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Federal Civil Rights Liability For Accidental Shootings by Officers: Stamps v. Town of Framingham

❖ Introduction

Federal civil rights liability for police misconduct under color of state law (42 U.S. Code Sec. 1983) is based on the sanctioning of intentional actions that deprive a person of federally protected rights. So at first glance, even the title of this article might seem like a contradiction in terms. Ordinarily, liability for accidental acts causing personal injury is an area more commonly addressed by state law negligence principles. But, as a recent federal appeals court decision clearly illustrates, it is not that simple.

Determining that a shooting of a person by an officer was an unintentional act may be only the beginning of the analysis. If the officer engaged in actions that created the circumstances that led to the accidental discharge of his or her weapon, there still may be liability for violation of federal civil rights.

This brief article will focus on the case of *Stamps v. Town of Framingham*, #15-1141, 2016 U.S. App. Lexis 2026 (1st Cir.), and examine the court's reasoning, drawing out some suggestions to consider from the lessons of the case. At the end of the article, some relevant resources and reference are listed.

An earlier article in this publication, Civil Liability for Use of Deadly Force-- Part Three. Supervisory Liability and Negligent/Accidental Acts, 2008 (1) AELE Mo. L.J. 101,

contains a section discussing some prior case law in this area, and should be read together with the present article.

❖ The Facts in *Stamps*

In *Stamps*, an elderly African-American man, described as innocent, was accidentally shot and killed by an officer during a SWAT team raid executing a search warrant for drugs and paraphernalia on his home, where two drug dealers were thought to reside. A lawsuit argued that the officer violated the decedent's rights by pointing a loaded semi-automatic rifle at his head with the safety off and a finger on the trigger, even though he was compliant and posed no known threat.

Rejecting the officer's argument that he was entitled to qualified immunity because the shooting was accidental and not a violation of clearly established law, the federal appeals court found that the law was sufficiently established to put the officer on notice that his actions were not constitutionally permissible.

The case involved a post-midnight execution of a search warrant on a first floor apartment by a group of approximately eleven SWAT officers. The apartment was the home of the elderly African-American man, Eurie Stamps, Sr., as well as his wife and stepson. The search warrant identified another man as also occupying the apartment and was issued on probable cause that the other man and the stepson were selling crack cocaine from the residence. A third man thought to be an associate of the two suspected drug dealers was believed to also be in the apartment, but he was not mentioned in the warrant.

The police department suspected that these three men had ties to local gangs and collective criminal histories including drug and weapons offenses. There was no accusation that Stamps was involved in anything illegal. While the search warrant authorized a nighttime search for drugs and paraphernalia, it did not authorize an unannounced entry or command a search of any person.

SWAT teams members were told during a pre-raid briefing that the sixty-eight year old Stamps was likely to be present, that he was not suspected of any crime, and that his only criminal record consisted of motor vehicle charges. They were also told that he had no violent history, and no history of owning or possessing a weapon. They were also told that he posed no known threat to them.

The raid commenced shortly after midnight. The officers announced their presence, and one team set off a flash-bang grenade through a kitchen window. A second team entered the apartment with a battering ram. One member of the team, upon entering, switched the selector on his loaded M-4 rifle from "safe" to "semiautomatic."

He assumed control of the elderly Stamps, who was encountered in a hallway separating the kitchen from the bathroom and a rear bedroom. When ordered to "get down," Stamps got down on his stomach with his hands raised near his head, fully complying with instructions. The officer pointed his rifle at the man's head while he lay in the hallway, and two other officers went forth to search and clear the apartment.

The rifle's safety remained off and it remained set to "semi-automatic." The officer placed his finger on the rifle's trigger. Stamps was unarmed and continued to fully comply. The officer said nothing to him, but unintentionally pulled the trigger and shot him accidentally.

A bullet pierced Stamps' head, neck, and chest, and he was pronounced dead at a hospital after being taken there by ambulance. Following the incident, the officer was dismissed from the SWAT team based on a determination that he had failed to comply with police training and protocols.

The decedent's estate sued the town and the officer under 42 U.S. Code Sec. 1983 for violations of the Fourth and Fourteenth Amendments, as well as wrongful death under state law. It also asserted claims against the town for inadequate training and supervision. The officer argued that he was entitled to summary judgment on the basis of qualified immunity because an unintentional shooting does not violate the Fourth Amendment, and because even if there was a Fourth Amendment violation, the law on the subject was not clearly established. His motion was denied, and he appealed.

