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Anatomy of a Fatal Police Shooting -- Allegations and Holdings

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1. Introduction

The following article examines, in some detail, a single case involving a fatal police shooting, Estate of Bennett v. Wainwright, No. 07-2169, 2008 U.S. App. Lexis 24217 (1st Cir.). The decedent was shot and killed by police after he himself initiated gunfire, which led to a federal civil rights lawsuit by his estate.

Ultimately, the court found no liability for the shooting, rejecting a wide variety of legal claims. The case is worthy of such examination because it brings into focus a whole series of points of contention that may arise in deadly force liability lawsuits, including search and seizure issues, establishing a perimeter in response to an armed confrontation, dealing with mentally ill suspects, deployment of a SWAT team, protection of third parties (in this case, the suspect's family members), the display of firearms, the actual decision to fire, and the issue of supervisory responsibility and liability based on the alleged inadequacy of training provided.

As a result, properly presented, the case can be excellent material for training and teaching, providing a focus for lively discussion and examination of vital issues. At the conclusion of the article, there is a list of resources that can provide some general background on some of these key issues.

2. Alleged Facts

The decedent, Daniel Bennett II, was a mentally ill young man who, between 1996 and 2000, was subject to a number of psychological problems for which he was prescribed medication. As sometimes is the case, he ceased taking his medication in November of 1999. Law enforcement personnel in Maine, where he resided, were summoned to his residence on a number of occasions in response to the resulting behavior and difficulties, safely transporting him to mental health care facilities on each occasion.

On the morning of January 21, 2000, he walked from Bucksfield, Maine, arriving in Sumner, Maine at his grandmother's home. The walk covered a distance of approximately ten to fifteen miles, with Bennett wearing only slippers despite the snow then on the ground. Once he reached his objective, his presence was initially punctuated by the spectacle of his beating a stray dog with a bat until it died.

Concerned about this, his grandmother tried to call his mother. Unable to reach her, the grandmother then called his sister, who ultimately had more success in contacting his mother, who announced that she would travel to the grandmother's house. His sister also got in touch with a male cousin, and requested that he also go to the scene, which he undertook to do, accompanied by his father. Not content with this, the sister called her husband, and he also set out to go to the grandmother's house to aid with the emergency.

Bennett's mother, upon arrival, had little success in speaking with him. His response was to tell her to "leave me the fuck alone, I don't want to kill you, too." She summoned help by calling 911, describing the situation and her son's statement. She also conveyed the fact that her son was not taking his medication, that he had killed a dog, and that, while there were guns in the house, they were either non-functioning or in a location unknown to her son. The subsequent lawsuit contended that she told 911 personnel that she wanted mental health transport for her son, rather than police intervention.

A deputy sheriff arriving on the scene was informed that there was a shotgun and a rifle inside the house, and he asked for a perimeter to be established around the residence, and for the presence of another deputy, the State Warden, and a Maine state police unit.

The first officer and a state police officer entered the home, and family members in the kitchen showed them a door leading though the living room to the back of the house, where Bennett was then present. These officers insisted on the family evacuating the premises, over their protests. As the officers accompanied the family members to the sister's nearby home, Bennett briefly came out of the back of the grandmother's house to demand that they "get the fuck out!"

A sheriff's department captain, who became the ranking officer on the scene upon arrival, ordered the deputy, the state police officer, and a second deputy to return to the grandmother's house, and to maintain a defensive posture until a Maine state police SWAT team arrived. They occupied the kitchen, monitoring the doorway leading through the living room to where the suspect was present.

The SWAT team assembled outside, at a time when all law enforcement personnel present apparently still believed that the goal was placing Bennett in protective custody and taking him to a facility where he could obtain psychiatric care.

The District Attorney's office declined to obtain a warrant, finding a lack of probable cause. A diagram prepared by family members showed the location of guns inside the home. The captain was told that Bennett did not know where the guns were, and that a single-shot breach-loader was the only functioning firearm present in the home. The plaintiffs in the lawsuit later claimed that the captain, at the time, "shocked and despondent" about events, threw up in the bathroom at the sister's house, and told family members that officers at the grandmother's house had prevented him and mental health personnel from contacting Bennett, as well as that they were "out of control," "too gung ho," and going "way too fast." A chief deputy who arrived on the scene became the ranking officer present.

