



**THE FLORIDA SENATE**  
**SPECIAL MASTER ON CLAIM BILLS**

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DATE	COMM	ACTION
3/20/25	SM	Favorable

March 20, 2025

The Honorable Ben Albritton  
President, The Florida Senate  
Suite 409, The Capitol  
Tallahassee, Florida 32399-1100

Re: **SB 4** – Senator Rodriguez  
**HB 6509** – Representative Hart  
Relief of Patricia Ermini by the Lee County Sheriff's Office

**SPECIAL MASTER'S FINAL REPORT**

THIS IS A CONTESTED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF \$626,769.93 TO BE PAID BY THE FLORIDA SHERIFFS SELF INSURANCE FUND ON BEHALF OF ITS INSURED, THE LEE COUNTY SHERIFF'S OFFICE, TO PATRICIA ERMINI AS COMPENSATION FOR DAMAGES AWARDED BY JURY VERDICT IN CONNECTION WITH NEGLIGENT CONDUCT DURING A WELLNESS CHECK BY LEE COUNTY SHERIFF'S DEPUTIES. THE AMOUNT REPRESENTS AN EXCESS JUDGMENT IN THE AMOUNT OF \$550,000, PLUS INTEREST, TAXABLE TRIAL COSTS, AND APPELLATE COSTS AWARDED TO MS. ERMINI AS A RESULT OF HER INJURIES.

FINDINGS OF FACT:

On the evening of March 23, 2012, Ms. Robin LaCasse (LaCasse), at approximately 8:40 p.m., placed a phone call to the Lee County Sheriff's office to request a wellness check on her mother, the claimant, Ms. Ermini (then Ms. Mapes) (Ermini).<sup>1</sup> During the call, LaCasse informed the Sherriff's Office that she had spoken with Ermini about an hour before and Ermini seemed distraught and possibly suicidal. LaCasse

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<sup>1</sup> Lee County Sherriff's Office, Call from Robin LaCasse CFS#12-125672 at 1, Respondent's Exhibit C.

was concerned that she had been unable to get back in touch with Ermini. During the call, LaCasse also relayed that Ermini had a pistol in her home and that Ermini may have been drinking.<sup>2</sup>

At approximately 8:45 p.m., three Lee County deputies were dispatched to the home of Ermini to conduct the wellness check—Charlene Palmese (Palmese), Robert Hamer (Hamer), and Richard Lisenbee (Lisenbee).<sup>3</sup> Deputies Palmese, and Lisenbee were relatively inexperienced law enforcement officers, Palmese<sup>4</sup> having completed her field training in November of 2011 and Lisenbee having completed his field training in February of 2011.<sup>5</sup> Hamer was the more senior official, with ten years of experience between the Lee County Sherriff's Department and New York City Police Department.<sup>6</sup>

The deputies were advised, by dispatch and computer-aided dispatch of Ermini's name, age (70 years old), that Ermini was going through a divorce, received bad news that day, and was possibly suicidal; that LaCasse was concerned for Ermini's well-being; that Ermini owned a pistol; that Ermini had not answered her phone for the past hour; and Ermini was possibly intoxicated.<sup>7</sup>

Lisenbee was the first to arrive on scene at approximately 8:53 p.m.,<sup>8</sup> parking his patrol vehicle out of view of Ermini's residence. Lisenbee, according to his testimony, did not do a full check of the perimeter of Ermini's home, did not check for open or broken windows, and instead headed to Ermini's front door. Lisenbee banged on the door and announced "Sherriff's Office."<sup>9</sup> Finding the door to be unlocked, Lisenbee briefly stepped into the residence to find the all of the lights turned

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<sup>2</sup> *Id.*

<sup>3</sup> Lee County Sherriff's Office, Incident Recall, Claimant's Exhibit 30.

<sup>4</sup> Trial Transcript Vol 1 Day One of Three of Trial: Direct of Charlene Palmese, Claimant's Exhibit 34.

<sup>5</sup> Trial Transcript Vol 2 Day Two of Three of Trial Part 1: Direct of Richard Lisenbee, Claimant's Exhibit 35.

