

Bonogofsky v. Big Horn Co. Sheriff's Dept. (verdict)

DISTRICT COURT

VERDICT: Defense, excessive force arrest/detention claims by PFMA victim . . . negligence by deputies in connection with use of force, but negligence not cause of claimed aggravation of prior back injury/pain.

A Hardin jury found that the Big Horn Co. Sheriff's Dept., acting through its deputies, did not use excessive force in arresting or detaining him 6/30/05. It found that the Department, acting by and through its deputies, was negligent in connection with the use of force, but that the negligence was not a cause of Bonogofsky's damages or injury. It assigned negligence 45% to the Sheriff's Dept. and 55% to Bonogofsky. It set forth damages suffered by Bonogofsky at \$22,206.22 medical & hospital treatment, \$11,250 course of life, \$23,400 physical pain & suffering, and \$22,500 emotional pain & suffering.

Dep. Debbie Windburn and Reserve Dep. Raymond Jefferson responded to a 911 call that shots had been fired at Bonogofsky's Fort Smith residence. BIA and NPS officers also responded. He had been shot at with a rifle by his ex-wife Sheila, who was ultimately charged with attempted homicide. Also with her was her 13-year-old son and a young girl. The three fled after the rifle was discharged. Bonogofsky took the loaded rifle into his home. It was unclear to the officers whether he was a victim or perpetrator. They knew only that shots had been fired and that he was in his home with a gun that had not been secured. The deputies took the lead in approaching his residence, with NPS and BIA officers covering. Because they knew the call involved a gun they took special precautions. Bonogofsky was on the phone with another deputy in Hardin advising that he should exit with his hands up, which he did. Jefferson repeatedly ordered him to the ground. He was initially noncompliant but eventually went to the ground in a prone position. He was handcuffed and taken into temporary custody so an investigation could be conducted. He complained that excessive force was used during his handcuffing by a Reserve Deputy driving a knee into his back. The Department denied that allegation. He was taken to Hardin, interviewed, and released later that morning.

Bonogofsky, 53, claimed that the alleged excessive force aggravated a prior back injury. He had a work-related back injury in 1990 which caused a chronic pain condition and resulted in numerous surgeries. His treating physician Gregory McDowell testified that the problems in his back were multifactorial which related partly to his preexisting painful back condition that predated the 6/30/05 incident and partly to the incident. Treating physician Michael Schabacker could not offer an opinion as to whether Bonogofsky's pain condition for which he is currently treating him related to the claimed excessive force. He acknowledged that he had never discussed anything about the event with Bonogofsky, and had no ability to relate his current pain condition to the event.

Judge Cebull previously rejected Bonogofsky's federal claims leading up to his custody based on the Public Duty Doctrine (37 MFR 361) and his claims of negligence per se and §1983 relating to his arrest (38 MFR 11).

Plaintiff's experts: John Sullivan, Las Vegas (police practices); orthopedic surgeon Gregory McDowell (deposed); pain specialist Michael Schabacker, Billings (deposed).

Defendant's expert: Mark Tymrak, Bozeman (police practices).

Demand, \$94,000; offer, \$46,500. Jury request, \$177,000; jury suggestion, 0. Michael Anderson, mediator. Jury deliberated 3 ½ hours including lunch 4th day; Judge Jones.

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Robert Stephens (Southside Law Center), Billings, for Bonogofsky; Jared Dahle (Nelson & Dahle), Billings, for the Department (Trident Insurance Services).

