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LAW ENFORCEMENT OFFICER
TRAINING CASE OF THE MONTH

By Don Hays

Month of November – 2023 - ALTERNATIVE

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THE CASE: Numerous Officers shot three burglars as they tried to escape from the scene of their burglary in a stolen van. Two burglars survived multiple gunshot wounds. The third burglar died. QUESTION: Could the City be held liable for the Officers’ alleged excessive use of force in firing 76 rounds at the stolen van and the burglars used to attempt their escape?

FACTS: Three men burglarized an electronics store in Chicago, then attempted to escape in a stolen getaway van, but police appeared bearing guns and firing some 76 rounds at the van as it burst through the store's garage door. (Some of the Officers stopped to reload before continuing to fire.) The three burglars were shot multiple times, and one died of his wounds. Following a joint criminal jury trial, the two surviving burglars were found guilty of felony murder, since the deceased burglary was killed (albeit, by police gunfire) during the course of their felony burglary. They were also found guilty of aggravated battery of a police officer and possession of the stolen van. Their criminal convictions were affirmed on appeal.

Thereafter, the two surviving burglars, along with the deceased burglar's estate, filed a civil suit against the City for the injuries suffered by the surviving burglars and the deceased burglar's death by police gunfire. The trial court dismissed the surviving burglar's claims due to doctrine of collateral estoppel from their criminal convictions. That is, the Court concluded that because the burglars were convicted of felony murder and aggravated battery of police officers, they could not then sue the Officers for damages caused by their commission of those offenses. The estate, however, was allowed to proceed to trial on its survival, wrongful death, and willful and wanton claims against the City. Ultimately, the estate prevailed, obtaining a $1,999,998 jury verdict. (You just never know what a jury will decide. Ed. Note). The jury nevertheless also found that the deceased burglar, was contributorily willful and wanton as alleged by the City, where his injuries were proximately caused by his own conduct. (After all, he was involved in a burglary when he was shot and killed. Ed. Note) Accordingly, the jury’s verdict was reduced to a mere $999,999. The City filed a motion for judgment notwithstanding the verdict based on two special interrogatories inquiring whether the officers were unjustified in the shooting and were truly willful and wanton, i.e., intentional, or reckless. Since the jury answered “No” to those questions, the City claimed those interrogatories controlled over the general verdict, and the trial court granted the City's motion. As such, the City ultimately won at trial against the estate of the deceased burglar.

In a consolidated appeal, the two surviving burglars challenged dismissal of their claims, while the estate challenged the reversal of the jury’s award of $999,999. The appellate court was asked to decide whether the trial court erred in dismissing the surviving burglar’s claims and reversing the estate’s award. The appellate court held that the criminal convictions of surviving burglars for felony murder and aggravated battery to a police officer did not prevent them from suing the Officers for damages based upon the Officers’ alleged use of excessive force. (76 rounds fired into the van both before and after is rolled to a halt.) Additionally, the appellate court declared that the jury’s answer to the questions they were asked did not justify the reversal of the jury’s award of $1 million in the estate’s favor. From that judgment, the City brought this appeal before the Illinois Supreme Court.

ISSUE: Did the appellate court err in finding in favor of the two surviving burglars and the estate of the deceased burglar? (Yes and No).

THE SURVIVING BURGLARS’ CASE: The City identified two issues that it alleged were raised and conclusively decided in surviving burglar’s criminal cases: (1) that the police did not engage in excessive force and (2) that the burglars intentionally caused the police shooting that resulted in their injuries. In response to this argument, the Supreme Court noted that the trial court in the criminal case allowed the surviving burglars to argue that the City’s police officers, not they, were at fault for the deceased burglar’s death because the police officers’ use of deadly force was an intervening cause of the burglar’s death that relieved them of liability. According to the City, the centerpiece of the surviving burglar's defense to felony murder was that, “in attempting to escape the crime scene, they could not have anticipated the police would use deadly force that would endanger the deceased burglar’s life.” Since the jury convicted the surviving burglars of felony murder, the City argued that this meant the jury necessarily rejected the surviving burglar’s claims of excessive force by the police. The City contended, therefore, that surviving burglars could not relitigate their claim that the police officers engaged in excessive force when they shot at the van.