Expert testimony asserted that the officer had made three mistakes during his seizure of the decedent that were in violation of his training, police department rules, and general firearm protocol:

1. Police Department policy required officer to keep their fingers outside of the trigger guard "until ready to engage and fire on a target. The officer had been trained on this. For purposes of his appeal, the officer accepted that he placed his finger on the trigger, and that this violated department policy and his training.
2. Department training required that the officer's weapon be set on "safe" unless he perceived a suspect as a threat or he was actively engaged in clearing a room. The appeals court assumed for purposes of the appeal that neither was the case. Accordingly, the officer deviated from his training and from "proper, reasonable, established, and accepted police practices and procedures" by having his safety off.
3. By failing to keep his rifle's muzzle pointed in a safe direction at all times, the officer violated departmental guidelines and basic firearm safety procedures.

❖ **Reasoning of the Court**

The appeals court, in upholding the denial of qualified immunity to the officer, agreed with the trial court that "[e]ven the unintentional or accidental use of deadly force in the course of an intentional seizure may violate the Fourth Amendment if the officer's actions that resulted in the injury were objectively unreasonable." It further indicated that there were substantial issues as to the reasonableness of the officer's "conduct as a whole," emphasizing the low risk posed by Stamps and the high risk created by the officer aiming his rifle at Stamps' head with the safety off and his finger on the trigger, concluding that a reasonable jury could find that the officer's actions leading up to the shooting were objectively unreasonable, and "therefore that he employed excessive force in violation of the Fourth Amendment."

The court found that it was clearly established that an unintentional or accidental use of deadly force during a seizure can "give rise to a constitutional violation if the officer has acted unreasonably in creating the danger." The officer would have been on notice that his conduct violated the Fourth Amendment.

Key to this analysis is that the officer engaged in an intentional act—the seizure of Stamps, and could be found to have carried it out in an unreasonable manner, creating a high risk of an accidental and unintended consequence—the shooting.

What is a seizure under the Fourth Amendment? It occurs when an officer has "in some way restrained the liberty of a citizen through physical force or show of authority." A show of authority seizes a person when a reasonable person would have believed that he was not free to leave. The Fourth Amendment is only invoked when the governmental termination of freedom was achieved "through means intentionally applied."

The appeals court had no doubt that Stamps had been seized. "No reasonable person could possibly have felt free to leave with an assault rifle pointed at his head." Stamps clearly submitted to the officer's show of authority by remaining on the ground with his hands in the air.

The appellate court rejected the officer's argument that as a matter of law the Fourth Amendment did not apply to his conduct because the shooting itself was unintentional, and therefore, he asserted, was not "means intentionally applied."

> "The heart of their argument is that regardless of [the officer's] actions leading up to the moment he pulled the trigger, the inadvertence of the shot shields him from Fourth Amendment scrutiny. We cannot agree. The defendants' proposed rule has the perverse effect of immunizing risky behavior only when the foreseeable harm of that behavior comes to pass."

The appeals panel pointed to the analysis of the U.S. Supreme Court in *Brower v. Cty. of Inyo*, #87-248, 489 U.S. 593, 597 (1989). In that case, police were engaged in the high-speed pursuit of a suspect in a stolen car, and established a roadblock by positioning an 18-wheel tractor-trailer across both lanes of a two lane highway in the path of his flight, concealing it by placing it behind a curve and leaving it unilluminated. The driver was killed when he crashed into it.

The Supreme Court found that the roadblock constituted "means intentionally applied," While identifying the use of the roadblock as a seizure was not enough for liability, the plaintiffs could recover for the driver's death if they could show the unreasonableness of setting up the roadblock in such a manner "as to be likely to kill him." The plaintiff did not need to show that the officers intended to kill him.

From this, the appeals court extracted the general principle that "an officer can be held liable under the Fourth Amendment for an intentional but unreasonably dangerous seizure, even when the means employed to effectuate the seizure result — unintentionally — in someone's death."

Other cases, the court noted, have also found that a claim is stated under the Fourth Amendment for objectively unreasonable conduct during the carrying out of a seizure that results in the unintentional discharge of an officer's firearm, citing *Bleck ex rel. Churchill v. City of Alamosa*, #12-1139, 540 F. App'x 866, 2013 U.S. App. Lexis 22328 (Unpub. 10th Cir. 2013), cert. denied, #13-1253, 134 S. Ct. 2845 (2014), and *Watson v. Bryant*, #11-60699, 532 F. App'x 453, 2013 U.S. App. Lexis 2437, 2013 WL 3227633 (Unpub. 5th Cir. 2013)

In contrast to *Stamps*, see *Gardner v. Board of Police Commissioners, for Kansas City, Missouri*, #10-2179 , 641 F.3d 947 (8th Cir. 2011), in which a federal appeals court held that a diabetic police officer might be entitled to qualified immunity for firing every round in his weapon and hitting a trucker who had committed no offense. He had experienced a hypoglycemic reaction because of his diabetes, and consumed a donut and soda to attempt to counteract it.