<sup>6</sup> Trial Transcript Vol 2 Day Two of Three of Trial Part 1: Direct of Robert Hamer, Claimant's Exhibit 35.

<sup>7</sup> See Incident Recall, *supra* note 3, and Trial Transcript Vol 2 Day Two of Three of Trial: Direct and redirect of Karen Snyder-O'Bannon, Claimant's Exhibit 35.

<sup>8</sup> Incident Recall, *supra* note 3.

<sup>9</sup> Direct of Lisenbee, *supra* note 5.

off and it very dark inside.<sup>10</sup> Lisenbee then backed out of the home as Palmese arrived.<sup>11</sup>

Palmese was the next to arrive at 8:55 p.m.,<sup>12</sup> also parking her patrol vehicle out of view of Ermini's residence.<sup>13</sup> After re-entering the home through the door Lisenbee left open, Palmese and Lisenbee stated that Lisenbee again called out "Sheriff's Office," again with no response.<sup>14</sup> The home was in a significant degree of disarray<sup>15</sup> and Lisenbee claimed to see a wine bottle on the floor.<sup>16</sup> At this point, the two deputies, decided that the situation called for additional backup and they backed out of the home.<sup>17</sup>

Hamer was the last of the deputies to arrive, at approximately 8:57 p.m.<sup>18</sup> He retrieved an AR-15 rifle from the trunk of his patrol vehicle and joined Lisenbee and Palmese outside of Ermini's residence.<sup>19</sup> He could not say for certain whether his vehicle was visible from the residence, "but there [were] trees in the back of the picture," of his parked vehicle.<sup>20</sup>

The three deputies (Lisenbee, Palmese, and Hamer) reentered the home and began to "clear" the residence. Lisenbee approached Ermini's bedroom. The bedroom had double-doors, both of which were closed, and the officers could not see through them. Lisenbee opened the door on his right side, and shined a flashlight onto Ermini's bed. He did not knock first and was intentionally obfuscating himself from Ermini's vision with the flashlight.<sup>21</sup>

At this point, the testimony significantly diverges. Lisenbee stated that he announced several times "Sherriff's Office, we're here to help you," and then went into Ermini's bedroom

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<sup>10</sup> *Id.* At trial there did seem to be some inconsistency between Lisenbee's testimony and previous deposition regarding the status of Ermini's front door as to whether it was "unlatched" or simply unlocked, but closed.

<sup>11</sup> Direct of Lisenbee, *supra* note 5.

<sup>12</sup> Incident Recall, *supra* note 3.

<sup>13</sup> Direct of Palmese, *supra* note 4.

<sup>14</sup> Direct of Palmese, *supra* note 4; Direct of Lisenbee, *supra* note 5.

<sup>15</sup> See Composite Exhibit—Photographs, Respondent's Exhibit F.

<sup>16</sup> Lee County Sherriff's Office, Sworn Statement of Deputy Richard Lisenbee CFS#12-125672, Respondent's Exhibit J.

<sup>17</sup> *Id.*; Direct of Palmese, *supra* note 4.

<sup>18</sup> Incident Recall, *supra* note 3

<sup>19</sup> Direct of Hamer, *supra* note 6

<sup>20</sup> *Id.*

<sup>21</sup> Direct of Lisenbee, *supra* note 5.

continuing to shout, “Sherriff’s Office, we’re here to help you.” Lisenbee did not think that shouting would frighten Ermini. Lisenbee then said that he saw Ermini lying on her bed in her undergarments. He did not see a firearm at this time. At this point, Ermini appeared to arouse from her sleep, and, according to Lisenbee said, “Who is it?” to which Lisenbee responded again with, “Sherriff’s Office, we’re here to help you.” After this, according to Lisenbee, Ermini responded with “I don’t care. I’m gonna shoot you.”<sup>22</sup>

Hamer recalled that he first entered the home he went through the living room. Having heard Lisenbee make contact with Ermini, he turned around and looked towards the double doors of Ermini’s bedroom. After hearing Ermini state, “I don’t care. I’m gonna shoot you,” he told her to get back as he and Lisenbee backed away from the double-doors.<sup>23</sup>

Ermini’s recollection of the events in her testimony at trial was that she awoke when someone opened the door to her bedroom and heard someone say, “Here she is over here.”<sup>24</sup> Upon hearing this, Ermini testified that she said, “Get out of my house, I have a gun.” She did not recall hearing anyone say that they were with the Sherriff’s Department or that they were there to help her.

