



**STORAGE NAME:** h6501a.CJS

**DATE:** 2/5/2020

February 5, 2020

SPECIAL MASTER'S FINAL REPORT

The Honorable Jose R. Oliva  
Speaker, The Florida House of Representatives  
Suite 420, The Capitol  
Tallahassee, Florida 32399-1300

Re: CS/HB 6501 - Representative Fernandez-Barquin  
Relief/Dontrell Stephens/Palm Beach County Sheriff's Office

**THIS IS A CONTESTED CLAIM FOR \$22,431,892 BASED ON A FEDERAL JURY VERDICT FOR THE UNREASONABLE USE OF FORCE BY PALM BEACH COUNTY DEPUTY SHERIFF ADAM LIN AGAINST DONTRELL STEPHENS. RESPONDENT HAS PAID \$200,000 PURSUANT TO THE SOVEREIGN IMMUNITY CAP.**

FINDINGS OF FACT:

On September 13, 2013, around 8:20 a.m., Palm Beach County Deputy Sheriff Adam Lin fired four shots at Dontrell Stephens ("Claimant"), hitting him multiple times and rendering him a permanent paraplegic. Claimant was unarmed.

At the time of the shooting, Deputy Lin had been employed with the Palm Beach County Sheriff's office ("Respondent") for nine years. He had also previously served in the military.

Most of the facts in this case are hotly contested. Claimant characterizes Deputy Lin as a "police warrior" acting wholly unreasonably by shooting an unarmed man; and Respondent characterizes Claimant as a "drug dealer and convicted felon who was injured as a result of his refusal to follow a uniformed officer's directions during a lawful traffic stop."

### Dashcam Footage

Deputy Lin's police car was equipped with a dashboard camera ("dashcam"), which recorded much of the incident. However, during some of the more crucial moments, Claimant and Deputy Lin are not on camera.

The dashcam footage shows that while Claimant was riding his bicycle on a roadway, Deputy Lin activated his police lights and pulled Claimant over. Claimant rode his bicycle onto a driveway and dismounted.

At this point, Claimant was standing between two vehicles in a space about four feet wide between the vehicles. Claimant then began walking slowly in Deputy Lin's general direction (although Deputy Lin is not initially visible in the camera's view).

When Claimant began walking towards Deputy Lin, Claimant's left hand was empty and there was a black, rectangular object in his right hand, which later turned out to be a flip cellular phone. The video footage does not show any movement demonstrating hostility or aggression on Claimant's part. At least while Claimant was within full view of the dashcam, his arms dangled loosely at his side.

Claimant left the dashcam's view to the left of the screen, remaining out of the dashcam's view for 2 to 3 seconds. What happened during that time is unclear. When Claimant returned onscreen 2 to 3 seconds later, he was walking backwards, away from Deputy Lin, very slowly. About 1 second after reappearing onscreen, he turned and fled to the right, away from Deputy Lin, and Deputy Lin fired his first shot.

It appears from the dashcam that the first shot was fired almost at the same time that Claimant began to turn away from Deputy Lin to flee, and the next three shots followed in rapid succession. Claimant made it three steps away from Deputy Lin before he collapsed to the ground.

After the shooting, another deputy arrived as backup, and Deputy Lin administered first aid to Claimant. Paramedics arrived on the scene about 6 minutes after the shooting and transported Claimant to St. Mary's emergency room in Palm Beach County. At the emergency room, a nurse found 1.7 grams of marijuana on the floor of the operating room, which appears to have been in Claimant's possession. There was also some evidence that Claimant may have had cocaine in his possession. No weapon was found on Claimant; rather, the object in his right hand turned out to be a small, flip-style cellular phone measuring, when closed, less than 4 inches long, by 2 inches wide, by 0.75 inches thick.

Post-incident audio picked up a conversation between Deputy

Lin and a colleague shortly after the incident. Deputy Lin told his colleague that he initially thought Claimant was going to run away from him, but that Claimant then began "reaching back with his left hand," and then there was a small black object in that hand. Deputy Lin also told his colleague that he was "in fear for my life." The video indicates that Claimant did indeed have a cellular phone in his right hand, but the video indicates his left hand was empty (as he was previously riding a bicycle).

