

WHAT TO EXPECT WHEN YOUR POLICE OFFICER IS INVOLVED IN A SHOOTING

PRE-SUIT ISSUES

- Garrity
- FOIA
- Criminal Investigation
- File Claim with insurer
- Internal Investigation

OFFICER CHARGED CRIMINALLY

- Coverage Issues
- Union Issues
- Suspension with or without pay
- Collective Bargaining Agreement governs

CIVIL SUIT FILED

- Complaint
- Service of process
- Again, report to insurer
- Attorney retained / MEW Officer
- Conflict of interest
- Stay of proceedings due to criminal charges

CONVICTION OR ACQUITTAL/DISMISSAL

- Criminal act / no coverage
- Union may provide civil attorney
- Insurer will likely still defend entity
- Acquittal/Dismissal: lawsuit proceeds

SOURCES OF LIABILITY

- Potential Liability for Municipalities and Law Enforcement Personnel Exists Under:
 - * Federal Law – Constitutional Violations
 - * State law – General Tort Principles

FEDERAL LAW

- 42 U.S.C. 1983 – Passed in 1871 (during Reconstruction) (Also known as the Ku Klux Klan Act!)
- Allows individuals to sue:
 - * “Persons” acting under color of law
 - * Monell: Entities are “persons” insofar as they act through their policies, customs, or procedures

THE STATUTE – 42 U.S.C. 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. 1983 – PURPOSE

PROVIDES FOR MONETARY DAMAGES IN ORDER TO
COMPENSATE, DETER & PUNISH WHEN PLAINTIFF CAN SHOW
A DEPRIVATION OF A CONSTITUTIONAL RIGHT

INDIVIDUAL LIABILITY

- CAN ONLY BE LIABLE IF PERSONALLY INVOLVED
- IF A SUBORDINATE COMMITS AN UNCONSTITUTIONAL ACT, SUPERVISOR'S LIABILITY IS INDIVIDUAL
- SO, THERE MUST BE ENCOURAGEMENT OR DIRECT PARTICIPATION
 - Negligence Is Not Sufficient
 - Failure To Act Is Not Sufficient
 - Requires “Implicit Authorization, Approval, or Acquiescence”
- NO VICARIOUS LIABILITY UNDER SECTION 1983

FOURTH AMENDMENT CLAIMS

- Excessive Force
- Improper Searches
- False Arrest
- False Imprisonment
- Malicious Prosecution

EXCESSIVE FORCE CLAIMS

FACTORS THE COURT WILL CONSIDER:

- The Severity of the Crime
- Immediate Threat To Safety Of Officer/Others
- Is The Suspect Actively Resisting

QUALIFIED IMMUNITY

- For an individual officer
- Viewed From Objective Standpoint
- “Hazy Border”
- Two – Part Test
 - (1) Was A Constitutional Right Violated?
 - (2) Was The Constitutional Right Clearly Established?

RECENT SUPREME COURT CASES RE: EXCESSIVE FORCE

- *Scott v. Harris*
- *Mullenix v. Luna*

Scott v. Harris

- Police officer did not violate the Fourth Amendment when he attempted to stop a fleeing driver from continuing his “public-endangering flight” by ramming the driver’s car from behind even though the officer’s actions created the risk of serious injury or death to the driver.
- According to the Court in *Scott*, a video of the chase made clear that the officer’s ramming of the car was objectively reasonable.

Mullenix v. Luna

- Officer entitled to qualified immunity where he shot and killed a suspect who fled officers after threatening to shoot them.
- Officer fired at fleeing vehicle from overpass as vehicle was about to strike spike strips.
- Officer claimed that he meant to shoot the engine block.
- No previous decisions specifically on point, factually.
- Therefore, qualified immunity applies.

MUNICIPALITY LIABILITY CLAIMS ALSO KNOWN AS MONEL CLAIMS

FOUR WAYS TO ESTABLISH UNCONSTITUTIONAL POLICY, CUSTOM, OR PROCEDURE

1. Official Policy (even if not written)
2. Actions Of Final Decision-Maker (single-incident sufficient)
3. Inadequate Training
4. Custom Of Tolerance Or Acquiescence

MUNICIPALITY LIABILITY CLAIMS ALSO KNOWN AS MONELL CLAIMS

- Plaintiff Must Be Able Show Underlying Constitutional Violation Caused By A Specific Custom, Policy, Or Practice Of The Municipality
- **No Vicarious Liability**

POLICYMAKERS

- “Official Capacity Claims”
- Treated As Being Brought Against the Municipality
- Person Must Have “FINAL AUTHORITY”
 - Not policymaker unless the person as final and unreviewable authority
 - No superior official over him, her, or them

FAILURE TO “BLANK”

- TRAIN, SUPERVISE, DISCIPLINE ETC.
- THESE ARE EXCLUSIVELY OFFICIAL CAPACITY CLAIMS
- MUST SHOW:
 - An obvious need for training, etc.
 - Objective deliberate indifference to that need
 - The failure was the cause of the constitutional deprivation

STATE LAW

INTENTIONAL TORTS

- False Arrest
- False Imprisonment
- Malicious Prosecution
 - Like Under 42 U.S.C. § 1983 Probable Cause Complete Defense
- Assault and Battery
 - But Officers May Use Objectively Reasonable Force
- But Governmental Immunity May Bar Claims

GOOD FAITH EXCEPTION

- In 2008, the Michigan Supreme Court clarified that there is a “GOOD FAITH EXCEPTION” with regard to intentional torts.
- This exception applies when:
 - (a) The acts were undertaken during the course of employment and the employee was acting, or reasonably believed that he was acting, within the scope of his authority,
 - (b) the acts were undertaken in good faith, or were not undertaken with malice, and
 - (c) the acts were discretionary, as opposed to ministerial.

GROSS NEGLIGENCE EXCEPTION

- (a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.
- (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
- (c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

GOVERNMENTAL IMMUNITY

“Gross Negligence” is defined as “conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.”

Does not apply if an intentional tort is alleged.

GOVERNMENTAL IMMUNITY

“The Supreme Court has defined “the proximate cause” as meaning “the one most immediate, efficient, and direct cause preceding an injury, not ‘a’ proximate cause.””

ANATOMY OF LAWSUIT

Complaint

Service of Process

Scheduling Conference

Discovery

Motion for summary judgment

Interlocutory Appeal

Trial

Officer Involved Shooting 2023

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