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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of April – 2023 - ALTERNATIVE

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Lampley v. City of Harvey, Case No. No. 22 C 03761, 2023 WL 121747, January 6, 2023.

The victim complained to the police about gang activity. The gang killed the victim. Are the Police potentially liable?

FACTS: Gang members shot at the victim multiple times. Fortunately, they missed. Not so fortunately (at least for the victim), the victim decided to do his civic duty and report the incidents. He described the offenders to the Harvey Police Department ("HPD"). Based on his description, the HPD were able to identify the offenders and apprehended them several hours later. The HPD then, for some unknown reason, decided to load the suspects up in a squad car, drive them directly to the victim's home and ask him to identify the suspects. Just as the police had ordered, the victim exited his home and was "stunned to learn" that the HPD had brought the offenders to his home instead of arranging for a line-up at the police station or asking the victim to identify them in a photo array. In the offenders' presence, the officers asked the victim to positively identify them. According to the estate of the deceased victim, because of this "show up" procedure, the offenders learned where the victim lived and that he was a cooperator with the HPD against them. Despite the victim's positive identification of the offenders, the HPD released them from custody. Days later, the offenders returned to the victim's home, where they shot and killed him. This was confirmed by shell casings which matched those from the prior shooting.

Not too surprisingly, the Estate of the late victim filed a suit against the City of Harvey, alleging wrongful death and a violation of 42 U.S.C. § 1983 due to conduct by its police officers that allegedly led to the victim's death. The Amended Complaint of the Estate principally alleged that bringing suspects accused of a violent crime to a victim's home for identification was a "gross departure from generally accepted policing practices and evinced a deliberate indifference to the victim's safety," and "created a danger to the victim that would not have existed absent the HPD officers' conduct." The City filed a motion to dismiss the Estate's case claiming that, pursuant to Illinois law, the City was immune from liability.

ISSUE: Should the Federal District Court grant Brown's motion to dismiss?

DISCUSSION

I. Wrongful Death Claim. Count I of the Estate's complaint was a wrongful death claim based on the HPD's allegedly willful and wanton conduct in "transport[ing] violent offenders to (the victim's) home without his permission," "violat[ing] generally accepted police practices," and "revealing to violent offenders the home address of the victim and that the victim was cooperating with the police." As to this claim, the City argued that it was immune from liability under the Illinois Tort Immunity Act, 745 ILCS 10/1-101 et seq. ("the Act"). It alternatively contended that it could not have acted willfully or wantonly because a show up was a generally accepted police practice and because the City was not executing or enforcing any law at the time of the victim's death. The District Court addressed each argument in turn.

THE LAW: Under Section 2-202 of the Act, public entities in Illinois are immune from liability with the exception of "willful and wanton conduct" arising out of executing or enforcing the law. 745 ILCS 10/2-202. But state actors enjoy absolute immunity pursuant to Section 4-102 of the Act for failing to: provide police protection service or, if police protection service is provided, for failure to provide adequate police protection or service, failure to prevent the commission of crimes, failure to detect or solve crimes, and failure to identify or apprehend criminals. 745 ILCS 10/4-102.

Similarly, § 4-107 of the Act completely immunizes public entities from claims related to "injur[ies] caused by the failure to make an arrest or by releasing a person from custody." 745 ILCS 10/4-107. The absolute immunity conferred by §§ 4-102 and 107 is unaffected by § 2-202 because these sections do not explicitly contain an exception for willful and wanton conduct. Illinois courts have "applied section 4-102 to immunize police officers from civil suit where they are performing some function other than traditional law enforcement." The Illinois Supreme Court has thus outlined the confines of § 4-102 immunity to include "weapons detection, traffic control, and crowd security and control." But where a claim involves officers "responding to a call that a crime may have just been committed, or ... investigating a crime ..., making an arrest or issuing a citation, or quelling a public breach of peace," § 4-102's blanket immunity does not apply. Put simply, "[s]ection 4–102 immunity may apply in the context where police officers are simply 'providing [or failing to provide] police services,' but section 2–202 immunity requires more particular circumstances for its application, i.e., an act or a course of conduct 'in the execution or enforcement' of law." "Generally, the question of whether a police officer is executing and enforcing the law under section 2–202, rather than providing police protection or service under section 4–102, is a factual determination

which must be made in light of the circumstances involved." A court may decide this question as a matter of law only "when the facts alleged support only one conclusion."

SUB-ISSUE #1: A. Illinois Tort Immunity Act?

FINDINGS: The City argued that it is totally immunized from liability under §§ 4-102 and 107 of the Act. Plaintiff, however, asserts that her allegations are not encompassed by those provisions. According to the Amended Complaint, the HPD responded to a crime—the shots fired at Price by two young men. The HPD then acted to execute and enforce the law by arresting the offenders based on Price's description of them. While conducting its investigation of the crime, the HPD took the acts which are the subject of Plaintiff's allegations, namely, transporting the offenders to Price's home for an in-person show up. Taking the facts as alleged, (as the Court was required to do at this stage of this case) the HPD's conduct was associated with "responding to a call that a crime may have just been committed, ... investigating a crime ..., [and] making an arrest," or in other words, the enforcement of the law under § 2-202, and not the failure to provide adequate police protection services under § 4-102.