#### Deputy Lin's Perspective

About three hours after the shooting, Deputy Lin gave a sworn taped statement with counsel present. Deputy Lin testified that he had seen Claimant impeding traffic on his bicycle and attempted to make a traffic stop. Claimant dismounted his bike, and Deputy Lin commanded Claimant to show his hands and get on the ground. Deputy Lin reached towards his Taser, believing Claimant was about to flee on foot. Deputy Lin saw Claimant reach around his back with his left hand, and Deputy Lin then started to grab his firearm and back away. Deputy Lin stated that Claimant was putting his hand near his waistband.

According to Deputy Lin, Claimant never communicated verbally during the incident, but Claimant's "stare" put him on high alert. Deputy Lin testified that in Claimant's left hand was a "small, dark, square object" he thought was a gun.

#### State Attorney Investigation

The State Attorney for the Fifteenth Judicial Circuit issued a report indicating that Deputy Lin's use of force was reasonable, and did not file any charges. The report acknowledged that one of the unexplained questions in the case was why Deputy Lin was concerned with the movements of Claimant's left hand when the cellular phone was actually in his right hand.

#### Aftermath of the Shooting

As a result of the shooting, Claimant suffered a perforated lung and paralyzing damage to his spinal cord. He underwent multiple medical procedures and is now a paraplegic who uses a wheelchair. Claimant's complications from the shooting include:

- Paralysis of both legs.
- Lack of bladder control requiring the use of a permanent catheter.
- Loss of bowel control.
- Chronic pain.
- Depression.

Claimant has outstanding medical liens held by multiple entities totaling \$1,769,607.62. Other medical bills total an additional \$839,564.80.

Claimant's attorney retained Dr. Craig Lichtblau and Pacey Economics, Inc., to estimate Claimant's future economic losses including, but not limited to, future medical care, testing, pain control, and support care. The most recent estimate, provided on January 15, 2016, totals \$4,950,100. Dr. Lichtblau also opined that, because of the pain stemming from his medical condition, Claimant "will not be able to maintain gainful employment in the competitive open labor market or in a sheltered environment with a benevolent employer."

LITIGATION HISTORY:

Claimant filed a six-count complaint in state court, alleging:

- An excessive force claim under 42 U.S.C. s. 1983, against Deputy Sheriff Adam Lin, in his individual capacity;
- An excessive force claim under 42 U.S.C. s. 1983, against Palm Beach County Sheriff Ric Bradshaw;
- A state law battery claim against Sheriff Bradshaw based on the theory of respondeat superior;
- A state law battery claim against Deputy Lin, in his individual capacity;
- Negligent use of a firearm against Sheriff Bradshaw based on the theory of respondeat superior; and
- Negligent supervision, retention, and training against Sheriff Bradshaw.

The case was removed to federal court, presumably because of the federal law claims. Ultimately, only two counts proceeded to trial: the excessive force section 1983 claim against Deputy Lin (Count I) and the state law battery claim against Sheriff Bradshaw based on respondeat superior (Count III).

The federal jury returned a \$23,148,100 verdict for Claimant, finding that Deputy Lin's "intentional use of force against Dontrell Stephens was excessive or unreasonable." The jury itemized its award as follows:

- For past and future medical expenses, \$6,450,100.
- For ill health, physical pain and suffering, disability, disfigurement, discomfort, and other physical harm, \$10,626,000.
- For mental and emotional distress, impairment of reputation, personal humiliation, and related harm, \$6,072,000.

In turn, the court entered judgment against Deputy Lin and Sheriff Bradshaw jointly and severally for \$22,431,892.05.<sup>1</sup> Both parties appealed.

The Eleventh Circuit Court of Appeals affirmed the jury verdict for the state law battery claim (Count III) but reversed and remanded for a new trial on the excessive force claim against

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<sup>1</sup> The original \$23,148,100 verdict was reduced by the court to \$22,431,892.05 based on a post-trial stipulation regarding Claimant's medical bills.