Ermini approached her bedroom door with her Glock pistol, and at some point placed her finger onto its trigger.<sup>25</sup> Hamer stated that, as Lisenbee was walking backwards, he saw Ermini approach, place both hands around the grip of her firearm, finger on the trigger, pointing the firearm at him with Ermini stating that “I’m gonna shoot you.” At this point, Hamer, having kneeled down into a firing position, stated that he shot at Ermini seven times and that there was no time for him to tell Ermini to drop her firearm.<sup>26</sup>

Ermini recalled in her trial testimony that she was standing behind her opened bedroom door, “apparently” with her

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<sup>22</sup> Direct of Lisenbee, *supra* note 5.

<sup>23</sup> Direct of Hamer, *supra* note 6.

<sup>24</sup> Trial Transcript Vol. 4 Day Three of Three of Trial Part 1: Direct of Robert Hamer, Claimant’s Exhibit 37.

<sup>25</sup> According to the claimant’s own expert witness on Glock firearms, Larry Williams, at the special master’s hearing, it would be “impossible” for a Glock pistol such as Ermini’s to discharge a round without a person pulling the trigger and the pistol could not accidentally go off simply by being dropped. Since it is not disputed that Ermini’s pistol did discharge, she had her finger on the trigger of the firearm at some point.

<sup>26</sup> Direct of Hamer, *supra* note 6.

firearm (which she did not remember picking up). Ermini then stated that she looked around the door and the light of flashlights were hitting her in the eye and said, "Put your flashlights down, I can't see anything." The flashlights then went off of her and that is when she saw "this guy down on his knees with—well, I call it a machine gun," who then opened fire. After being shot twice, Ermini said she asked, "What are you shooting me for?" followed by what sounded like "bombs going off in my house." This is the last thing she could recall from the incident.<sup>27</sup>

Regardless of what series of events prompted it, Hamer fired his AR-15 seven times in Ermini's direction, striking her five times through the closed half of her double-door. At some point after Hamer started firing, Ermini's firearm discharged,<sup>28</sup> with the round later found in the ceiling of her home. Hamer admits to firing first. Hamer stated that he ceased firing upon seeing Ermini fall and drop her weapon, which fell to the left side of Ermini (Ermini is right handed).

The entire time elapsed from when the three deputies entered the home together through the front door and shots being fired is not entirely clear from the record. However, during the special master hearing, counsel for the Claimant played a recording of the dispatch from the night of the incident.<sup>29</sup> From the time that Palmese reported to dispatch that the door to Ermini's home was open until the report of shots fired was approximately 35 seconds. This likely represents the maximum amount of time that elapsed from the time the three deputies entered the home and Ermini was shot. The entire time from when Lisenbee first arrived on scene and shots were fired was likely no more than six to seven minutes.

According to Hamer, he immediately began giving emergency care to Ermini until paramedics arrived.<sup>30</sup> According to the witnesses (deputies and the paramedics that arrived on scene), Ermini still seemed extremely confused as to what

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<sup>27</sup> Direct of Ermini, *supra* note 24.

<sup>28</sup> What caused Ermini's discharge is inconclusive. Claimant did present evidence at the special master's hearing that Ermini's firearm may have inadvertently discharged due to a "limp-wrist malfunction," potentially demonstrating that Ermini did not have a full grip of the weapon at the time it discharged. However, even if so, it does not necessarily indicate whether or not Ermini intended to fire at the officers or that the pulling of the trigger of her firearm was inadvertent due to being shot. Regardless, it is clear from the evidence that Ermini had her finger on the trigger of her firearm and that Hamer was the first to shoot.

