

Judge rules on motions in lawsuit against SoBo police; May trial to proceed

Posted: Monday, March 7, 2016 4:32 pm

“Having fully considered their filings and arguments, the matters are now ripe for disposition,” U.S. District Senior Judge Jackson L. Kiser said Monday when handing down an order that fails to dismiss the \$25 million lawsuit filed by Gwendolyn Smalls, the sister of the late Linwood Lambert Jr.

What it does do is grant in part the South Boston Police Chief Jim Binner and co-defendants’ motion for summary judgment and denies Smalls’ motion for summary judgment.



Gavel

Inside the United States District Court for the Western District of Virginia in Danville early last month, lawyers representing both Lambert’s estate and the South Boston Police Chief and co-defendants argued against and for a defense motion for summary judgment in the defendant’s favor in the \$25 million civil lawsuit filed by Lambert’s sister.

Lambert’s death occurred after officers stunned him with a taser outside the Halifax Regional Hospital emergency room on May 4, 2013 after taking him into custody at the Super 8 Motel on U.S. 58 in South Boston, according to the lawsuit filed April 29 in U.S. District Court in Danville.

Binner, Town of South Boston, South Boston Police Department Deputy Chief B. K. Lovelace, Corporal Tiffany Bratton and Officers Clifton Mann and Travis Clay were named as defendants in the suit.

The plaintiff alleges Lambert was deprived of his civil rights and denied medical attention, and it also alleges a conspiracy to violate civil rights and intentional infliction of emotional distress.

Thomas N. Sweeney, representing the plaintiffs in the case, and James. A. L. Daniel, representing Binner and co-defendants, gave differing interpretations of case law and the video of the incident in support of their positions last month.

In the judge’s 34-page memorandum opinion issued Monday, Kiser concluded Binner’s motion succeeds against Count VII: Deprivation of Medical Care and Count VIII: False Arrest.

He ruled the officers also are entitled to summary judgment against Smalls’ state-law claims to the

extent they are premised on the officers' reasonable conduction.

However, Binner's motion fails on the remaining claims, most notable, Count IV: Excessive Force.

"These rulings either confirm or effectively deny qualified immunity and, in turn, defeat or obviate the respective bases of Plaintiff's motion, which will be denied."

The remaining claims are set for trial scheduled the week of May 16.

Breakdown of judge's order

Both parties in the litigation moved for summary judgment on the question whether Corporal Bratton and Officers Clay and Mann are entitled to qualified immunity.

Qualified immunity is an affirmative defense that requires courts to enter judgment in favor of a government employee accused of violating individual rights unless the employee's conduct violates "clearly established statutory or constitutional rights of which a reasonable person would have known."

In this case, qualified immunity would hold that police officers should not be punished with lawsuits for carrying out their duties in reasonable fashion.

The motions center on the events preceding Lambert's death early in the morning of May 4, 2013.

According to the judge's memorandum opinion:

EMERGENCY CUSTODY

On May 3 of that year, Lambert checked himself into Super 8 Motel in South Boston, and beginning at 2:48 a.m. the police department began getting a series of phone calls that were unclear pertaining to a person needing assistance.

After several phone calls and failed attempts to locate the caller, at 4:30 a.m. the three officers found Lambert, "out of breath and sweating profusely with blood on his left hand and white substance draining from his nostrils."

They also found overturned furniture, mattresses removed from bed frames, broken glass, lights torn off the wall, broken chairs, blood drops on the bed's sheets and various other items broken or strewn about.

Lambert told police "someone was after him," that the blood in the room was not his, and that "they had lights on him" — "those red lights" referring to the targeting beams of a gun.

Lambert said he had stabbed two people in the room and hidden their bodies in the ceiling tiles, but officers found no bodies.

He admitted he had been drinking vodka that evening, but denied having any drugs or medication of

any type.

Bratton determined he should be taken to the hospital for a medical evaluation, so Lambert was handcuffed and taken into emergency custody, but he was not placed under arrest.

En route to the hospital, Lambert ducked to avoid being seen through the police car's rear window and continued to express fears about lights and the cars behind them.

TASINGS AT HOSPITAL DOORS

After arriving at the hospital, Lambert kicked out the rear right door's window. After several commands to calm down, Lambert then evaded Bratton and Mann and headed to the hospital's entrance where Bratton discharged her taser, but it did not make contact with Lambert, who then ran into and damaged the emergency room doors.

Bratton and Clay fired their tasers in probe mode at Lambert who fell and hit his head on the hospital's outer wall or a soap dispenser on it.

Lambert attempted to get up, and Bratton fired her third, fourth and fifth discharges and commanded him to stay back, to stay down and to stop and to lie on his belly.

A little while later, coinciding with Clay's second taser discharge and Bratton's seventh, arcing could be heard, and sparking could be seen near Lambert's feet, but his manner did not appear to change.

Lambert said he was trying to roll over onto his stomach and asked the officers not to hurt him.