Deputy Lin (Count I). After remand, the parties agreed to a dismissal of Count I, leaving only the state law battery claim against Sheriff Bradshaw intact.

In turn, Respondent paid Claimant \$200,000, the limits for tort damages under section 768.28, Florida Statutes. Claimant now seeks the remaining amount plus costs incurred since the verdict, plus interest.

CLAIMANT'S POSITION:

Claimant argues that Deputy Lin's use of force when he drew his firearm and shot Claimant was wholly unreasonable under the circumstances. Claimant asserts that even though Deputy Lin's job was to monitor traffic during school bus pickups and foster "positive community relations," he dressed in military-style pants and carried a total of 76 rounds of ammunition on his body.

Claimant argues that Respondent should be financially responsible under respondeat superior for his injuries, regardless of whether the claim is viewed as a state law battery or negligence claim. If the Legislature pays this claim bill, Claimant asks for the money to be placed in a special needs trust for Claimant's benefit rather than having the money go directly to Claimant.

RESPONDENT'S POSITION:

Respondent vigorously opposes this claim bill and urges no payment for two reasons.

First, Respondent argues Deputy Lin's actions were reasonable under the circumstances, because Deputy Lin reasonably feared that Claimant intended to use deadly force against him. Respondent asserts that Claimant's injury is due to Claimant's "refusal to follow a uniformed officer's directions during a lawful traffic stop."

Second, Respondent asserts that Claimant has questionable moral character. Respondent spent a large part of its case-in-chief during the special master hearing attempting to show that Claimant is a drug dealer and a liar, and that as such, he should not receive any state funds.

Respondent called to the witness stand Agent Michelle Romagnoli, who had posed as an undercover drug buyer to Claimant. Respondent offered hidden camera footage showing Claimant making a drug sale to Agent Romagnoli. Respondent also asserts that Claimant has connections to various gangs.

According to Respondent, "Claimant now seeks to recover a massive windfall on the taxpayers' dime," but "Florida's limited resources are better spent elsewhere."

CONCLUSIONS OF LAW:

State Law Battery Claim<sup>2</sup>

Claimant sought recovery in federal court on several counts, but the only count now remaining is his state law battery claim. Under Florida law, battery is "the infliction of a harmful or offensive contact upon another," with the intent to cause the contact or create an apprehension that the contact is imminent.<sup>3</sup>

A battery claim against a law enforcement officer for excessive force "is analyzed by focusing on whether the amount of force used was reasonable under the circumstances."<sup>4</sup> In general, law enforcement officers are entitled to use force to the extent necessary to defend themselves or others from bodily harm while making an arrest.<sup>5</sup> The question here, then, is whether Deputy Lin's decision to shoot Claimant was reasonable under the circumstances.

It is undisputed that at the time of the shooting, Claimant was unarmed. However, whether a shooting victim is unarmed at the time of the shooting does not necessarily mean the officer acted unreasonably.<sup>6</sup> Moreover, "[d]etached reflection cannot be demanded in the presence of an uplifted knife."<sup>7</sup> That is, whether Officer Lin's conduct was reasonable must be judged based on the circumstances he found himself in on the day of the shooting, not in hindsight.

Here, the dashcam indicates that this is not a case of an "uplifted knife." Rather, it is a case of a sheriff's deputy honestly—but unreasonably—overreacting to a situation and firing four shots at an unarmed person as he attempted to back away.<sup>8</sup>

It is clear that during the incident, Deputy Lin was on a high state of alert. Shortly the incident, Deputy Lin audibly recounted his fear. Deputy Lin's perception of the events was apparently distorted by this high state of alert, as he believed Claimant's hands were empty when he dismounted the bicycle (Claimant's

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<sup>2</sup> In most claim bill proceedings, the claimant seeks damages based on the legal theory of negligence, and the special master report analyzes the claim as such. In this peculiar situation, however, the jury verdict found Claimant was entitled to relief based on his tort claim of battery, not negligence. Moreover, analyzing a case involving alleged excessive force in terms of negligence would be awkward—if not incorrect. See *City of Miami v. Sanders*, 672 So. 2d 46, 48 (Fla. 3d DCA 1996) (in Florida, there is no cause of action for negligent use of excessive force; rather, such claims are analyzed as battery claims).

