm that is found to be defective will be taken out of service and sent to an armorer or the factory to be repaired. The officer will be issued another firearm, if it is of the same model and caliber as the one that is being repaired. If another similar firearm cannot be located, the officer will be required to qualify with the firearm prior to returning to full duty.

## General Order

### Hooper Bay Police Department

- B. All off-duty firearms and ammunition carried by an officer of the Hooper Bay Police Department must be inspected and registered by the firearms training division.
- C. Periodic inspections of non-lethal weapons shall be conducted by certified instructors for the particular weapon. Weapons found to be unsafe shall be taken out of service immediately and, if department issued, replaced as soon as practical.

#### Reports

##### Firearms/Use of Force Continuum

- A. Officers are required to report, using a department report format, any discharge of their firearms.
  - 1. The officer will report orally to the immediate supervisor, as soon as is practical, after the incident in which the weapon was fired.
  - 2. A written report will be submitted by the officer involved prior to the end of their shift.
  - 3. If the officer involved is injured or unable to submit a report, the officer's supervisor will submit a written report prior to going off duty for that shift.
- 4. This report will be submitted to the Chief and will include the Use of Force Report, as well as a detailed account of the incident, explanation of what force was used, why it was used and the extent of injury (if any) that was inflicted or sustained. This rule does not apply to rounds fired on the range during training or regular practice unless an injury results from such discharge (or to the discharge of a weapon to destroy a sick or injured animal).
- 5. In the event that use of force results in serious bodily injury or death the immediate supervisor will;
  - a. Relieve the officer involved from normal duty;
  - b. Take control of the firearm or weapon used, in a discreet manner and outside of public view so as not to cause embarrassment to the officer.
  - c. If practical, the firearm should be replaced with a firearm of the same make, caliber, and model.

The Chief will relieve the officer from normal duties, and assign the officer to administrative duties pending results of the formal investigation. The officer

## **General Order**

### **Hooper Bay Police Department**

will also be required to attend a psychological debriefing prior to reassignment to normal duties.

6. The above mentioned reports will be completed prior to the end of the shift, and forwarded to the Chief of Police.
- B. Officers are required to submit a Use of Force Form (Appendix A) whenever:
1. Their actions result in, or are alleged to have resulted in, injury or death of another person; and/or
  2. They apply force to a subject greater than step "B" (Contact Controls) of the Use of Force Continuum.
  3. They apply force through the use of the Tire Deflating Spike System as outlined in General Order PR-316 Section 316.6.0: The Use of Force Form follows the outline as mentioned in 316.6.0 Reporting Procedures.
  4. Use of force reports will be submitted to their immediate supervisor by the end of their shift. This report will be forwarded to the CEO via the chain of command. Each level of the chain of command shall indicate on the form that it has been reviewed.
  5. In the event that the use of force is questionable, the CEO will follow the guidelines set forth in this General Order, Section 302.12.0.

This report along with the officer's incident report will describe, in detail, the circumstances surrounding their use of force and the resulting injury or death, if any.

#### **Vehicles**

- A. Where police are involved with pursuing other vehicles, it will be considered a use of force. Whenever a pursuit occurs, officers will follow the guidelines as outlined in General Order PR-316 Section 316.11.0.

#### **Records**

- A. The Chief of Police is responsible for instituting and maintaining records pertaining to all department weapons, authorized ammunition, personal weapons carried by officers, firearms training, all firearms qualifications, and weapon certifications.
- B. The records of registered off duty firearms will be maintained by the firearms training division and the support services division manager.

## General Order

### Hooper Bay Police Department

- C. The Chief of Police shall conduct an annual review of all of the Use of Force reports submitted. A review of these incidents may reveal a pattern or trend that may indicate that additional training or policy modifications need to be made.

#### Medical Aid

- A. In cases of injury to prisoners or bystanders, officers shall be responsible to ensure that appropriate medical aid is provided to the injured subject at the earliest possible opportunity.
1. The Officer in Charge shall be notified of all injuries incurred as a direct or indirect result of the use of force in an arrest situation.
  2. All injuries incurred by prisoners as a result of the use of force in an arrest situation shall be documented in the arrest report as well as in the Use of Force report.
    - a. At the discretion of the Officer in Charge, minor injuries may be treated by the officer or Hooper Bay Clinic personnel.
    - b. prisoners with serious injuries, and those that request hospital examination, shall be examined and treated by medical staff at the Y.K.H.C. Hospital in Bethel, Alaska.
- B. When a Taser has been deployed on a subject and the probes need to be removed, officers will follow these guidelines:
1. Do not attempt to remove the probes if the subject is combative or the probe is embedded in the face, eye, neck, ear, groin, or a woman's breast
  2. Treat probes as biohazards and wear gloves to handle and remove them
  3. After removal, inspect the probe and wound site to ensure that the entire probe has been removed intact
  4. Treat the wound with anti-septic, and evaluate it for the need for further medical care. If further care is needed follow the protocol as listed above.

