



STORAGE NAME: h6517.CJC

DATE: 3/16/2017

March 16, 2017

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6517 - Representative Alexander
Relief/Reginald Jackson/City of Lakeland

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF \$312,500 AGAINST THE CITY OF LAKE LAND FOR INJURIES AND DAMAGES SUFFERED BY REGINALD JACKSON WHEN HE WAS SHOT BY A CITY OF LAKE LAND POLICE OFFICER ON OCTOBER 18, 2001.

FINDING OF FACT:

In the late night of October 18, 2001, Reginald "Reggie" Jackson was driving down West Memorial Boulevard in Lakeland when Lakeland Police Officer Michael Cochran pulled him over because his tag was invalid. His tag came back invalid because Officer Cochran made a mistake when he input the tag number into his computer. By substituting a "V" for an "N," Officer Cochran ran a tag that, apparently, didn't exist. After pulling Mr. Jackson over, Officer Cochran reran the tag at Mr. Jackson's request and found that it was in fact valid. Nevertheless, he gave Mr. Jackson a ticket for not having a proper child restraint device for his girlfriend's 18-month-old son, who was sitting next to him on the front bench seat. Officer Cochran instructed Mr. Jackson to properly restrain the child before traveling any further, even though it was midnight and Mr. Jackson told him that he only had a few more blocks to travel.

From here, the testimony of the various witnesses diverges. Mr. Jackson claims that he tried to use the payphone in the parking lot of the Church's Chicken where Officer Cochran originally pulled him over, but that phone was not working. He saw another payphone less than a block away and drove over to use it. As he was attempting to use the payphone, Officer Cochran pulled up behind his car and startled him when told him he was under arrest. Mr. Jackson, startled by the Officer, ran to his car, started it up, and put it in reverse. Seeing that he couldn't back up because of Officer Cochran's patrol car, he put his car in drive and pumped his brakes twice, which made the car bounce or lurch forward twice. When he pumped the brakes the second time, Officer Cochran fired his weapon through the windshield, hitting Mr. Jackson in his neck, rendering him unconscious.

Officer Cochran describes the first meeting of the two gentlemen as somewhat tense. Mr. Jackson, understandably upset that Officer Cochran pulled him over for what turned out to be a mistake, felt that he had been racially profiled, and responded by challenging Officer Cochran. The first challenge—that his tag was actually valid—turned in his favor, while the second challenge—that Officer Cochran couldn't give him a ticket for the failure to properly restrain the child—did not. After initially refusing to sign the ticket, Mr. Jackson acquiesced. Officer Cochran left the scene and traveled a short distance down the road where he parked his patrol car where Mr. Jackson cannot see it and waited to see if Mr. Jackson would disobey his order.

From Officer Cochran's perspective, Mr. Jackson directly disobeyed his order and set out to drive the rest of the way home without properly restraining the young child. When Mr. Jackson saw Officer Cochran's vehicle in a nearby alleyway, he quickly darted into the parking lot at The Blue Bar. Impliedly, Officer Cochran felt that Mr. Jackson's protest that he was just driving over to use the phone was a ruse to cover up the fact that he had intended to drive home in direct contradiction to his order. No one but Mr. Jackson will ever know if that was true or not.

The separate eyewitness accounts of the few seconds between when Officer Cochran pulled up to arrest Mr. Jackson and when Officer Cochran shot Mr. Jackson coalesce to form a cohesive story with only a few divergences. Officer Cochran pulled his patrol car up behind Mr. Jackson's car so as to block a rearward escape. Mr. Jackson was at the payphone when Officer Cochran shouted at him, "you're under arrest!" Some say that Mr. Jackson immediately ran around the payphone and back to his car, while others claim that he turned and started walking toward Officer Cochran, who then drew his firearm. Officer Cochran doesn't remember exactly when he drew his firearm, but claims it was shortly after Mr. Jackson turned and