At the grandmother's house, a deputy's efforts to communicate with Bennett from the kitchen were unavailing. Bennett entered the living room briefly twice. A second deputy pointed an AR-15 "long gun" at Bennett, who was then holding a toilet paper roll, and demanding that he put his hands up. The plaintiffs argued that Bennett was then going towards the bathroom, and that he then peacefully retreated to the back of the house.

When Bennett entered the living room a third time, however, he gave no warning, and was aiming the single-shot breach-loader shotgun at the second deputy, who yelled at him to drop the gun. Bennett fired, and the second deputy fired five rounds from the AR-15. The first deputy emptied a full thirteen-shot magazine from a 40-caliber handgun, before reloading, walking into the living room, and firing two or three additional shots at Bennett where he had fallen, behind a sofa, with one shot allegedly to his head and another "straight down" to his chest.

While CPR was performed on Bennett, and he was taken to a hospital, he was pronounced dead. He had been struck five times by the AR-15, including having his left pinky finger shot off, a wound to the left shoulder, and two through-and-through wounds to his left arm. He had also suffered a wound to the head and another to the chest from the 40-caliber handgun.

These facts, recited by the court, were stated in the manner most favorable to the plaintiff estate, since the issue on appeal was whether the trial court's grant of summary judgment for the defendants on all Fourth Amendment claims (as well as equal protection, supervisory liability, and conspiracy claims) should be upheld.

Because, however, the plaintiff estate failed to comply with local court evidentiary rules by failing to properly admit, deny, or qualify certain numbered statements of material facts set forth by the defendants, the court ruled that nine "facts" claimed by the plaintiffs would not be considered.

These included:

- A claim that the first deputy was known as "Deputy Death" and had been involved in the previous shooting of a mentally ill person; and that
- Bennett was not a threat to his family, and his family did not perceive him as one;
- The mother expressly told the 9-1-1 dispatcher that she did not want police assistance;
- Bennett's family members did not want to leave the grandmother's residence;
- The captain was upset about the goings-on inside the grandmother's residence, vomited, and criticized the actions of the other defendants to the family members gathered at the sister's house;
- When Bennett entered the residence's living room on one of the two times prior to when he was shot, a deputy pointed his firearm at him and Bennett held up a roll of toilet paper in his hand;
- On his third and final foray into the living room, when Bennett pointed the shotgun at the second deputy, the deputy responded by yelling "Danny, drop the gun, drop the gun";
- The first deputy fired a full 13-shot magazine at Bennett before he reloaded; and
- The first deputy walked into the living room and fired a second volley of shots straight into Bennett as he lay on the ground, in the fashion of a "coup de grace."

3. Legal Issues and Holdings

The estate's lawsuit named the two deputies, the captain, the state police officer, the county sheriff, the county, and the chief deputy as defendants. The lawsuit asserted federal civil rights claims that included alleged violations of substantive due process,

equal protection, and Fourth Amendment rights, as well as conspiracy to violate civil rights and claims under state law. The plaintiffs also argued that the sheriff and county should be subject to supervisory liability on the basis that they deliberately or consciously failed to adequately train their subordinates, in deliberate indifference to the decedent's constitutional rights.

The plaintiffs appeared to argue that the confrontation had involved a whole series of rights violations, from start to finish.

Fourth Amendment violations, the plaintiffs contended, included the initial entry into the home by the deputy and state police officer, since, at the time, they had no invitation to enter and also had no warrant. The subsequent re-entry by these two officers and an additional deputy, after the evacuation of other family members present, was also said to violate the Fourth Amendment.

The estate also claimed that, in ordering the family members to evacuate and then re-entering the house and remaining there without their consent, the defendants temporarily "seized" the Estate's property, the grandmother's residence, in violation of the Fourth Amendment, and that they "seized" Bennett in violation of his Fourth Amendment rights by establishing a perimeter around the residence.

