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RONNIE G. CLARK

29<sup>TH</sup> JUDICIAL DISTRICT COURT

VERSUS

PARISH OF ST. CHARLES

STATE OF LOUISIANA, THROUGH  
THE DEPARTMENT OF PUBLIC  
SAFETY AND CORRECTIONS, ET AL

STATE OF LOUISIANA

NUMBER: 44, 194 DIV: "C"

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REASONS FOR JUDGMENT

On March 19, 1994, Ronnie G. Clark was the driver of a motorcycle which was involved in a high-speed chase with several Louisiana State Troopers on Interstate 10. The chase had begun in St. John the Baptist Parish when a Louisiana State Trooper had attempted to stop plaintiff for speeding. Instead of stopping, plaintiff attempted to outrun the trooper. The chase continued for a number of miles into St. Charles Parish, causing the State Police to set up a roadblock near the I-10/I-310 interchange. Rather than stopping for the roadblock, plaintiff aimed his motorcycle in the direction of one of the State Troopers, accelerated, and proceeded towards one of the officers in an attempt to run the roadblock. The two officers who were positioned at the roadblock opened fire, seriously wounding plaintiff. Plaintiff subsequently filed suit as a result of the incident.

The officers involved in the shooting were Lieutenant Michael Sunseri ("Lt. Sunseri") and Sergeant William Dorris ("Sgt. Dorris"), both troopers in the Louisiana State Police. Said officers were named as defendants by plaintiff, along with the State of Louisiana, through the Department of Public Safety and Corrections and the Louisiana State Police.

The case was tried on the merits in a judge trial over the course of a four week period. The Court heard testimony from a total of twenty-four witnesses (14 fact and 10 expert witnesses) and reviewed over seventy-five separately identified trial exhibits (including numerous photographs, diagrams, sketches, scientific journal articles, deposition testimony, shooting test results, and physical evidence). Due to the many factual complexities involved in this case, the Court entertained post-trial memoranda. In said memoranda, both sides submitted lengthy arguments and case law totaling hundreds of pages supporting their respective positions.

From this comprehensive record, the Court must determine whether the shooting of Ronnie G. Clark was an appropriate response in light of the danger faced by Lt. Sunseri and/or Sgt. Dorris, or instead constituted an unjustified use of deadly force that warrants a judgment of liability against the defendants.

I. OVERVIEW OF THE GENERAL FACTS

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At the time of the shooting, the plaintiff was twenty-four years old and was residing with his father in Texas. On March 19, 1994 he was traveling through Louisiana on a 1982 Yamaha motorcycle en route to Florida after being contacted a day earlier by his probation officer in Florida about potential probation violations in connection with previous arrests in that state. (Plaintiff was a convicted felon.) The plaintiff was armed with a loaded .45 caliber handgun.

Trooper Terrence Freese of the Louisiana State Police was on patrol with police radar along a portion of I-10 in St. John the Baptist Parish when around 1:10 p.m. he observed the plaintiff traveling eastbound on I-10 at a speed of 115 m.p.h. Trooper Freese initiated pursuit in order to stop the plaintiff for a traffic violation and activated his police lights and siren. The plaintiff, however, refused to stop as required by law and continued to speed while periodically forcing slower moving traffic off the road.

During the pursuit, the back of plaintiff's shirt became dislodged, allowing Trooper Freese to observe a handgun tucked in the back of plaintiff's pants. As the chase continued, Trooper Freese was joined by Trooper Richard Reggio to assist in stopping the plaintiff. Throughout the pursuit, plaintiff remained defiant, at one point making an obscene hand gesture to the officers. Plaintiff also continued to force slower moving traffic off the road and at times traveled at speeds in excess of 120 m.p.h. Furthermore, on at least two occasions, the pursuing troopers reported over police radio that they observed the plaintiff reach back and touch or grab his weapon as the troopers moved closer to the motorcycle.

As the chase continued eastbound on Interstate 10, both Lt. Sunseri and Sgt. Dorris (who were located in separate vehicles nearby in Jefferson Parish) monitored the high speed chase over police radio as it traveled in their direction. Lt. Sunseri and Sgt. Dorris decided to overtake the pursuit and set up a police roadblock to force the plaintiff to stop. Traveling by different routes, Lt. Sunseri and Sgt. Dorris converged on a location of I-10 at or just before the I-310 exit ramp where they positioned their cars to block the regular lanes of traffic, leaving only the shoulders on either side of the roadway open. (The site of the roadblock was on the elevated twin span portion of I-10 that traverses the southern edge of Lake Pontchartrain.)