<sup>3</sup> *Quilling v. Price*, 894 So. 2d 1061, 1063; see *Mazzilli v. Doud*, 485 So. 2d 477, 480 n.2 (Fla. 3d DCA 1986) (intent required for battery is that the defendant must have intended the contact to occur, and such intent is present if the defendant intended to shoot the plaintiff).

<sup>4</sup> *City of Miami v. Sanders*, 672 So. 2d 46, 47 (Fla. 3d DCA 1996).

<sup>5</sup> See *id.*

<sup>6</sup> Cf. *Reese v. Anderson*, 926 F.2d 494, 501 (where police officer ordered the plaintiff to raise his hands, but instead the plaintiff repeatedly raised and lowered his hands out of sight, causing the officer to reasonably believe the plaintiff was reaching for a firearm, Court found "irrelevant" whether the plaintiff was actually armed).

<sup>7</sup> *Brown v. U.S.*, 256 U.S. 335, 343 (1921).

<sup>8</sup> The parties agreed in their written submissions that the first three shots hit Claimant in the front. Respondent contends that the fourth shot missed Claimant altogether; while Claimant sought to demonstrate that the fourth shot actually hit Claimant in the back. Respondent claims that one of the first three shots exited out Claimant's back, causing an exit wound. I find that whether the fourth shot entered Claimant's back is irrelevant to the ultimate conclusion that Respondent's employee acted unreasonably under the circumstances.

cellular phone was in his right hand), and he believed an object in Claimant's left hand might possibly be a firearm (actually, the small cellular phone measuring less than four inches long was in Claimant's right hand). Indeed, at trial, Deputy Lin testified that he was "completely shocked" when he saw the video footage, because he remembered the cellular phone being in Claimant's left hand "even to this day, as I am sitting here."

It is clear from the video footage that Claimant's cellular phone was in his right hand as he dismounted his bicycle and walked toward Deputy Lin, not his left hand as Deputy Lin later stated. There is also no indication from the footage that Claimant attempted to hide the cellular phone or wield it menacingly.

I find that Claimant has carried his burden to prove that Deputy Lin's use of force was unreasonable, and I give great weight to the fact that a jury found the same. The dashcam gives no indication that Claimant reacted in a hostile or threatening manner towards Deputy Lin; rather, the evidence indicates that most—if not all—of the shots were fired as Claimant moved away from Deputy Lin. Regardless of Deputy Lin's motivations, I find that his decision to fire four rounds at the unarmed, fleeing Claimant was unreasonable under the circumstances.

#### Respondeat Superior

An employer may be held liable for an employee's intentional tort when the employee committed the tort within the scope of the employment.<sup>9</sup> In this case, before the jury returned its verdict in Claimant's favor, the parties stipulated—and the federal district court ordered—that if the jury found Deputy Lin committed a battery, Sheriff Bradshaw would acknowledge vicarious liability under the state law battery claim in Count III.<sup>10</sup>

#### Damages

Claimant's medical bills and liens total about \$2.6 million, and the most recent plan submitted by Pacey Economics estimates the cost of care for the remainder of Claimant's life at just under \$5 million.

Claimant's life has been tragically and irreversibly altered by the shooting, and he now requires a wheelchair. However, in light of the amounts the Legislature has awarded similarly-situated claimants in the recent past, the Legislature may determine that a smaller award is reasonable in this case.

#### CLAIMANT'S CHARACTER:

The issue of Claimant's character is almost wholly irrelevant to whether Deputy Lin's conduct on the day of the shooting was reasonable. However, the question of a claimant's character in a

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<sup>9</sup> *Weiss v. Jacobson*, 62 So. 2d 904, 906 (Fla. 1953); see *Fields v. Devereux Found., Inc.*, 244 So. 3d 1193, 1196 (Fla. 2d DCA 2018).