#### Investigations/Review Board

- A. In the event of a complaint of an alleged or actual injury or death of another person caused by an officer's use of force, the Chief of Police shall:
1. Appoint an Administrative Review Board consisting of 3 officers; one of which is of a higher rank. At least one of the board members shall be an

**General Order**

**Hooper Bay Police Department**

instructor certified to train officers in issues pertaining to the specific type of force used in the incident. The third member shall be of equal or higher rank. This review board shall investigate the circumstances surrounding the use of force. In determining justification for the use of force, the board may only consider the facts known to the officer at the time the force was used.

2. The review board shall report their findings, in writing, to the Chief within five days of their being convened. The report shall include a recommendation for further action. The report will also include the relevant facts and circumstances surrounding the incident and whether the use of deadly and/or non-deadly force was consistent with department policies and/or State statutes. The five day limit may be waived by the Chief.

**Definitions**

- A. **Force:** Conduct on the part of a police officer that is designed to assist the officer in controlling a situation or the actions or behavior of a person or persons.
- B. **Progressive Force:** The escalation of force used by an officer in order to control a situation or the actions of persons. (pursuant to the use of force continuum).
- C. **Deadly Force:** Any assault or confinement which the actor commits with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily injury.
- D. **Non-Lethal Weapon:** A weapon, other than a firearm, used to control persons or defend oneself or others, from harm.
- E. **Serious Bodily Injury:** Means bodily injury which creates a substantial risk of death or which causes substantial loss or impairment of the function of any bodily member or organ or substantial impairment of health, or substantial disfigurement.

Approved By: \_\_\_\_\_ Date Approved: \_\_\_\_\_



**HOOPER BAY POLICE DEPARTMENT**  
**USE OF FORCE REPORT FORM**  
*Appendix A*

**OLEORESIN CAPSICUM SPRAY**

The O.C. Spray issued to sworn personnel of the South Burlington Police Department shall be Punch II or Punch III "law enforcement strength" manufactured by Aerko International. As of 19 February 2004 the O.C. spray issued will be the Sabre 5.0 "Law Enforcement Strength" "Non-flammable Electronic Immobilization Device Compatible" manufactured by Security Equipment Corporation. The type of Oleoresin Capsicum shall be a 5% of 2,000,000 Skoville Heat Unit O.C. mix. Ultraviolet dye shall be present in the mixture for suspect and product identification. The following delivery systems of the above described mixture are acceptable and may be used by sworn personnel.

1. Full Cone Spray Pattern
2. Ballistic Stream Spray Pattern
3. Jet Foam Spray Pattern
4. Magnum Fogger Spray Pattern

**PEPPERBALL SA200 LAUNCHER**

The SA200 Launcher is a specialized tool that is used to launch pepperball or other projectiles. This launcher is a 33-inch, 3.5 lb. weapon that uses air pressure to launch the projectiles at a rate of approximately 6 rounds per second at a factory set velocity of 300-380 feet per second. The department does not issue this weapon to each member, but maintains a launcher in its inventory in the event that one is needed. Only those sworn personnel that are trained and have shown proficiency in its use shall be authorized to utilize it.

**TASER MODEL M26 & X26 NON-LETHAL WEAPON/STUN DEVICE**

The use of a Taser stun device is considered a less lethal tactic. It is designed to confuse the signals going from the brain to the voluntary muscles and thereby achieve incapacitation without harming the human body. The Taser is an alternative less than lethal application of force not intended to replace firearms or self-defense techniques. Studies to date have shown that the Taser when used as trained has little or no lethal potential. All officers will be trained and certified in the use of the Taser non-lethal weapon/Stun device and shall demonstrate their proficiency in its use on an annual basis either through a written or practical examination. The only version of the Tasers authorized for Department use are the M26 & X26 models Advanced Taser.

Effective: October 1, 1997  
Reviewed/Revised June 29, 1998

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Exc. 69

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

SECOND JUDICIAL DISTRICT AT KOTZEBUE

N. COLAS PAGE, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 CITY OF KOTZEBUE and )  
 NORMAN HUGHES, )  
 )  
 Defendants. )

Case No. 2KB-07-76 CI

ORDER GRANTING SUMMARY JUDGMENT

In this case the evidence, drawing all inferences in favor of the non-moving party, is that, while the actions of defendant Hughes may have been objectively unreasonable, the use of the Taser on the handcuffed, but resisting Page was within the range of forces a reasonable police officer in Hughes' position could decide to use. The court also finds that the officer subjectively believed the use of the Taser was necessary and not improper. The plaintiff argues that the City of Kotzebue policy regarding use of force should have placed Hughes on notice that use of the Taser was improper. However, the policy is very general and as unhelpful as the existing state statute AS 11.25.070. Likewise the plaintiff suggests the Model Policy on use of Electronic Control Weapons is an appropriate standard to measure Hughes' conduct. However, the plaintiff had offered no evidence such model policy has been adopted by any police agency within Alaska. Even if the policy had been adopted, it limits the use of electronic weapons to individuals who are actively resisting, which the defendant was. Whether the particular offender's conduct was "overly sensitive" and whether other means can "reasonably" control the conduct remain the sort of questions that call out for application of the qualified immunity analysis.

Order Granting Summary Judgment  
Page v. Hughes, City of Kotzebue 2KB-07-76 CI  
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