The officer argued that, because of problems with his blood sugar, he did not intend to fire his weapon at all, much less shoot the trucker. The trial court acted erroneously in rejecting the officer's defense without taking into account the officer's subjective intent.

There was, unlike in *Stamps*, no showing that the officer intentionally took unreasonable actions that created a substantial risk of the accidental unintended consequence of shooting the person.

Ultimately, however, on remand, the officer was denied qualified immunity because the trial court concluded that there was evidence from which a reasonable jury could factually find that the officer was not actually experiencing a hypoglycemic reaction at the time, and therefore did intend to seize the trucker by firing his weapon. *Gardner v. Bd. Of Police Comm'rs*, 2012 U.S. Dist 6850, 2012 WL 170969 (W.D. Mo.).

❖ Some Suggestions to Consider

Minimizing the circumstances in which accidental discharge of a firearm is possible is an important objective. The following are some suggestions to consider in this regard.

1. Written policy and procedures on the subject of firearms safety rules should be developed and periodically reviewed.
2. Personnel should receive training on the developed policy and procedures. Such training should include information designed to make personnel aware of the risk of accidental discharge and precautions that can be taken to minimize the danger.
3. The premature or unneeded drawing, pointing, or displays of weapons run the risk of resulting in accidental discharge or use, leading to unjustified injuries. Even if accidental discharge does not occur, a premature drawing or display of weapons often creates unnecessary apprehension and anxiety on the part of the public. Such incidents impede the police department's public relations, decreasing the willingness of people in the community to cooperate with important investigations and lessening the possibility that persons will volunteer vital information to police.
4. Officers should have a valid reason for displaying a weapon. Those reasons are ultimately strongly related to many of the same factors that may help justify the ultimate decision to actually use deadly force, such a threat to the safety of the officers or members of the public, the actual or reasonably anticipated presence of weapons, the nature of the crime being investigated, and the dangerousness of the locale and circumstances.
5. Officers need not wait to draw and display their weapons until an armed suspect is actually pointing their own weapon at them, perhaps making it too late to adequately meet deadly force with equivalent or superior force, but neither should officers be pointing weapons at non-resisting, subdued suspects, or at non-suspects not engaged in any criminal activity or without the ability to pose a substantial threat, such as small children or incapacitated persons.

❖ Resources

The following are some useful resources related to the subject of this article.

- Firearms Related: Accidental Use. AELE Case Summaries.
- Firearms Related: Negligent Use. AELE Case Summaries.
- Peoria, Illinois Police Department Policy 4.09 Department Firearms. (April 20, 2007).
- The Six Basic Gun Safety Rules, California Department of Justice, Office of the Attorney General.
- Unintentional discharge (firearms). Wikipedia article.

❖ Relevant Monthly Law Journal Articles

- Civil Liability for Use of Deadly Force-- Part Three. Supervisory Liability and Negligent/Accidental Acts, 2008 (1) AELE Mo. L.J. 101.
- Weapon Confusion and Civil Liability, 2012 (6) AELE Mo. L. J. 101
- Excessive Force Claims Concerning Pointing Firearms--Part 1**,** 2010 (10) AELE Mo. L. J. 101
- Excessive Force Claims Concerning Pointing Firearms--Part 2, 2010 (11) AELE Mo. L. J. 101

❖ References: (*Chronological*)

1. Why Are Police Shootings of Innocents on the Rise? by Steven Yoder, The American Prospect (October 31, 2013).
2. Organizational factors that contribute to police deadly force liability, by Hoon Lee and Michael S. Vaughn, Journal of Criminal Justice 38 (2010) 193-206.
3. Training Liability in the Use of Deadly Force, by Jack Ryan, Legal & Liability Risk Management Institute (2007).
4. Off-duty incidents and federal civil rights liability: what officers need to know, by Michael P. Stone, Police One (July 14, 2006).
5. Handgun safety rules and regulations, PoliceOne.com (February 16, 2003).
6. "Accidental" Shootings as Fourth Amendment Seizures, by Kathryn R. Urbonya, Hastings Constitutional Law Quarterly, Vol. 20:337 (Winter 1993).

7. Liability of Police Officers for Misuse of Their Weapons, by Herbert E. Greenston, 16 Cleve-Mar. Law Review (3) 397 (Sept. 1967).

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