Other alleged Fourth Amendment violations purportedly included involving the SWAT team during the standoff at the residence, causing Bennett to be unlawfully seized, and carrying out an unreasonable seizure by ordering family members out of the residence, as well as supposedly denying Bennett access to the restroom by blocking his access to it because of the positions they had taken.

Finally, the estate claimed that the defendants violated Bennett's Fourth Amendment rights by pointing their firearms at Bennett when he twice ventured into the living room prior to being shot, and by using excessive force in shooting him.

Before analyzing the heart of the case, the claimed Fourth Amendment violations, the appeals court quickly dispatched the substantive due process and equal protection claims.

To establish a claim for violation of substantive due process, the court noted, the plaintiffs had to show that law enforcement defendants had deprived the estate of a recognized 14th Amendment life, liberty, or property interest through "conscience-shocking behavior." The estate claimed both that the defendants' conduct was shocking to the conscience, and also that it could recover on a state-created danger theory because the defendants cause the decedent to become vulnerable to harm when they forced them to leave the house, putting him in the care of the deputy they tried to characterized as "Deputy Death."

But the appeals court found that the estate did not identify, aside from the deprivation of Bennett's life interest, what "specific deprivations" it supposedly suffered, and held that the deprivation of Bennett's life was essentially an excessive force claim that had to be brought under the Fourth Amendment, according to the principles set forth in Graham v. Conner, 87- 6571, 490 U.S. 386 (1989).

As for the equal protection claim, the appeals court found that the plaintiff estate had failed to show that Bennett, as a mentally ill person, was subjected to disparate treatment than non-mentally ill person. "The Estate cites some statistics comparing the number of mentally ill versus non-mentally ill persons shot by Maine law enforcement between 1985 and 2000, and it asserts that 'the Oxford County Sheriffs[sic] Office and the County and the individual defendants have a pattern and practice of using force disproportionately against the mentally ill as a strategy of suppressing them by the use of illegal arrest.'" But the pleadings filed by the plaintiffs failed to make any effort to show how Bennett's treatment was different from the treatment of other similarly situated non-mentally ill persons, so summary judgment was proper on the equal protection claim.

On the Fourth Amendment claims, the appeals court found that the initial entry into the home was objectively reasonable. While a warrantless entry into a home is presumed to be unreasonable without consent, an exception to this exists when there are exigent circumstances. A state statute authorized the officers to seize persons reasonably believed to be mentally ill if they present a threat to themselves or others. Under the facts presented, the officers in this case could reasonably believe that Bennett was mentally ill and "presented a threat of imminent and substantial physical harm to himself or others," including to the officers themselves, and could have reasonably believed that it was not a good idea to wait for a warrant or express consent before entering.

This also justified the reentry after other family members were taken out of harm's way. The officers, "based on undisputed" facts they knew, "could have reasonably believed that their prompt re-entry was necessary to respond" to Bennett's imminent threat.

Similarly, a reasonable officer could have believed that seizing the residence by forcing family members to leave and then reoccupying it was justified by the need to protect human life in the course of attempting to carry out a potentially dangerous psychiatric transfer.

The court found that the mere establishment of a perimeter and the calling in of the SWAT team was not a seizure at all, given the lack of any evidence that Bennett knew that a perimeter had been established outside the home, that he thought that his freedom

to leave the home was restricted because of it, or that he had any interaction with the SWAT team members before he was shot.

The striking of a number of purported facts barred the claim that the officers violated Bennett's Fourth Amendment rights by denying him access to the bathroom.

The appeals court also found that a reasonable officer "could have believed that pointing a firearm at a mentally ill individual with access to weapons did not amount to excessive force under the circumstances." The court cited Flowers v. Fiore, 03-1170, 359 F.3d 24 (1st Cir. 2004), a case in which it was held that officers did not use excessive force when they displayed firearms, including a shotgun, when making a traffic stop, when the description of the motorist stopped fit the description of a person known to be armed, so that police perceived a threat to their safety.