Bratton reached her taser close to or against Lambert as he sat with his back leaning onto the hospital doors and began to discharge, in stun mode, her taser against Lambert

The officers continued to order Lambert to roll over on his stomach, and he responded, "If y'all stop, I will."

During this interaction, Bratton discharged her taser an eighth and ninth time, and Clay discharged his a third time.

The officers continued to command Lambert to roll over, and Bratton placed her taser on or near him and commanded, "Roll around," as the other officers rolled him over.

Lambert continued to say, "No sir."

Pinned to the ground, Lambert then stiffened his body, and Bratton discharged her taser twice, the 10th and 11th discharges in stun mode.

Eventually, Mann shackled Lambert's legs.

At this point, Lambert told the officers, "I just took cocaine, man. I was just takin' cocaine."

Bratton then placed him under arrest for resisting arrest and damaging the hospital and Super 8 Motel

as well as the police car.

The officers picked Lambert up and walked him to Clay's police car commanding him to enter the backseat.

TASINGS IN POLICE CAR'S BACKSEAT

While the officers were outside, and the police car doors were shut, Lambert sat up and began to swing his head about hitting it several times against the car's interior. Officers yelled stop, but Lambert continued and began to thrust his head and his torso toward the rear right door and raised his legs toward the front of the car.

At this time, Bratton opened the car's rear left door, pointed her taser at Lambert's left shoulder and commanded him to sit up. Eventually both Mann and Bratton discharged their tasers in stun mode, Mann's first discharge and Bratton's 12th.

Lambert jumped away from Mann and Bratton and lay across the backseat.

After letting him sit for a little while, Mann lifted Lambert's torso so he would be sitting in an upright position. After Mann fastened Lambert in a seatbelt, Lambert leaped toward Clay, and the officer attempted a manual pain-compliance maneuver, and Lambert tried to bite him.

TRANSPORTATION, UNRESPONSIVENESS AND DEATH

Bratton decided the officers would take Lambert to jail rather than to the emergency room. The officers did not check Lambert's vital signs or ask him about his condition, but he was breathing as long as the car remained on hospital premises.

Upon arrival at the jail, the officers found no pulse, removed him from the car and performed CPR until emergency help arrived and transported Lambert to the hospital where he was declared dead at 6:23 a.m.

An autopsy determined the manner of death to have been "accidental," and the cause of death to have been "excited delirium due to cocaine use with subsequent physical restraint including use of tasers."

EXCITED DELIRIUM

Excited delirium is a "state of extreme mental and physiological excitement, characterized by behaviors and symptoms such as extreme agitation, elevated body temperature, watering eyes, hostility, exceptional strength and endurance without fatigue."

Bratton, Clay and Mann had been taught very generally about excited delirium but received no instruction on "signs that an officer should be looking at to determine if an individual is suffering from excited delirium."

OFFICERS ENTITLED TO QUALIFIED IMMUNITY ON FALSE ARREST

The officers lawfully arrested Lambert, were present when he kicked out the rear right-door window of Clay's police car and when he damaged the hospital's entrance doors.

Damaging property is a crime.

Having observed the crimes committed in their presence, the officers' arrest of Lambert was constitutional, and they are entitled to qualified immunity.

OFFICERS ENTITLED TO QUALIFIED IMMUNITY IN PART FOR EXCESSIVE FORCE

Summary judgment on qualified immunity is appropriate for Bratton's first five taser discharges and for Clay's first.

Summary judgment on qualified immunity is inappropriate as to Bratton's sixth through 11th taser discharges and Clay's second and third.

EXCESSIVE FORCE UNDER 14th AMENDMENT

When the officers realized that Lambert was banging his head inside of the car and raising his legs, they were justified in taking some action to ensure that Lambert would not damage the car any further and that he would not injure himself.

After repeated verbal commands that he do so, Lambert, who was handcuffed and shackled, stopped raising his legs and swinging his head. He slouched in his seat. Discipline had largely been restored, and the threat of damage had dissipated; however, Bratton and Mann tased him under these relative settled circumstances.

"...the scant justification for force suggested malice and intent to harm or punish – not good faith intent to restore discipline."

Neither Bratton nor Mann enjoys qualified immunity as to these tasings.

OFFICERS ENTITLED to QUALIFIED IMMUNITY ON DEPRIVATION OF MEDICAL CARE

Lambert's excited delirium presented a "serious medical need"

"...the record does not reveal the officers' casual inference that Lambert's circumstances substantially risked excited delirium or consequent sudden death.

"In training the officers heard some passing mention of excited delirium, but whatever vague remembrance they had, it did not form an appreciation of the risk of sudden death or of the telltales that differentiate a person suffering excited delirium from an intoxicated or psychotic person not so affected. Because the officers lacked both the abstract and the concrete knowledge of Lambert's condition, they cannot be found to have been deliberately indifferent. The officers are entitled to qualified immunity on this claim."