FINDINGS: The Supreme Court concluded that the City is correct that the jury rejected the surviving burglar’s intervening...
cause defense. They argued in their criminal trial that the police officers’ conduct was an intervening circumstance that broke the causal chain between their actions and the deceased burglar’s death. In returning a guilty verdict, the jury necessarily rejected this argument. However, the Court held that the City erred in concluding that the criminal jury necessarily determined that the police officers who caused the surviving burglar’s injuries did not use excessive force. The Court concluded that there was no evidence in the record that the jury determined that the police did not, in fact, use excessive force. On the contrary, consistent with criminal precedent, the Court held that the record revealed that the issue of excessive force was not dispositive of whether the surviving burglars were guilty of the charged offenses. Instead, the jury determined that surviving burglar’s actions were a proximate cause of the deceased burglar’s death, and the issue of whether the police’s conduct was justified was not before the court. Therefore, the jury never decided that issue. For this reason, the Supreme Court declared that two surviving burglars were not barred from claiming that the Officers used excessive force in shooting them during their escape attempt.

Alternatively, the City argued that because the jury found that the surviving burglars intended to commit the violent offense of Burglary, they must have intentionally caused their own injuries. Therefore, they could not now argue that the Officers alone caused their injuries. In response, the Supreme Court noted that the jury was never instructed to find whether or not instructed to determine whether the burglars caused their own injuries because that issue was not relevant to the criminal trial. As noted by the appellate court, the criminal prosecution did not conclusively determine whether, under civil standards, the burglars were by degrees willful and wanton in bringing about their own injuries in the form of the multiple gunshot wounds or whether the officers’ actions proximately caused their injuries.

As an illustration, the Supreme Court noted that “there is nothing inherently contradictory about pleading guilty to aggravated battery of a peace officer and bringing a claim of excessive force. In Illinois, a person may be guilty of aggravated battery of a peace officer for either causing bodily harm to an officer or making physical contact of an insulting or provoking nature with an officer. 720 ILCS 5/12-3. Thus, a person could theoretically be found guilty of aggravated battery for crumpling up a parking ticket and throwing it at the officer’s foot or tweaking a police officer’s nose. If a police officer responded to those relatively minor insults with deadly force, a claim for excessive force would not be barred simply because the offender pled guilty to aggravated battery of a peace officer. According to the Court, a civil suit for excessive force in those circumstances would not imply the invalidity of the conviction.”

Consequently, the Supreme Court affirmed the judgment of the appellate court which found that the trial court had erred in dismissing the claims of the surviving burglars.

**THE ESTATE OF THE DECEASED BURGLAR’S CASE:** The City then argued that the appellate court erred in rejecting the finding of the trial court in entering judgment for the City in the estate’s civil case, notwithstanding the jury’s general verdict for the estate and against the City.

**FINDINGS:** The trial court noted that the jury in this case first made a general finding that the City was liable to the estate of the deceased burglar for $999,999 and then answered the specific interrogatory concerning whether or not the Officers acted with willfully and wanton in the negative. According to the trial court, the specific finding of the jury, that the Officers did not act willfully and wantonly would take effect over the jury’s general finding that the Officers were liable. Consequently, the trial court entered judgment against the estate and in favor of the City. The appellate court rejected this argument and found that because the questions as of the jury were vague, confusing, or impermissibly compound, the jury’s answer to the question did not overcome the jury’s verdict finding the City liable.

The Supreme Court disagreed with this finding. The Court declared that in answering “no” to special interrogatory No. 2, the jury determined that at the time deadly force was used, the City's officers who used deadly force did not engage in a course of action without legal justification that showed an utter indifference or conscious disregard for the safety of others, i.e., they did not engage in reckless willful and wanton conduct. According to the Court, the answer to this interrogatory, standing on its own, defeated the estate's claim. The jury's negative answer to special interrogatory No. 2 was clearly and absolutely irreconcilable with the jury's general verdict, which apportioned fault on both parties and was appropriate only if the City's conduct was recklessly willful and wanton. For these reasons, the Supreme Court declared that the trial court properly held that the jury's special finding, by answering “no” to special interrogatory No. 2, related to an ultimate issue of fact upon which the rights of the parties depended and was clearly and absolutely irreconcilable with the verdict returned. Accordingly, the trial court properly entered judgment in the City's favor.