<sup>29</sup> A full copy of the dispatch audio was also provided in Respondent's Exhibit E.

<sup>30</sup> Direct of Hamer, *supra* note 6.

was happening—asking why the deputies were in her home and why they were trying to kill her. Ermini was subsequently transported to Lee Memorial Hospital for treatment where she ultimately survived her wounds. She was also placed under constant supervision by sheriff's deputies at the hospital due to suspicion that she had committed a criminal offense. Ermini was formally arrested on March 30.<sup>31</sup>

At the hospital, Ermini was diagnosed with gunshot wounds to her head, upper right extremity, and lower left extremity with an open fracture<sup>32</sup> to her femur. She also had blood in the 4<sup>th</sup> ventricle leading from her brain and wood splinters imbedded in her face from her bedroom door.<sup>33</sup> It was also later discovered that Ermini had a wood fragment from her damaged door lodged in her right eye.

Shortly after Ermini's admission, around 9:35 p.m., the hospital also drew blood for a series of lab tests. As part of the lab test, Ermini's blood alcohol level came back as 0.0148.<sup>34</sup> Dr. Robert O'Connor (O'Connor), a trauma surgeon at Lee Memorial Hospital who helped treat Ermini, stated at trial that although this would be nearly double the legal limit for driving, it does not automatically indicate impairment as alcohol can affect people differently.

Ermini was discharged from the hospital on April 18, ending up staying in the hospital for a total of 26 days. During that time, Ermini had multiple surgeries including skin grafts and a rod placed in her leg.<sup>35</sup>

On June 5, 2012, the State's Attorney Office filed a no information due to lack of evidence, dropping the charges against Ermini.<sup>36</sup>

In describing her injuries at trial, Ermini stated that she still does not see well out of her injured eye and can no longer drive at night, still did not have full range of motion with her arm, still took pain medicine for her leg, and continued to have scars from her injuries. She also suffered for several years

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<sup>31</sup> Lee County Sherriff's Office, Criminal Investigation Report, Respondent's Exhibit H.

<sup>32</sup> An open fracture is a broken bone with an open wound or break in the skin.

<sup>33</sup> Trial Transcript Vol 3 Day Two of Three of Trial Part 2: Direct of Robert O'Connor, Claimant's Exhibit 36.

<sup>34</sup> *Id.* Ermini admitted to having "two goblets of wine" that evening. Direct of Ermini, *supra* note 24.

<sup>35</sup> *Id.*

<sup>36</sup> *Ermini v. Scott*, 249 F. Supp. 3d 1253, 1263 (M.D. Fla. 2017)

from fear that someone would come in her room while she was asleep. She testified that she still slept with her “bedroom door locked and my gun real close by.”<sup>37</sup>

LITIGATION HISTORY:

On November 10, 2015, Claimant filed a complaint and demand (in Federal Court) for jury trial against Sheriff Mike Scott (Scott), in his official capacity as Sheriff of Lee County, Florida, and Palmese, Lisenbee, Hamer, and William Murphy (Murphy), individually.<sup>38</sup>

On October 24, 2016, Claimant filed an amended complaint.<sup>39</sup> The amended complaint against Scott alleged 13 total counts:

- Count I (Federal Law Claim): Violation Civil Rights against Palmese, Lisenbee, and Hamer for Unlawful Search and Seizure Pursuant to 42 U.S.C. § 1983.
- Count II (Federal Law Claim): Violation of Civil Rights Excessive and Deadly Force against Hamer Pursuant to 42 U.S.C. § 1983.
- Count III (Federal Law Claim): Violation of Civil Rights of Pursuant to 42 U.S.C. § 1983 against Murphy for False Arrest.
- Count IV (Federal Law Claim): Violation of Civil Rights Pursuant to 42 U.S.C. § 1983 Against Murphy for Falsifying an Affidavit to Obtain an Unlawful Search Warrant.
- Count V (State Law Claim): Unlawful Search and Seizure by Palmese, Lisenbee, and Hamer.
- Count VI (State Law Claim): Claim for Battery against Hamer.
- Count VII (State Law Claim): Claim for Gross Negligence against Palmese, Lisenbee, and Hamer.
- Count VIII (State Law Claim): Claim for Negligent Infliction of Emotional Distress against Lisenbee and Hamer.
- Count IX (State Law Claim): Claim for Malicious Prosecution against Murphy.
- Count X (State Law Claim): Claim for Intentional Infliction of Emotional Distress against Murphy.