fled. Officer Cochran states that he drew his firearm when he saw that Mr. Jackson was headed back to his car because he hadn't searched the car and didn't know if he was going for a weapon or not. Mr. Jackson got in his car and put it in reverse. Officer Cochran was now positioned at the driver-side fender/tire where he was right up against the car with his hand on the hood shouting at Mr. Jackson to stop or he would shoot him. After coasting in reverse for a short period with Officer Cochran running with the car, Mr. Jackson put the car in drive and turned the wheels toward Officer Cochran to try to get back onto West Memorial Boulevard. At this point, the car lurched forward twice as Mr. Jackson pumped the brakes. Officer Cochran believed that he was in danger when he felt the car accelerate. Officer Shrader, who pulled up right as the episode was unfolding, observed the events from his patrol car on West Memorial Boulevard. He saw that Officer Cochran was in danger because as the car turned and was pushing him closer to a storm drain, which made the drop off from the sidewalk to the street a more precarious physical presence. He had decided to ram Mr. Jackson's car back into the parking lot and away from Officer Cochran when the car lurched for the second time. Officer Cochran reacted by shooting through the windshield and hitting Mr. Jackson on the left side of his neck. The shot lodged in the skin at the exit wound on his right shoulder and rendered him unconscious.

Mr. Jackson's car then idled across West Memorial Boulevard, coming to rest in the parking lot of a seafood market across the street. Officer Shrader followed the car over to the parking lot and directed Officer Cochran to get the child out of the car while he secured Mr. Jackson and called for emergency medical services.

Mr. Jackson was treated at Lakeland Regional Medical Center and taken to the Polk County Jail. He was charged with attempted murder of a police officer but the charges were later dropped.

LITIGATION HISTORY:

On November 12, 2008, Mr. Jackson filed a lawsuit against the City of Lakeland Police Department in the circuit court of the Tenth Judicial Circuit in and for Polk County. After a three day trial held in February 2009, a jury found the City of Lakeland 75% at fault and Mr. Jackson 25% at fault. The jury awarded a verdict in the amount of \$550,000 for past and future pain and suffering. The jury verdict was reduced in accordance with Mr. Jackson's negligence and a final judgment was entered in for \$412,500. The City of Lakeland has paid the statutory cap of \$100,000.

CLAIMANT'S POSITION:

Claimant argues Officer Cochran breached the duty of care he owed to Mr. Jackson by negligently handling and discharging his firearm in his attempt to stop and/or arrest Mr. Jackson.

RESPONDENT'S POSITION:

The City of Lakeland argues Officer Cochran's actions were reasonable.

CONCLUSION OF LAW:

The legislature is not bound by the jury's findings of fact. A claim bill is an act of legislative grace in which the legislature allows a citizen to collect damages where they would normally be barred by common law sovereign immunity. The legislature can give the jury's findings of fact weight in making its own determination, but the legislature should conduct its own inquiry of the facts and make its own determination of the facts and law at issue. It is my opinion that the jury was mistaken in this case.

The issue here is whether or not Officer Cochran's use of his firearm constituted negligence. The Florida Supreme Court has said, regarding an officer's negligent use of his or her firearm:

'Negligence is the failure to use reasonable care. Reasonable care is that degree of care which a reasonably careful person would use under like circumstances. Negligence may consist of either doing something that a reasonably careful person would [not]¹ do under like circumstances or in the failure to do that which a reasonably careful person would do under like circumstances. In determining this issue, you should consider whether the force used was that which reasonably prudent police officers would have used based on their knowledge of the situation in this case.' It [i]s up to the jury to determine whether the police officers acted as reasonable men.²

The current Lakeland Police Department General Order 16 contains guidance for how and when officers should use deadly force. At 16-2.3, the General Order states that an officer is authorized to use lethal force when he or she believes it reasonably necessary "to defend [his or herself] or another person who is in imminent danger of serious physical injury, when making an arrest." Officer Cochran claimed that he feared that Mr. Jackson was going to hit him with the car, which

¹ The original text reads, "would do," but the sentence only makes sense if the court mistakenly left out the word, "not."