The Court noted that though the "police protection services" immunized under § 4-102 include crime prevention, the Estate did not allege that the HPD was willful and wanton in failing to prevent Price's murder, failing to solve a crime, failing to offer police protection, or failing to arrest the offenders. Nor did it allege that the HPD wrongfully released the offenders from custody. Rather, the crux of the Estate's allegations was that the HPD was willful and wanton in its investigation of a crime by transporting violent criminals to the victim's home for in-person identification, which informed them of his home address and that he was working with the police. The Court therefore held that sections 4-102 and 107 do not grant absolute immunity to the City for the HPD's conduct. In this case, the Estate plainly admitted that the HPD's decision to release the offenders was immunized. However, the Estate did not base its allegations on that decision, nor did it try to repackage that allegation as something else. Rather, this case was about an allegedly wrongful show up procedure. The Court therefore rejected the City's argument that the Illinois Tort Immunity Act immunized it against Plaintiff's wrongful death claim.

SUB-ISSUE #2: B. Show-Up Procedure as Generally Accepted Police Practice

FINDINGS: The City next argued that a show up procedure cannot be willful and wanton because it is approved by the Illinois Supreme Court as an acceptable police practice. In rejecting this argument the Court noted that the issue here—whether bringing a suspect of a violent crime to a victim's home for identification is willful and wanton toward the victim—was completely different from the cases cited by the City. In this case, the Estate alleged that this specific show up procedure in the victim's case was a deviation from accepted police practices. The City made no argument to the contrary.

SUB-ISSUE #3: C. Executing or Enforcing the Law at the Time of Price's Death

FINDINGS: The City finally argues that it cannot be liable for willful and wanton acts taken while "executing or enforcing the law" because the offenders murdered Price nearly two weeks after the HPD's conduct at issue. 745 ILCS 10/2-202. Thus, the City alleges, the Estate did not have a claim because the HPD was not "executing or enforcing" any law at the time the victim was killed. In rejecting this claim, the Court noted that the Estate here alleged that the City acted willfully and wantonly while enforcing and executing the law against violent offenders, and that, as a direct and proximate result, those same offenders later murdered the victim at his home. The Court held that the lapse of time between the HPD's actions and the victim's death did not disqualify the Estate's claims.

II. Section 1983 Due Process State-Created Danger Claim. Under the state-created danger doctrine, the Due Process Clause is implicated when "(1) the government, by its affirmative acts, created or increased a danger to the plaintiff; (Here, the Estate alleged that although the offenders had already shot at the victim, the HPD's actions informed them of where he lived and that he was cooperating with police, information they did not previously know. The Court held that if these allegations were true, a reasonable jury could find that the HPD's actions increased the danger that the offenders would want retribution and that any attempts to murder the victim would be successful, thereby causing his death.) (2) the government's failure to protect against the danger caused the plaintiff's injury; (Here the estate pleaded facts that show that the victim was at least a foreseeable victim of the harm that occurred to him—the HPD revealed his home address and status as a cooperator specifically to people who had already shot at him and threatened him with their guns.) and (3) the conduct in question 'shocks the conscience.' " (Here, the Court held that the Estate pled sufficient facts to allege a violation of this Doctrine. It was at least conceivable that the HPD acted with deliberate indifference, rather than mere negligence, toward the victim's safety, and this was enough to reach the level of conscience-shocking behavior.)

CONCLUSION: The District Court denied the City's motion to dismiss. A jury must decide this case.

QUIZ QUESTIONS FOR THE MONTH OF APRIL – 2023 - ALTERNATIVE

Lampley v. City of Harvey, Case No. No. 22 C 03761, 2023 WL 121747, January 6, 2023.

1. In Illinois, Law Enforcement Agencies are immune from liability with the exception of "willful and wanton conduct" arising out of executing or enforcing the law.

   a. True.

   b. False.

2. In Illinois, Law Enforcement Agencies are absolutely immune from liability for failing to provide adequate police services.

   a. True.

   b. False.

3. In this case, the City argued that it should be absolutely immune from liability because it failed to provide adequate police service when it transported the arrested gang members directly to the home of the victim. Did the District Court agree with this argument.

   a. Yes.

   b. No.

4. Under the "state-created danger doctrine", the Due Process Clause is violated when "(1) the government, by its affirmative acts, created or increased a danger to the plaintiff; (2) the government's failure to protect against the danger caused the plaintiff's injury; and (3) the conduct in question 'shocks the conscience.' " The City argued that Estate could not establish any one of these elements. Did the District Court agree with this argument?

   a. Yes.

   b. No.

QUIZ ANSWERS AND DISCUSSION FOR MONTH OF APRIL – 2023 - ALTERNATIVE

Lampley v. City of Harvey, Case No. No. 22 C 03761, 2023 WL 121747, January 6, 2023.

1. In Illinois, Law Enforcement Agencies are immune from liability with the exception of "willful and wanton conduct" arising out of executing or enforcing the law.

   a. True. That is what this Court declared. (745 ILCS 10/2-202.)

2. In Illinois, Law Enforcement Agencies are absolutely immune from liability for failing to provide adequate police services.

   a. True. Again, that is what this Court declared. (745 ILCS 10/4-102.)

3. In this case, the City argued that it should be absolutely immune from liability because it failed to provide adequate police service when it transported the arrested gang members directly to the home of the victim. Did the District Court agree with this argument.

   b. No. The Court held that the alleged use of an improper show-up procedure constituted the execution or enforcement of the law rather than an act of providing a police service.

4. Under the "state-created danger doctrine", the Due Process Clause is violated when "(1) the government, by its affirmative acts, created or increased a danger to the plaintiff; (2) the government's failure to protect against the danger caused the plaintiff's injury; and (3) the conduct in question 'shocks the conscience.' " The City argued that Estate could not establish any one of these elements. Did the District Court agree with this argument?

   b. No. The District Court found that a jury could reasonably find that the Estate did plead sufficient facts to support the application of this Doctrine. That is why the Court denied the City's motion to dismiss this case and why a jury must decide the liability of the City.