

# Court dismisses paralyzed man's claims against city, officer

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The Denver Gazette · 24 Jan 2026 · A15 · COURTS REPORTER MICHAEL KARLIK

The Denver-based federal appeals court upheld the dismissal last week of a man's excessive force claims against the city of Colorado Springs and the officer who tased him, causing him to fall down a sloped surface and break his neck.



Note

A three-judge panel of the U.S. Court of Appeals for the 10th Circuit declined to say whether those actions from a police officer would amount to a constitutional violation. Instead, it concluded Jacob Root failed to demonstrate how Officer Robert Comstock was clearly on notice that his use of a Taser under the circumstances would violate Root's constitutional rights.

Further, the fact that Colorado Springs exonerated many of its own officers for using excessive force against others meant there was no pattern of excessive force to form the basis of a legal claim.

"In fact, Mr. Root admits that CSPD found the officers' use of force was appropriate in many of the listed instances," wrote Judge Scott M. Matheson Jr. in the Jan. 14 order. "The prior instances thus do not show a custom of condoning and encouraging excessive force."

As alleged in Root's complaint, a multi-agency task force located a stolen vehicle in a motel parking lot in May 2022. Instead of taking custody of the vehicle, they affixed a tracking device. Officers followed the car to a different parking lot and attempted to box the vehicle in. Root managed to drive off, colliding with and damaging a law enforcement vehicle in the process.

Officers later found the car at a gas station on the 2500 block of Airport Road. When Root exited the building, he began to run. One officer unsuccessfully shot at Root with a "BolaWrap," which is a lasso-type device for restraining someone. Comstock then tased Root without warning in the back. Root fell down a sloped area and broke his neck. He is now quadriplegic.

Comstock and Colorado Springs moved to dismiss Root's excessive force claim against them. Comstock invoked qualified immunity, a judicially created doctrine that shields government employees from civil lawsuits unless their conduct violates a right clearly established by prior court decisions.

Last March, U.S. District Court Judge Daniel D. Domenico granted the motion, finding the circumstances justified Comstock's use of force.

"(B)y the time Officer Comstock was pursuing Mr. Root at the gas station on Airport Road, he had reason to suspect Mr. Root already committed two dangerous felonies — the first by stealing a car, and a second by using that car to evade pursuing police officers (and striking a police cruiser along the way)," Domenico wrote. "This would have put all officers involved on notice that the suspect presented a credible threat to their safety and that of the public."

Domenico added that Root failed to cite any similar court cases that would have established Comstock acted unreasonably, nor had Root described why the sloped area was an inherently dangerous spot to tase someone.

Finally, the other cases involving force that Root cited in Colorado Springs were "not similar enough" to hold the city liable for a custom of excessive force.

Root appealed to the 10th Circuit. Among other things, his lawyer accused Domenico of having "fabricated" facts in his order, specifically that Comstock was justified in using force because Root was running toward a "busy" roadway. The city countered that Comstock made a "reasonable, split-second decision" to stop a felony suspect.

"There is no clearly established law that instructs him not to use his Taser in this situation," said Brian Stewart of the Colorado Springs City Attorney's Office during oral arguments in November. "Mr. Root has not pointed to any case where this court has warned an officer not to tase a fleeing felony suspect simply because that person is running over some sort of undefined gradient."

"What do we know about this road?" asked Matheson. "How do we get from there to it being a busy road and he's running towards it and somehow that's dangerous?"

"I would submit that running toward any public road is an inherently dangerous thing to do," replied Stewart.

"So, if someone is crossing a quiet residential street and police are pursuing that person, it's reasonable to tase that person?" asked Matheson.

"Yes, I would say so," said Stewart. Ultimately, the 10th Circuit panel did not decide whether Comstock used excessive force unconstitutionally, or whether it would be improper for police to act similarly going forward. Instead, it found he was entitled to qualified immunity because no prior court decision had deemed similar police conduct unreasonable.