

VERDICTS & SETTLEMENTS

FRIDAY, JUNE 19, 2020

CIVIL RIGHTS

EXCESSIVE FORCE

Failure to Train, Supervise and Discipline

Settlement: \$4,650,000

CASE/NUMBER: Richard Martin Franco, Jr. et al. v. City of West Covina, et al. / 5:18-cv-02587-JGBSHK

COURT/DATE: USDC Eastern / Feb. 19, 2020

JUDGE: Jesus G. Bernal

ATTORNEYS:

Plaintiff - **Yana G. Henriks (McMurray Henriks LLP)** Dale K. Galipo Law Offices of Dale Galipo

Defendant - James R. Touchstone Melissa M. Ballard Stephen G. Larson Koren K. Bell (Larson O'Brien LLP for Corp. Mike Weathermon)

FACTS: On Dec. 15, 2017, Corporal Michael Weathermon of the City of West Covina Police Department pulled Richard Franco over after receiving a report of an attempted residential burglary, and Franco's van matched the description of the van used to flee the scene. Ultimately, Weathermon pursued Franco in a high-speed chase.

When Franco was stopped, Weathermon shot at him twice, striking him once in the head. Weathermon testified that he shot Franco in the head with the intent to kill because he predicted that if Franco had continued driving, he would have posed a threat to the public.

Franco brought this action based on excessive force (42 U.S.C. 1983); excessive force, Monell (42 U.S.C. 1983); failure to train, supervise, and discipline, Monell (42 U.S.C. 1983); negligence; battery; violation of the Bane Act (Cal. Civ. Code 52.1); and loss of consortium.

PLAINTIFF'S CONTENTIONS: Plaintiffs argued that Franco had surrendered with his hands up when defendant Weathermon, without warning, shot him. Plaintiffs argued that defendant Weathermon could not predict Franco's potential actions as a means to justify

the use of deadly force and that prophylactic killing by law enforcement is not permitted. Plaintiffs argued that the shooting was excessive and unreasonable under the totality of the circumstances because there was no immediate threat of death or serious bodily injury at the time the shots were fired.

DEFENDANTS' CONTENTIONS: Defendants denied the contentions and filed motions for summary judgments as to all causes of action. Defendants argued that Weathermon's patrol dash cam clearly showed that Franco fled from the police, drove his van with reckless abandon and wanton disregard for the safety of other drivers and pedestrians, and he was attempting to again drive away and cause similar threats of serious bodily injury or death to other motorists if permitted to flee custody. Defendants contended that Weathermon was entitled to qualified immunity under "Plumhoff v. Rickard" because he acted reasonably in using deadly force since an officer's attempt to stop a dangerous high-speed case chase that threatens the lives of bystanders does not violate the Fourth Amendment even if the fleeing motorist is at risk of being injured. The City also had a pending motion for summary judgment based on its position that there was no evidence of any unconstitutional policies, customs or practices that would support the federal civil rights claim against it.

All defendants contended that the state court tort claims would also fail due to applicable immunities and a lack of evidence to support a breach of duty.

INJURIES: As a result of the shooting, Franco was considered by plaintiffs' expert Bennet Omalu, M.D. to suffer from a mild to moderate traumatic brain injury.

Franco also suffered from loss of his right eye due to a severed optic nerve, a broken jaw, nerve damage, loss of feeling on the right side of his face, including his lips and teeth, hearing loss, issues breathing out of his nose, equilibrium/balance issues, seizure disorder that

causes fainting, and back pain. He underwent reconstructive surgery on the right side of his face.

Additionally, Franco's right knee meniscus was re-torn. he suffers from migraines on a daily basis, post-traumatic stress disorder, depression, emotional distress. memory issues, and declining cognitive impairment, among other things. Lastly, he must take approximately 14 prescription and non-prescription medications multiple times a day.

Defendants disputed the claimed residuals from Franco's alleged mental and physical injuries, and the extent of future care needed.

RESULT: The parties settled by way of private mediation for \$4,650,000 when the cross motions for summary judgment were pending before the court.

OTHER INFORMATION: After taking the deposition of Weathermon, plaintiffs filed a motion for summary judgment on qualified immunity and the requisite state law causes of action. Defendants also filed motions for summary judgment regarding qualified immunity and Monell.

Felony charges against Franco were dismissed. He pleaded no contest to a misdemeanor Vehicle Code violation. The Vehicle Code had no element for reckless driving; therefore, plaintiffs were able to argue in the subsequent civil rights matter that Franco had not driven recklessly during the vehicle pursuit, and therefore did not pose a threat to the safety of the public.

The instant case was removed to federal court and stayed pending the Justice System Integrity Unit investigation, that eventually found no wrongdoing on the part of Corporal Weathermon and exonerated him from any liability. Plaintiffs are actively seeking to re-open the JSID investigation because they allege numerous inconsistencies in the JSID report, which essentially adopted defendant's version of events.

FILING DATE: Dec. 12, 2018