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<sup>37</sup> Direct of Ermini, *supra* note 24.

<sup>38</sup> Patricia I. Ermini, formerly known as Patricia I. Mapes, Plaintiff, v. Mike Scott, in his Official Capacity as Sheriff of Lee County, Florida, Charlene Palmese, individually, Richard Lisenbee, individually, Robert Hamer, individually and William Murphy, individually, Defendants., 2015 WL 13801355 (M.D.Fla.).

<sup>39</sup> Patricia I. Ermini, formerly known as Patricia I. Mapes, Plaintiff, v. Mike Scott, in his Official Capacity as Sheriff of Lee County, Florida, Charlene Palmese, individually, Richard Lisenbee, individually, Robert Hamer, individually and William Murphy, individually, Defendants., 2016 WL 10951433 (M.D.Fla.).

- Count XI (State Law Claim): Claim for Negligence against Scott for Failure to Properly Train and Supervise.
- Count XII (State Law Claim): Claim for Negligence against Scott.
- Count XIII (State Law Claim): Claim for Defamation against Scott. The amended complaint notes, however, that this count had already been dismissed.

On April 15, 2017, the trial court granted summary judgment dismissing all of the counts in the case, except the portion of Count XII relating to Scott.<sup>40</sup>

On January 9, 2018, a three-day trial was conducted regarding the claim of negligence against Scott, in his official capacity as Sherriff of Lee County. At the conclusion of the trial, the jury found that the negligence of Scott was the legal cause of Ermini's injuries, and also found that Ermini's negligence also contributed to her injuries. The jury found "Ermini's damages for pain and suffering disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a disease or physical defect, scarring and loss of capacity for the enjoyment of life sustained in the past and to be sustained in the future" to be \$1,000,000. The jury apportioned fault to be 75 percent with Scott and 25 percent with Ermini, making a total award to Ermini of \$750,000.<sup>41</sup> The court subsequently entered a judgment in favor of Ermini for \$750,000 on January 12, 2018.

On February 7, 2018, Respondent filed a Motion for New Trial and Renewed Motion for Judgment as a Matter of Law. This motion was denied by the trial court on March 2, 2018.<sup>42</sup>

Respondent subsequently appealed the trial court's decision in the United States Court of Appeals, Eleventh Circuit. This appeal was denied on September 10, 2019.<sup>43</sup>

A *de novo* special master final hearing was held on December 19, 2023. The Legislature is not bound by settlements or jury

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<sup>40</sup> *Ermini v. Scott*, 249 F. Supp. 3d 1253, 1283 (M.D. Fla. 2017)

<sup>41</sup> Jury Verdict Form for 2018 WL 1053132 (M.D.Fla.).

<sup>42</sup> *Ermini v. Scott*, 2:15-CV-701-FTM-31CM, 2018 WL 1139053, at \*3 (M.D. Fla. Mar. 2, 2018), *aff'd*, 937 F.3d 1329 (11th Cir. 2019).

<sup>43</sup> *Ermini v. Scott*, 937 F.3d 1329 (11th Cir. 2019).



verdicts when considering a claim bill, passage of which is an act of legislative grace.

CONCLUSIONS OF LAW:

Section 768.28, of the Florida Statutes, waives sovereign immunity for tort liability up to \$200,000 per person and \$300,000 for all claims or judgments arising out of the same incident. Sums exceeding this amount are payable by the State and its agencies or subdivisions by further act of the Legislature.