Lt. Sunseri and Sgt. Dorris exited their vehicles as the pursuit neared. Lt. Sunseri was armed with a 12-gauge shotgun and Sgt. Dorris was armed with a .9mm semi automatic handgun. Traffic had formed at the roadblock resulting in a line of vehicles which were stopped

in both travel lanes on I-10 East. As the plaintiff neared the roadblock, instead of stopping, he maneuvered his motorcycle onto the left-hand shoulder, passing the stopped traffic in the left-hand lane in an obvious attempt to avoid the roadblock. While in the process of driving through the roadblock, plaintiff accelerated his engine, picked up speed, and headed directly toward Lt. Sunseri, resulting in both Lt. Sunseri and Sgt. Dorris firing their weapons. (Lt. Sunseri shot his weapon twice and Sgt. Dorris shot his weapon three times).

The plaintiff was struck in three places: a bullet wound to his right foot, a shotgun pellet wound that penetrated his left side, and a shotgun pellet wound that hit his spine. The plaintiff subsequently fell off the motorcycle. He was arrested and transported to Charity Hospital for treatment of his injuries. The spinal injury has left the plaintiff completely and permanently paralyzed from the waist down and has required extensive hospitalization and rehabilitation since the shooting.

## II. THE APPLICABLE LAW

At the outset of this analysis, it is important to note what this case is not – what occurred was not an accidental shooting. It is undisputed that Lt. Sunseri and Sgt. Dorris discharged their weapons with the intended purpose of striking the plaintiff. What is at issue is whether the shooting was a reasonable use of force under the circumstances. The plaintiff alleges that Lt. Sunseri and Sgt. Dorris shot after the plaintiff was well past their position at the roadblock and that such use of deadly force was unjustified under the circumstances. The defendants, however, maintain that such force was justified because one of the troopers acted in self-defense and the other acted in defense of a fellow officer.

It is clear, therefore, that this matter must be separated from claims based on alleged negligent wrongdoing and should instead be viewed in the context of an intentional tort. Yet, in the post-trial memoranda submitted by both sides, the parties devote much of their arguments to analyzing this case within a negligence framework.

The plaintiff and the defendants both utilize the seven factor duty/risk analysis articulated by the Louisiana Supreme Court in Kyle v. City of New Orleans, 353 So.2d 969 (La. 1977) and Mathieu v. Imperial Toy Corporation, 646 So.2d 318 (La. 1994). The central issue, however, in each of these cited decisions concerned alleged acts of negligence by the police arising out of two shooting incidents. The holding of Kyle and Mathieu, and the analysis applied in both

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cases, dealt only with the degree of force reasonably necessary to apprehend or effectuate arrest of certain suspects.

In Kyle, the Court determined whether several police acted negligently by shooting blindly through a door in the course of effectuating an arrest. In Mathieu, the Court determined the very narrow issue of whether the manner in which two police officers approached and attempted to disarm a suspect constituted negligence. Neither of these two cases specifically addressed the use of deadly force by a police officer as a means of self-defense or defense of a fellow officer (or other persons).

If Lt. Sunseri and Sgt. Dorris had discharged their weapons in an attempt to effectuate the arrest of plaintiff, then the Kyle and Mathieu analysis would definitely apply. If the sole issue in the instant case concerned whether Lt. Sunseri and Sgt. Dorris acted reasonably in setting up the police roadblock to arrest the plaintiff, then the Kyle and Mathieu analysis would probably apply in that instance, also.

However, the defendants maintain (as unequivocally testified to by Lt. Sunseri and Sgt. Dorris at trial) that the troopers' decision to use deadly force was for defensive purposes only. Their testimony was that their use of deadly force was not to effect the arrest of plaintiff. For reasons hereinafter discussed, the Court believes this testimony. And, while the Court notes that some questions were raised by plaintiff about the set-up of the roadblock and its propriety, the Court finds that these issues are not central to plaintiff's case-in-chief and are of no moment to this Court in its opinion herein.

Based on the foregoing, this Court finds that the dictates of Kyle and Mathieu can be utilized by this Court as persuasive authority but are not dispositive of the issues in the instant case.