The shooting of Bennett, the appeals court reasoned, was supported by the trial court's "straightforward factual account of the tragic shooting." When Bennett, without warning, suddenly entered the living room pointing a shotgun at a deputy, the deputy yelled at him to drop the gun, and he refused to do so, instead firing at the deputy. The fire was returned, and it was believed Bennett was reloading his weapon. One deputy paused once to reload. Bennett received immediate first aid after the shooting, and before being pronounced dead at the hospital.

"While the result is tragic, we cannot conclude that the officers' actions were so deficient that no reasonable officer in their position would have made the same choices under these circumstances." The fact that the deputies fired multiple shots at the decedent, and may have even reloaded, did not alter the court's assessment. They could have reasonably believed that Bennett posed a continuing threat, and that their own safety and the safety of others required that they keep firing.

As for the estate's argument that the officers did or should have known that Bennett's weapon only had a single shot, "it is unreasonable to expect that having suddenly come under fire during a tense protective custody situation," the officers were required to take time to get a good look at the type of gun Bennett was using. Under the circumstances, the court concluded, even if Bennett's shooting was "unfortunate," it was not the result of "plain incompetence or knowing violation of law," entitling the officers to qualified immunity.

The appeals court compared this case to Berube v. Conley, 06-2644, 506 F.3d 79 (1st Cir. 2007), in which it found that the actions of an officer who continued to fire at a suspect after he fell to the ground could not be termed unreasonable on the basis that she

failed to "perfectly calibrate the amount of force required to protect herself," but instead made a "split-second judgment in responding to an imminent threat."

The appeals court also rejected the claims that the sheriff or county were liable for the shooting on the basis of either inadequate training or a pattern and practice of using excessive force in the course of mental health extractions. Citing City of Canton v. Harris, 86-1088, 489 U.S. 378 (1989), the appeals court noted that a failure to train claim can only result in liability on a showing of "deliberate indifference" that caused a violation of constitutional rights.

In this case, even if there had been proof of a constitutional violation, there was no evidence to show that it had been caused by inadequate training, the appeals court stated.

Similarly, there was no evidence of any "conspiracy" among any of the defendants to violate Bennett's civil rights. State law claims were also rejected.

4. Resources

The following are some useful resources, including some past articles from this publication on related topics.

- Civil Liability for Use of Deadly Force-- Part One--General Principles and Objective Reasonableness, 2007 (11) AELE Mo. L.J. 101.
- Civil Liability for Use of Deadly Force-- Part Two. Qualified Immunity and Inadequate Training, 2007 (12) AELE Mo. L.J. 101.
- Civil Liability for Use of Deadly Force-- Part Three. Supervisory Liability and Negligent/Accidental Acts, 2008 (1) AELE Mo. L.J. 101.
- Civil Liability for SWAT Operations, 2007 (7) AELE Mo. L.J. 101.
- Long v. Honolulu Police Sharpshooter Decision, 2008 (5) AELE Mo. L.J. 501.
- Improving Police Response to Persons with Mental Illness, T. Jurkanin, L. Hoover & V. Sergevnin, Charles C. Thomas, Publisher, ISBN 978-0-398-07778-5 (2007). http://www.ccthomas.com/ebooks/9780398077785.pdf
- People with Mental Illness, Gary Cordner, COPS Problem-Oriented Guide for Police No. 40 (2006). http://www.popcenter.org/problems/pdfs/MentalIllness.pdf
- Police Handling of People with Mental Illness, A. Lurigio, J. Snowden & A. Watson, 6 (3) Law Enf. Executive Forum 87-110 (2006).

- Police Response to People with Disabilities: Eight-Part Series, Dept. of Justice videos (including mental illness and retardation). http://www.ada.gov/policevideo/policebroadbandgallery.htm
- Police Response to Emotionally Disturbed Persons: Analyzing New Models of Police Interactions with the Mental Health System, H. Steadman, J. Morrisey, et al., NCJRS No. 179984 (1999). http://www.ncjrs.gov/pdffiles1/nij/grants/179984.pdf
- Police Response to People with Mental Illnesses: Trainers Guide and Model Policy, Police Executive Research Forum, ISBN 1-878734-55-5 (1997).

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