



July 7, 2011

Dismissal of Wrongful-Death Suit Upheld Where SWAT Team Use-of-Force During Hostage Situation Found Reasonable

Lorena Lopez v. City of Los Angeles

Court of Appeal, Second District (June 13, 2011)

This case addressed whether Los Angeles police officers acted reasonably in an incident that led to a fatal shooting. After affirming that Fourth Amendment excessive force claims and common-law unreasonable use of force claims against law enforcement are judged by the same standard -- whether or not the force was objectively reasonable under the circumstances -- the Court found the officers involved acted reasonably.

On July 10, 2005, Plaintiff/Appellant Lorena Lopez ("Plaintiff") contacted the police and reported that Raul Pena had threatened to kill Plaintiff, himself and his step-daughter Ilsy.

An inebriated and emotionally unstable Pena took his 19-month old daughter, Suzie, to his auto shop that afternoon. Police assembled outside. Using Suzie as a human shield, Pena stood outside the shop and shot at officers four times. He repeatedly threatened to kill Suzie and "take her to hell with him."

Police rescued Ilsy, also being held in the shop. She confirmed Pena had a handgun and a shotgun and said he was going to kill Suzie.

In the second hour of negotiation with police, Pena disconnected the phone, refusing to negotiate any longer. He proceeded to walk outside the auto shop, holding Suzie as a human shield. Officer



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O'Sullivan, believing Pena was going to pull his gun and shoot Suzie, fired at Pena in order to stop him.

After O'Sullivan's shot, a four-member SWAT began an emergency assault to prevent Pena from killing Suzie. Entering the shop, they found Pena positioned in an interior office. Through drywall, Pena fired at least six shots at the SWAT team, one of which hit an officer.

After tossing a stun grenade into the office, the team entered and simultaneously fired at Pena, releasing 50-55 shots in 3.5 to 6 seconds. Pena, again using Suzie as a human shield, had fired 39 rounds before his death. Both Pena and Suzie died in the assault. A bullet fired by one of the officers killed Suzie.

Plaintiff sued the City of Los Angeles ("City") under two causes of action: negligence and wrongful-death. Plaintiff's sole basis of liability for both causes of actions was use of unreasonable force by the officers. At trial City moved for non-suit. The trial court found that the officers' use of force reasonable and granted the motion.

Plaintiff argued on appeal that she had presented evidence the following conduct was unreasonable use of force: (1) O'Sullivan's decision to fire upon Pena; and (2) the deadly force used in the final assault upon the auto shop. The Court found both arguments unpersuasive. It concluded Plaintiff demonstrated no evidence of unreasonable force and affirmed the trial court's grant of nonsuit.

Plaintiff argued O'Sullivan lacked probable cause to shoot Pena because Suzie was not in danger. The Court, finding the assumption about Suzie's safety "a nonsensical interpretation of the evidence," noted Pena's threats throughout the day and his shots at the police while using Suzie as a human shield. That Pena did not shoot anyone during his negotiation with the police is irrelevant, as Pena: (1) stopped negotiation and refused continue; (2) threatened Suzie during negotiation; and (3) did not surrender. That Pena did not actually point his gun at Suzie at that moment was not significant, as the Court found the police were not required to wait until Pena actually shot Suzie to conclude his threats were real. The Court also disposed of Plaintiff's argument on causation grounds. Plaintiff's two causes of actions were based upon Suzie's death. Because the shot fired by O'Sullivan did not kill her, it did not make City liable for her death.

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Plaintiff also argued the final assault was unreasonable because police lacked probable cause to believe Pena posed a substantial threat to Suzie. The Court, referencing its earlier analysis, rejected this argument. Plaintiff further argued the use of deadly force was unreasonable because the police only used it in response to the threat Pena posed to them (not the threat posed to Suzie). The Court rejected this argument as well, finding the evidence demonstrated the SWAT members entered to rescue Suzie. The Court also held that the manner of deadly force exercised by the officers -- the number of shots fired in the few seconds -- was reasonable because Pena: (1) possessed multiple firearms; (2) was shooting at the officers; and (3) was threatening to kill Suzie. The Court also rejected Plaintiff expert's opinion otherwise, emphasizing that an expert's opinion must be supported by reasons and facts and that an opinion, in and of itself, does not make an officer's actions unreasonable.

COMMENT

This case affirms that the Fourth Amendment objective reasonableness standard for use-of-force by law enforcement applies to common-law claims alleging unreasonable use of force. The fact that a bystander was the subject of that force is irrelevant to the analysis, however tragic the result.

For a copy of the complete decision see:

[HTTP://WWW.LOWBALL.COM/WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/B219499.PDF](http://www.lowball.com/www.courtinfo.ca.gov/opinions/documents/B219499.pdf)

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