As in criminal cases, the defendants' assertions of self-defense and defense of another are considered affirmative defenses or privileges to an intentional tort claim. Both defenses operate on the principle that where force (even deadly force) appears reasonably necessary to defend oneself from a real or reasonably perceived attack by another, then such force is justified.<sup>1</sup>

In their post-trial argument, the defendants refer to the "aggressor doctrine", which essentially involves the same concept. The "aggressor doctrine" jurisprudence holds that a plaintiff is barred from recovery when his actions are such that they provoke a reasonable person

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<sup>1</sup> See Frank L. Maraist and Thomas C. Galligan, Jr., Louisiana Tort Law, § 2-9 (1996). See also LA. R.S. 14 :19 of the Louisiana Criminal Code.

to use physical force in fear of or anticipation of perceived injury. Tripoli v. Gurry, 218 So.2d 563 (1969); Brumfield v. Coastal Cargo Company, Inc., 768 So.2d 634 (La.App. 4<sup>th</sup> Cir. 2000); Lavesque v. Saba, 402 So.2d 266 (La.App. 1981). The "aggressor doctrine", however, does not bar recovery where a defendant uses excessive force to repel or subdue the initial aggression by a plaintiff. Vasquez v. Schwegmann Supermarket, Inc. 466 So.2d 745 (La.App. 4<sup>th</sup> Cir. 1985).

The distinction between the present case and the negligence actions involved in the Kyle and Mathieu decisions cannot be underscored. The difference between an intentional tort claim with issues of self-defense and defense of another as opposed to an action strictly based in negligence is not simply theoretical. By asserting affirmative defenses to justify the shooting at issue in this case, the defendants triggered a critical change in the procedural posture of the parties. Unless provided otherwise, affirmative defenses or privileges must be proven by the party who invokes said defenses.<sup>2</sup> Thus, at trial, while the ultimate burden of persuasion remained with the plaintiff in this matter, the burden of proof shifted to the defendants to substantiate their affirmative defenses and demonstrate that the use of deadly force was reasonably necessary to justify the shooting herein.

### III. FINDINGS OF FACT

At trial, the Court was presented with several hypotheses/theories/scenarios as to where the officers were or could have been located at the time of the shooting, the possible positions of the plaintiff as the shots were being fired or as he was hit by fire, plaintiff's speed at the time of the shooting, and whether or not the discharges of weapons were reasonable under the circumstances.

And, while all of us aspire to a perfect world, such is not the case here, and such is not the case in the real world.

Specifically, the Court notes that experts typically have the ability to attempt to reconstruct the scene of a shooting, analyze it in scientific terms, dissect it, determine what's ideal and what's not ideal, critique it and criticize it (constructively and critically), say what probably did and did not happen, and then conclude what probably occurred and why. In a nutshell, experts have the advantage of working hours and hours on microscopic analysis, apply 20/20 hindsight, and are then able to conclude what would have been the ideal (i.e., what should have been done in a perfect world.)

<sup>2</sup> See Frank L. Maraist and Thomas C. Galligan, Jr., Louisiana Tort Law, § 2-9 (1996).

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As the trial transcript herein will bear out, there are literally hundreds of pages (representing hours of testimony) of each side attempting to paint the most probable scenario of who was where when the shots were fired and what was likely under the circumstances.

And, while experts are often useful and are often crucial and invaluable in the determination of what happened in a particular situation, this Court suggests that this case does not rest on whose expert can give the best or most likely description of the facts of the shooting. In this Court's mind, this case turns more on the testimony of the lay witnesses than the testimony of experts. When all facts are broken down and analyzed, it is clear to this Court that this case boils down to common sense and reasonableness.

Common sense says that one doesn't attempt to avoid police officers in the lawful performance of their duties by attempting to outrun them at speeds in excess of 120 miles per hour. Common sense says that one doesn't create havoc on an interstate highway by weaving through traffic and forcing law-abiding motorists off the roadway. Common sense says that a motorcyclist doesn't make hand gestures toward a visible handgun located in his waistband while fleeing law enforcement officers. Common sense says that one stops for a legitimate police roadblock. Common sense says that one doesn't accelerate a motorcycle as a motorcyclist approaches a roadblock. Common sense says that one doesn't aim a moving motorcycle in a direct line of travel towards a police officer who is performing his lawful duty. Common sense says that one doesn't place a police officer in fear of death or great bodily harm by directing a moving motorcycle at the officer. Common sense says that one doesn't become the aggressor towards an obviously armed law-enforcement officer who is attempting to effect a lawful traffic stop.

In essence, common sense says that one doesn't put oneself in a position of peril from which one can't extricate oneself. And (as the Court recalls one witness observing while testifying), this is exactly what Mr. Clark did—he put himself in a position of peril from which he couldn't extricate himself. In the process of doing so, Mr. Clark's actions placed an officer in fear of death or great bodily harm. In the process of doing so, Mr. Clark's actions caused another officer to reasonably believe that a fellow officer was in danger of death or great bodily harm. And in the process of doing so, Mr. Clark's illegal, reckless, and irresponsible actions set into motion a series of events which are regrettable, irreversible, and permanent.