<sup>10</sup> Claimant, in turn, withdrew his state law battery claim against Deputy Lin (Count IV).

claim bill proceeding may bear on the Legislature's decision to grant or deny an offer of grace through a claim bill.

Because the special master proceedings were inextricably intertwined with issues relating to Claimant's character, I conclude that it is necessary to include information pertaining to Claimant's character in this report.

#### Claimant's Character in General

Respondent used a significant part of its time during the special master hearing to attack Claimant's character. On the day of the shooting, marijuana and cocaine were found on Claimant's person. Respondent demonstrated that since the accident occurred, Claimant has directly sold drugs. There is also evidence indicating that Claimant may have connections to gangs including "YMS Trel" and "El Chapo."

Further testimony indicated that Claimant likely wiped his Facebook and Instagram accounts clean the night before the special master final hearing to conceal gang-related language. Respondent submitted photographs of Claimant's Facebook page, which showed Claimant posing with money in his hands or mouth and pointing firearms at the photographer in multiple pictures.

Even more troubling is the question of Claimant's credibility. At the special master hearing, I questioned Claimant extensively about various matters, including his drug-dealing past and voter registration. He testified under oath that he had never sold drugs to an undercover agent and had never registered to vote, even though there was clear evidence to the contrary. Whether Claimant had a clear intent to deceive or was not at full capacity on the day of the hearing is unclear. What is clear is that he wholly lacks credibility.

#### Claimant's Criminal History

Claimant was a convicted felon at the time of the shooting and has committed additional felonies since the shooting occurred. On April 27, 2012, Claimant was convicted of possession of cocaine, a third-degree felony. The court withheld adjudication. On January 31, 2013, Claimant was convicted of the sale of cocaine, a second-degree felony. He was adjudicated guilty and sentenced to 90 days' incarceration.

The shooting occurred on September 13, 2013, after Claimant had been adjudicated as a felon for the sale of cocaine crime. About three years after the shooting, Claimant was adjudicated guilty of several drug crimes including sale of cocaine, a second-degree felony. He was sentenced to nine months' incarceration and two years' probation.



Legislative Discretion in Considering Claimant's Character

Ultimately, my recommendation that this claim bill should be reported favorably follows from my conclusion that the shooting was unreasonable and unjustified. Whether the Legislature should consider Claimant's character problems when deciding whether to pass this claim bill is not a factor in my favorable recommendation.

The Legislature may determine that, based on Claimant's demonstrated lack of character, the claim bill should be reduced or not paid at all. Such determination, like the decision of whether to pass the claim bill, is a policy decision for the Legislature, not the special master.<sup>11</sup>

ATTORNEY'S/  
LOBBYING FEES:

If the claim bill passes, the attorney fee will not exceed \$4,486,378.41, and the lobbying fee will not exceed \$1,121,594.61. Outstanding costs are \$109,736.74.

COLLATERAL SOURCES:

Claimant states he has received no money from collateral sources. He has received medical care under letters of protection.

RESPONDENT'S ABILITY  
TO PAY:

Respondent states that it does not have the money to pay this claim bill, and that if it were to have to pay the claim, the impact on the sheriff's office would be "difficult to anticipate" but would likely cause a significant impact on the office's ability to provide law enforcement and corrections functions to the public.

LEGISLATIVE HISTORY:

This is the second session this claim bill has been filed. Last session, HB 6519 was not heard in committee.

RECOMMENDATION:

I respectfully recommend that CS/HB 6501 be reported **FAVORABLY**, with the caveat that the Legislature may decide to reduce the amount awarded based on the totality of the circumstances.

Respectfully submitted,



**JORDAN JONES**

House Special Master

cc: Representative Fernandez-Barquin, House Sponsor  
Senator Flores, Senate Sponsor  
Christie Letarte, Senate Special Master

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<sup>11</sup> See Fla. House Rule 5.6(c) ("The Special Master may prepare a final report containing findings of fact, conclusions of law, and recommendations").