**CONCLUSION:** Consequently, the Supreme Court affirmed the appellate court’s decision in favor of the two surviving burglars and reversed the appellate court’s decision concerning the dismissal of the estate’s claim against the City.
QUIZ QUESTIONS FOR THE MONTH OF NOVEMBER – 2023 - ALTERNATIVE


1. The two surviving burglars in this case were convicted of felony murder in that the forcible felony they committed resulted in a death; i.e., the deceased burglar. Under Illinois law, could those two surviving burglars sue the Officers who shot them for using excessive force?
   a. Yes.
   b. No.

2. In this civil case, the two surviving burglars accused the Officers of committed a civil battery against them by using excessive force in order to arrest them. The People argued that because the two surviving burglars were convicted of Felony Murder, their jury must have found that the Officers did not use excessive force in arresting the burglars. The Supreme Court agreed with this argument.
   a. True.
   b. False.

3. The estate of the deceased burglar argued that the Officers acted with willful and wanton misconduct when they fired 75 rounds into the fleeing van. Pursuant to Illinois law, can Officers be held liable for their acts during the enforcement of a law if it is found that their acts constituted willful and wanton misconduct?
   a. Yes.
   b. No.

4. The jury in this civil case returned a verdict in favor of the deceased burglar’s estate and awarded $999,999 in compensation. However, when asked, the jury also concluded that the Officers’ actions did not constitute willful and wanton misconduct. The Supreme Court declared that these two findings by the jury were legally inconsistent. Therefore, the Court affirmed the jury’s verdict against the Officers.
   a. True.
   b. False.
QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF NOVEMBER – 2023 - ALTERNATIVE


1. The two surviving burglars in this case were convicted of felony murder in that the forcible felony they committed resulted in a death; i.e., the deceased burglar. Under Illinois law, could those two surviving burglars sue the Officers who shot them for using excessive force?

   a. Yes. The Supreme Court ruled that the mere fact that the burglars were convicted of felony murder did not mean that they could not sue the Officers in a civil case for damages caused by the Officer’s use of excessive force.

2. In this civil case, the two surviving burglars accused the Officers of committed a civil battery against them by using excessive force in order to arrest them. The People argued that because the two surviving burglars were convicted of Felony Murder, their jury must have found that the Officers did not use excessive force in arresting the burglars. Did the Supreme Court agree with this argument?

   b. False. The Supreme Court concluded that the jury in the burglars’ criminal trial were never asked to decide if the Officers used excessive force when arresting the burglars. It simply was not relevant. Therefore, the Court held that the burglars could argue in their civil case against the Officers that the Officers illegally civilly battered them when they used excessive force.

3. The estate of the deceased burglar argued that the Officers acted with willful and wanton misconduct when they fired 75 rounds into the fleeing van. Pursuant to Illinois law, can Officers be held liable for their acts during the enforcement of a law if it is found that their acts constituted willful and wanton misconduct?

   a. Yes. The Illinois Tort Immunity Act provides that Officers are immune from liability for injuries they cause during the Officers’ enforcement of the law except where the Officers’ actions constituted willful and wanton misconduct.

4. The jury in this civil case returned a verdict in favor of the deceased burglar’s estate and awarded $999,999 in compensation. However, when asked, the jury also concluded that the Officers’ actions did not constitute willful and wanton misconduct. The Supreme Court declared that these two findings by the jury were legally inconsistent. Therefore, the Court affirmed the jury’s verdict against the Officers.

   b. False. The Supreme Court found that the jury’s specific answer to the question overcame the general verdict they returned in favor of the estate. Consequently, the Court ruled in favor of the Officers and vacated the jury’s verdict.