It is obvious from the foregoing discussion that the Court considers Mr. Clark to have been the aggressor herein. The Court specifically finds that the defendants herein have been proven by a preponderance of the evidence that Mr. Clark was the aggressor herein. The testimony of the participants and eyewitnesses is crucial to this finding.

With one exception, the Court was impressed with the sincerity and candor of all of the eyewitnesses to the incident. With the sole exception of Mr. Jonathan Cole, this Court believed that each of the eyewitnesses told the facts to the best of his or her recollection (over seven years had passed since the incident) and to the best of his or her observation. And while there were inconsistencies between the witnesses as to the exact locations of each of the participants (a fact to be expected by a Court and noted by the experts as being expected in incidents such as these), all of the eyewitnesses were consistent with the fact that the firing of the weapons occurred in a matter of a few seconds and all of the witnesses were consistent in testifying that the shots were fired successively and without interruption. Every one of the eyewitnesses called by the plaintiff and the defendants corroborated these facts.

The only eyewitness this Court found to have made a major error in testimony was Mr. Jonathan Cole. Mr. Cole testified that he was the first vehicle in the left-hand lane of the roadblock and that he had a clear view of the incident.

In truth and in fact, however, it was obviously Susan and Lehman Davis who were in the first vehicle in the left-hand lane of traffic. Their clear testimony to this fact was corroborated by the fact that they had been requested by State Troopers on the scene (who did not interview them or take statements from them) to write their account of the incident (which they did.) (This Court recalls testimony to the effect that occupants of the first vehicle in both lanes of travel had been asked to do this by State Troopers.) Mr. Cole testified that he did not talk to troopers on the scene nor was he asked to provide a statement by any troopers. This is indicative of the fact that he was not in the first vehicle in the left-hand lane and that his line of vision could not have been what he had said it was. (In fact, it was apparently the person who was riding with Mr. Cole who filed a complaint with the State Police and alerted the litigants herein to Mr. Cole's presence on the scene. Mr. Cole testified that his first contact regarding the case was by Mr. Clark's attorney.)

The Court was impressed by the testimony of both Sgt. Dorris and Lt. Sunseri. The Court found both of them to be sincere, believable, and candid witnesses. Their demeanor on the

stand showed that both troopers were deeply affected by the events of March 19, 1994. Both troopers impressed the Court as being dedicated law enforcement officers who were called upon to do their duty, who did their duty, and who are deeply saddened and still affected by the end results of having done their duty.

Sgt. Dorris testified that when he set up the roadblock, he was aware that he was dealing with an armed subject who was driving recklessly and who had reached for his weapon while being pursued by fellow troopers. In his mind, the situation was escalated because he thought the subject may use his weapon to escape.

Sgt. Dorris further testified that, as the cyclist approached the roadblock, everything happened in a split second. He related to the Court how he first saw the motorcycle as it passed an eighteen-wheeler at a good rate of speed (the driver being in a crouched position), and that everything that he saw indicated that the driver's intention was to run over Lt. Sunseri in order to avoid apprehension. He further testified that he instinctively made a decision to shoot the driver before the driver could hit Trooper Sunseri, and that he fired three shots as soon as the motorcycle cleared the front vehicle of the roadblock as it approached Lt. Sunseri. He testified further that he had stopped firing when he no longer deemed Lt. Sunseri to be in danger, and that his firing was in one fluid motion.

This Court is convinced that Sgt. Dorris was reasonable in his actions. As stated by Trooper Dorris, he did what he thought he needed to do under the circumstances. The Court is convinced that Sgt. Dorris' motives in firing were purely and simply in the defense of a fellow officer. The fact that his firing of his handgun was instinctive and instantaneous upon his perceiving the threat, the fact that the firing occurred over just a few seconds, the fact that the firing occurred in one fluid motion, the fact that he ceased firing once he felt the danger was over (corroborated by the fact that he used only three rounds of the sixteen that he had in his gun), and the fact that his actions were in compliance with State Police guidelines all support this Court's conclusion that Sgt. Dorris' actions were justifiable and reasonable under the circumstances.