**Vicarious Liability**

As pointed out by the appellate court, “practically speaking, the deputies’ actions are on trial,”<sup>44</sup> and Scott was the defendant due to vicarious liability whereby an employer is responsible for actions of employees. Section 30.07, of the Florida Statutes, authorizes such vicarious liability for the actions of deputies stating that, “Sheriffs may appoint deputies to act under them who shall have the same power as the sheriff appointing them, and for the neglect and default of whom in the execution of their office the sheriff shall be responsible.”

**Negligence, Generally**

Negligence is the failure to take care to do what a reasonable and prudent person would ordinarily do under the circumstances.<sup>45</sup> Negligence is inherently relative—“its existence must depend in each case upon the particular circumstances which surrounded the parties at the time and place of the events upon which the controversy is based.”<sup>46</sup>

Negligence comprises four necessary elements: (1) *duty*—where the defendant has a legal obligation to protect others against unreasonable risks; (2) *breach*—which occurs when the defendant has failed to conform to the required standard of conduct; (3) *causation*—where the defendant’s conduct is foreseeably and substantially the cause of the resulting damages; and (4) *damages*—actual harm.<sup>47</sup>

**Negligent Use of Excessive Force**

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<sup>44</sup> *Id.* at 1343 (11th Cir. 2019)

<sup>45</sup> *De Wald v. Quarnstrom*, 60 So.2d 919, 921 (Fla. 1952).

<sup>46</sup> *Spivey v. Battaglia*, 258 So.2d 815, 817 (Fla. 1972).

<sup>47</sup> *Williams v. Davis*, 974 So.2d 1052, 1056–1057 (Fla. 2007).

Respondent argues that Ermini's claim is barred in this matter as it is based upon a non-existent cause of action in Florida—negligent use of excessive force. Citing *City of Miami v. Ross*, 695 So.2d 486, 487 (Fla. 3d DCA 1997), *City of Miami v. Sanders*, 672 So.2d 46, 48 (Fla. 3d DCA 1996), and others, Respondent correctly argues that negligent use of excessive force is not a possible cause of action. In *Sanders*, the court points out that excessive force is an intentional tort involving battery, and thus, by its very nature, not negligence. Battery cannot be premised upon an omission or failure to act.<sup>48</sup>

The *Sanders* court does, however, point out that negligence “on the other hand, requires only the showing of a failure to use due care and does not contain the element of intent” and “a separate negligence claim based upon a distinct act of negligence may be brought against a police officer in conjunction with a claim for excessive use of force.”<sup>49</sup> “Negligence is not dependent upon bad intention, nor is it necessarily [negated] by good intention.”<sup>50</sup>

The issue in this matter is not the force, excessive or otherwise,<sup>51</sup> used by the deputies. Rather, it is whether the deputies were negligent in conducting the wellness check—which then lead to the use of force.

## **Duty**

### *Duty Element with Government Entities*

To have liability in tort for a government entity, there must exist an “underlying common law or statutory duty of care with respect to the alleged negligent conduct. For certain basic judgmental or discretionary governmental functions, there has never been an applicable duty of care.”<sup>52</sup> Section 768.28, of the Florida Statutes, does not establish any new duty of care for governmental entities. The purpose of statute was to waive

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<sup>48</sup> *Sullivan v. Atl. Fed. Sav. & Loan Ass'n.*, 454 So.2d 52, 54 (Fla. 4th DCA 1984).

<sup>49</sup> *Sanders* at 47-48.

<sup>50</sup> *Booth v. Mary Carter Paint Co.*, 182 So.2d 292, 299 (Fla. 2d DCA 1966).

<sup>51</sup> As stated, the excessive force claim made in the original complaint was dismissed via summary judgment. Thus, “excessive force” is not being considered here as part of Ermini's claim.