² *Cleveland v. City of Miami*, 263 So. 2d 573, 578 (Fla. 1972).

could have caused serious bodily injury or death. That belief seems reasonable given his testimony that the car moved forward in a smooth manner until it accelerated and he shot. The eyewitness testimony confirms that factual situation. All the eyewitnesses saw the car bounce or lurch forward at least twice before Officer Cochran shot. Second, "Prior to the use of lethal force, authorized members will, when feasible, identify themselves as police officers and order the subject to stop the activity which authorizes the use of lethal force." Gen. Order 16-2.3(B). No one disputes that Officer Cochran told Mr. Jackson he was under arrest and repeatedly commanded that he stop the car. General Order 16-2.9(B) presents a problem for Officer Cochran. It states, "Sworn members are expected to use care with respect to the direction a firearm is pointed, and take into consideration the potential to cause serious injury or death to innocent parties who may be in the line of fire." Officer Cochran did point the firearm at Mr. Jackson while there was an innocent 18-month-old child sitting right next to him. General Order 16-2.10(B)(3) states, "Sworn members shall not discharge a firearm [a]t a moving vehicle unless the member reasonably believes it is necessary to do so in order to protect themselves or others from death or great bodily harm." Here, we are back to the original question. Was it objectively reasonable for Officer Cochran to believe that he was in danger of death or serious bodily injury? The answer seems clearly to be, yes.

The State Attorney, in a letter laying out why his office was declining to charge Officer Cochran criminally, stated that Officer Cochran's use of his firearm was reasonable. State Attorney Jerry Hill premised this conclusion on the fact that Mr. Jackson's actions—making the car lurch toward the officer and turning the wheels toward him—were sufficient to give Officer Jackson a reasonable fear that his life was in imminent danger. Whether or not Officer Cochran put himself in a dangerous position is not important for determining whether or not he negligently discharged his firearm. The question of negligence is whether or not Officer Cochran's actions were objectively reasonable given the situation he found himself in.

It should be mentioned that the claimants put emphasis on *Lewis v. City of St. Petersburg*, 260 F.3d 1260, 1261-65 (11th Cir. 2001), to support the idea that there is a specific legal claim for the negligent use of a firearm. Though federal district and circuit court cases are persuasive, they are not controlling in Florida's state courts. There is no reason to question the validity of this legal claim. As mentioned above, in *Cleveland*, the Florida Supreme Court implicitly acknowledged the existence of a legal claim that a law enforcement officer negligently discharged his or her firearm. *Lewis*, though, makes clear that this claim is distinct from the more common claim of an excessive use of force. Some of Mr. Jackson's attorney's arguments in the 2009 claim bill hearing conflated these two

legal claims. It should be made clear that this case does not hinge on whether or not Officer Cochran's decision to use deadly force was correct. In fact, the claim is that, in using deadly force, Officer Cochran made some negligent action. Normally, this claim would come about when an innocent bystander was hit by a law enforcement officer's gun fire.

Damages

The jury verdict was solely for past and future pain and suffering. Nevertheless, Mr. Jackson argues for permanent physical and mental damages. Claimant states that prolonged strenuous activity can lead to numbness in his fingers and tightening in his shoulder joint. However, the claimant maintains a job almost identical to the one he had before being shot, and he makes a very similar wage. His psychologist has reported that any mental and emotional problems he had due to the shooting, e.g., PTSD, are all in remission at this point.

Since I find that Officer Cochran was not negligent in his actions, the \$100,000 paid to Mr. Jackson is a graceful and sufficient amount for any and all of his damages. However, the Legislature is not bound by this report, jury verdicts, or settlement agreements. Any claim bill passed is an act of legislative grace.³ The Legislature may feel called under a moral obligation to pass this claim bill to reconcile the actions taken place on October 18, 2001.

ATTORNEY'S/
LOBBYING FEES:

Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 10% of his attorney fee to the lobbyist. There are no outstanding costs.

LEGISLATIVE HISTORY:

This is the first time this claim has been filed in the House.

This claim was first filed in the 2010 legislative session as Senate Bill 66 by Senator Smith and died in the Senate Special Master on Claim Bills. Additionally, in the 2012 legislative session, the claim was filed as Senate Bill 48 by Senator Margolis. It was never heard in a committee and died in the Senate Judiciary Committee.

RECOMMENDATIONS:

For the reasons set forth above, I respectfully recommend that House Bill 6517 be reported **UNFAVORABLY**

Respectfully submitted,

³ Gamble v. Wells, 450 So. 2d 850, 853 (Fla. 1984).

PARKER AZIZ

House Special Master

cc: Representative Alexander, House Sponsor
Senator Rouson, Senate Sponsor
Tom Cibula, Senate Special Master