Even more poignant than the testimony of Sgt. Dorris was the testimony of Lt. Sunseri. His testimony was that he had set up a roadblock because of the report of a pursuit involving speeds in excess of 115 miles per hour where the cyclist was running people off the road and getting hold of a gun. When the roadblock was set up, Trooper Sunseri said that he didn't know where the cyclist was located, so he stepped into the shoulder adjacent to the left-hand lane in



hopes of spotting the suspect. (Note: he testified that the shoulder was approximately 6 feet wide.) Once he spotted the suspect on the left-hand shoulder, Lt. Sunseri (armed with a shotgun which was pointed skyward) stated that he had started waving and was yelling "Stop! Police!" Instead of stopping, the subject kept coming towards him. When he realized that the subject was coming right at him and wasn't going to stop, Lt. Sunseri said he had to make a decision of whether or not he was going to go home that day. He testified that he decided that he was going to live, so he lowered the shotgun and shot once as the cyclist came towards him, then, as he was jumping out of the way of the approaching motorcycle, he shot a second time. Lt. Sunseri stated that "he'd have hit me with his motorcycle" if he had not jumped out of the way.

The Court is convinced that Lt. Sunseri's actions were justified and reasonable under the circumstances. The Court is convinced that Lt. Sunseri felt that his life was endangered by the subject's actions. The Court is further convinced that Lt. Sunseri's belief that his life was endangered was entirely justifiable and reasonable under the circumstances.

Mr. Clark created a gravely serious situation. Lt. Sunseri testified that "the only thing I saw was that motorcycle" and that the subject was so close to him that he could have reached out and grabbed him had he not been going so fast. Before the first shot, Lt. Sunseri saw the subject heading toward him, saying that he "was right there, in front of me, on the shoulder," and that the subject was "headed towards me." As he stated on cross-examination, "the cyclist wasn't just going past me--he was going to go through me." This was confirmed by the eye-witness testimony of the occupants of the first car which was directly in front of Lt. Sunseri, Susan Davis and Lehman Davis. (Susan Davis testified that the cyclist traveled through the point where the officer had stood and Lehman Davis testified that it appeared that the cyclist was trying to run over the officer.)

Lt. Sunseri's testimony of when the shots were fired was supported by the testimony of Lehman Davis. Mr. Davis testified that the first shot was fired when the cyclist was by his car (saying that he felt pellets hit his car's tires) and the second shot was fired as the officer was jumping out of the way.

The Court agrees with Lt. Sunseri that what he did was reasonable under the circumstances. All actions were in compliance with Louisiana State Police guidelines. He only fired his weapon when he felt that his life was endangered. He ceased firing when the danger

had passed. The timing of his actions were appropriate and within the reaction/response time required for an officer to perceive aggressive behavior, assess the threat, make a decision, react and fire a weapon. (A standard concept in law enforcement discussed by several witnesses during the trial.)

All things considered, the Court is not surprised that Lt. Sunseri thinks about this event on a daily basis. He had a reasonable apprehension and fear of being killed. He had a brush with death which resulted in tragic consequences to the aggressor. This was undoubtedly an emotional experience for all of the participants.

Which brings the Court to a discussion of Mr. Clark. The testimony of most (if not all) of the witnesses (both plaintiff and defense) was diametrically opposed to much of the testimony that Mr. Clark had given in his deposition prior to trial. The only explanation that Mr. Clark could provide for his major errors was that he thought that his deposition testimony was actual and factual at the time but that, given the testimony of the witnesses at trial, he doesn't believe that he remembers the facts accurately. At trial, Mr. Clark testified that he believed that he has confused the reality of the situation with the nightmares that he's had, and that now he is "messed up" on the facts. In essence, Mr. Clark is acknowledging that he has distorted the reality of what transpired on the day of the incident.

In truth and in fact, it was Mr. Clark's distorted view of reality on March 19, 1994 that was the sole cause of the sequence of events which have resulted in his being in the position that he is in today. In the process, it was Mr. Clark's actions which have resulted in his imposing upon himself a sentence far harsher than any court of law could have imposed upon him.

#### CONCLUSION

For the foregoing reasons, this Court finds that plaintiff, Ronnie Clark, was the aggressor on March 19, 1994, that his actions placed Lt. Michael Sunseri in reasonable fear of death or great bodily harm, that his actions gave Sgt. William Dorris reasonable fear that a fellow law enforcement officer was in danger of death or great bodily harm, and that the use of deadly force by both Lt. Sunseri and Sgt. Dorris was reasonably necessary under the circumstances.

Accordingly, there will be judgment denying all relief sought by plaintiff herein.

Hahnville, Louisiana, this 8<sup>th</sup> day of November, 2002.

  
EMILE R. ST. PIERRE, JUDGE