<sup>52</sup> *Trianon Park Condo. Ass'n, Inc. v. City of Hialeah*, 468 So. 2d 912, 917 (Fla. 1985).

immunity that prevented recovery for breaches of existing common-law duties of care.<sup>53</sup>

### *Undertaker Doctrine*

Special relationships can give rise to a duty. Such a duty can arise from a status (such as between a parent and child) or can arise from voluntary contracts or undertakings. An undertaking in this sense means an explicit or implicit promise, or commitment, conveyed through words or conduct.<sup>54</sup> Generally, undertakings create a duty which must be performed with reasonable care.<sup>55</sup>

The Florida Supreme Court, in *Wallace v. Dean*, 3 So. 3d 1035, 1049 (Fla. 2009), held that a sheriff, acting through their deputies, owed a common-law duty of care to a specific individual when they undertook to provide a service (a welfare check) to that individual. The Court found that once the deputies—who are agents of the sheriff—“respond, actually engage an injured party, and then undertake a safety check, which places the injured party in a ‘zone of risk’ because the officers *either* increased the risk of harm to the injured party or induced third parties—who would have otherwise rendered aid—to forebear from doing so.”<sup>56</sup> The Court also cited, with approval, the common-law undertakers doctrine stated in Restatement (Second) of Torts section 323:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if  
(a) his failure to exercise such care *increases the risk of such harm*, or  
(b) the *harm is suffered* because of *the other's reliance upon the undertaking*.<sup>57</sup>

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<sup>53</sup> *Id.*

<sup>54</sup> Dan B. Dobbs, Paul T. Hayden, and Ellen M. Bublick, *The Law of Torts* § 410 (2d ed.) (regarding defendant's undertaking creating a duty to the plaintiff).

<sup>55</sup> *Roos v. Morrison*, 913 So.2d 59, 64 (Fla. 1st DCA 2005).

<sup>56</sup> *Wallace v. Dean*, 3 So.3d 1035, 1040 (Fla. 2009).

<sup>57</sup> *Id.* at 1051.

In the matter at hand, like in *Wallace*, the deputies were engaged in a wellness check, and in so doing, owed a duty to Ermini to exercise reasonable care in doing so. The duty of care owed would be that of a reasonable law enforcement officer.

### **Breach**

In this case, the deputies had been informed that Ermini was potentially intoxicated. They also had been informed that Ermini was potentially suicidal and had a firearm. In entering a fully darkened home and getting no response to their initial inquiries, the deputies should have reasonably inferred that Ermini was either asleep or unconscious. As such, she likely would be slow, or unable, to hear their pronouncements that they were with the sheriff's office and were there to help her.

Further, any reasonable person, and especially a law enforcement officer, should recognize that having unexpected persons in one's darkened home, obscured while shining flashlights while one is asleep at night, would be very likely to be frightening and surprising. It is also not unreasonable to anticipate that a person in such a situation may instinctually reach for a firearm to protect themselves.

Given the obvious risk to Ermini and the officers in the situation, the likely less than 35 seconds from time the three deputies entered the home together through the front door and shots being fired, demonstrates that the deputies were either careless or reckless in assessing the situation and attempting to safely make contact with Ermini to assess her well-being. The conduct of the deputies in conducting the wellness check was negligent in both the management of the situation and time taken to assess alternatives.

### **Causation**

The Respondent argues that Ermini, "either knew she was attempting to kill deputies, or she was too drunk to know she was about to kill deputies who were there to help

her.”<sup>58</sup> However, this argument is based solely upon the fact that the deputies “repeatedly announced their presence.”<sup>59</sup> The deputies parked their patrol vehicles out of sight (Palmese and Lisenbee testified this was done intentionally, Hamer could not recall or ascertain whether he had done the same, but likely had done so) and Lisenbee intentionally obfuscated himself from Ermini’s vision with a flashlight. The deputies did not indicate that they were there at the behest of Ermini’s daughter or give any other evidence that they were who they said they were. Thus, Ermini’s only audio or visual indication that the deputies were law enforcement with no ill-intention were the deputies’ announcement—a statement any unlawful intruder could make as well.

