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Estate of O'Brien v. City of Livingston (verdict)

FEDERAL COURT

VERDICT: Defense (49% liability by City, 51% by Decedent), officers shooting death.

On 1/2/16 at 8:30 p.m., Sean O'Brien, 37, went to the Livingston Shopko and told employees that "if you haven't called the cops you better cuz I'm going to shoot someone." He then went outside and hid in the bushes in front of the store. Officers Kevin Engle and Andrew Emanuel responded to the parking lot. One officer saw O'Brien and radioed his partner. O'Brien approached the first officer "feet stomping arms pumping" with a box cutter in his hand. The officer gave commands for O'Brien to "stop," he refused the commands and the officer attempted to Tase him but was unsuccessful due to his heavy winter clothes. The officers ordered O'Brien to "stop, drop the knife, show me your hands, get on the ground." After 14 refused commands O'Brien ran toward the officers with the knife and they shot him, killing him almost instantly.

Plaintiff's expert opined that the officers should have deescalated and that O'Brien was running or would have run away and that the shooting was not necessary. Defendant's experts opined that the City's use-of-force policies were adequate and appropriate and that the officers were justified in the use of deadly force to prevent imminent harm to themselves or others.

Magistrate Cavan and Judge Watters in 2020 granted the officers summary judgment on the basis of qualified immunity.

14 days before trial Cavan granted Plaintiff's motion to bifurcate liability and damages. This ruling was intended to focus the liability part on only the conduct of O'Brien and the officers and prevent the history of O'Brien's intoxication, addiction, mental illness, and suicide attempts from influencing the finding of liability. The first Billings jury hung 6-1 in favor of the City. The second Billings jury reached a 7-0 verdict on the following questions:

- Was the City of Livingston negligent? Yes
- Was the City of Livingston's negligence a cause of Sean O'Brien's death? Yes
- Was Sean O'Brien negligent? Yes
- Was Sean O'Brien's negligence a cause of his death? Yes

The jury apportioned fault 49% to the City and 51% to O'Brien. The instructions included special instructions about the effect of a 49/51 split.

Plaintiff's expert: Ernest Burwell, Thompson Falls (former Los Angeles Sheri , use of force, testified live at both trials, gave rebuttal testimony by video).

Defendant's experts: Mark Muir, Missoula (former Missoula Police Chief, JD practicing part time, policy expert, testified live at both trials); Emanual Kapelsohn, JD, Allentown, Penn. (-rearms and use of force expert, testified live at both trials).

No demand or officer. In the first trial Plaintiff suggested that the jury apportion liability 20% to O'Brien and 80% to the City but made no specific recommendation in the second trial.

Jury deliberated 2-3 hours 3rd day.

Estate of O'Brien v. City of Livingston, CV-18-106-BLG, 8/18/21.

Nathan Wagner (Sullivan Wagner Lyons), Missoula, for Plaintiffs; Randall Nelson (Nelson Law Firm), Billings, for the City (MMIA); Harlan Krogh (Crist, Krogh, Alke & Nord), Billings, for the officer; Livingston City Atty. Courtney Lawellin.