In addition, the record does not indicate that Ermini had, at the time of the incident or at any time before the incident, any animus towards law enforcement. Thus, there is no basis to the claim that Ermini was intentionally seeking to kill someone due to that person being a law enforcement officer. Instead, a preponderance of the evidence shows that Ermini was a frightened woman, clothed in undergarments and just aroused from sleep, who was not fully aware of the circumstances within which she suddenly found herself (which may have been partially due to intoxication, discussed further below), who took spur of the moment action to protect herself in her own home from unexpected persons entering her home at night. The deputies may have reasonably feared for their own lives before Hamer shot at Ermini; however, the deputies’ own negligent conduct placed themselves in that situation. This same negligence was the cause of Ermini’s injuries.

### **Damages**

Through the provision of records and evidence showing Ermini’s injuries, the Claimants have established that the jury verdict of \$750,000 for pain and suffering was reasonable and should not be disturbed. Though Ermini’s health and mental condition has improved over the past decade, her previous and continued suffering, makes the jury award appropriate.

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<sup>58</sup> Respondent Sherriff’s statement of the case.

<sup>59</sup> *Id.*

### Alcohol Defense

Section 768.36, of the Florida Statutes, which is part of Florida's negligence code, states that:

In any civil action, a plaintiff may not recover any damages for loss or injury to his or her person or property if the trier of fact finds that, at the time the plaintiff was injured:

(a) The plaintiff was under the influence of any alcoholic beverage or drug to the extent that the plaintiff's normal faculties were impaired or the plaintiff had a blood or breath alcohol level of 0.08 percent or higher; and

(b) As a result of the influence of such alcoholic beverage or drug the plaintiff was more than 50 percent at fault for his or her own harm.

In this case, at trial, the district court jury was instructed as to this provision of Florida negligence law. Counsel for Sherriff Scott, in its appeal, challenged the district court's jury instructions and verdict-form entry pertaining to this defense. Counsel argued that the Sherriff was entitled to a "new trial because the district court improperly told the jury about the legal effect of any finding under the alcohol defense—namely, that if proved the defense would bar Ermini from recovering. That information, he says, was unnecessary and was likely to evoke sympathy for Ermini."<sup>60</sup> The appellate court rejected this argument finding that federal law (which controlled this issue in the case) "doesn't preclude district court judges from accurately informing jurors of the effects of their findings—in either their instructions or their verdict forms."<sup>61</sup> Further, the court found that such instructions are permissible if done impassively and accurately.<sup>62</sup>

The jury in this matter considered Ermini to be 25 percent at fault for her injuries as a result of her apparent intoxication on the evening of March 23, 2012. This is well below the standard of 50 percent in section 768.36, of the Florida Statutes.

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<sup>60</sup> Ermini v. Scott, 937 F.3d 1329, 1335 (11th Cir. 2019).

<sup>61</sup> *Id.* at 1337.

<sup>62</sup> *Id.*

Owing to Ermini's blood alcohol level taken at the hospital after the shooting and her apparent slow recognition and confusion as to what was occurring in her home on that evening, evidence here shows that Ermini is somewhat at fault for her own injuries. However, far greater responsibility in regards to Ermini's injuries lies with the deputies' negligence in conducting the wellness check that evening. Thus, I concur with the finding of the jury and find that a preponderance of the evidence shows that Ermini was 25 percent at fault for her injuries and Scott's deputies' negligence were 75 percent at fault for Ermini's injuries, through which Scott is vicariously liable in his official capacity

ATTORNEY FEES:

Section 768.28(8), of the Florida Statutes, states that no attorney may charge, demand, receive, or collect for services rendered, fees in excess of 25 percent of any judgment or settlement.

The Claimant's attorney has submitted an affidavit to limit attorney fees to 25 percent of the total amount awarded and has not sought any attorney fees for her lobbying effort on behalf of Ermini.<sup>63</sup>

RECOMMENDATIONS:

Based upon the foregoing, I recommend that SB 4 be reported FAVORABLY.

Respectfully submitted,

Kurt Schrader  
Senate Special Master

cc: Secretary of the Senate

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<sup>63</sup> Sworn Affidavit of Colleen J. MacAlister, November 27, 2023.