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Md. high court reinstates police brutality verdict

Incident was caught on video

By: Steve Lash Daily Record Legal Affairs Writer June 3, 2020

Judge Michele Hotten on the bench at the Court of Appeals (File)

In a case centering on video of a police-involved shooting, a divided Maryland high court Tuesday reinstated a jury's civil verdict that a Baltimore officer used excessive force by firing four shots into a motorist who ran toward him during a traffic stop.

In its 4-3 decision, the Court of Appeals said the jury's finding that officer David Austin acted unreasonably in shooting Jeffrey Blair was wrongfully reversed by an intermediate appellate court based on its interpretation of the video evidence. Such reviews of video evidence are primarily the responsibility of juries — who also hear expert testimony — not appellate judges, the high court said.

Blair survived the Feb. 22, 2015, shooting by Austin but committed suicide later that year. Blair's widow, Tiauna Blair, sued the officer on the estate's behalf and was awarded $500,000 by the Baltimore City Circuit Court jury. The Court of Special Appeals, after reviewing the video, ruled 2-1 that Austin has acted unreasonably, prompting the widow's appeal to the high court.

"With certainty, factual matters are for juries, not appellate courts, to determine," Judge Shirley M. Watts wrote in her opinion providing the decisive fourth vote for the Blair estate.

"As technology becomes more prevalent in day-to-day life, issues involving its use will also become more prevalent in trials," Watts added. "Video recording, audio recordings, and images from social media websites will be offered as evidence more frequently as time goes on. Although an appellate court might be tempted to believe that it is in just as good a position as a jury to assess the weight of such evidence, the jury's province must remain sacrosanct, and an appellate court must not usurp the jury's role, no matter what type of evidence a case involves."

Austin, while on routine patrol, pulled Blair's car over after seeing him driving on the wrong side of the road and making a right turn against a red light onto Fremont Avenue, according to testimony at the civil trial.

Blair stepped out of his black Nissan Sentra and quickened his pace as he headed toward Austin, as seen on the video taken from a street-level security camera with no sound. The officer retreated about six steps and fired his weapon.

Blair was treated at The R Adams Cowley Shock Trauma Center for four gunshot wounds: one to his abdomen, one to his scalp and two to his right hand. He also received psychiatric treatment after saying he had wanted to kill himself, according to court documents.

Experts on police tactics presented dueling testimony at trial on whether an "objectively reasonable police officer" would have used a gun, as Austin had, or a nonlethal weapon.

The Court of Appeals held that the jury's interpretation of the video evidence and evaluation of the competing testimony was owed deference by the appellate courts.

"In conclusion, we hold that the Court of Special Appeals erred when it substituted its judgment for the factual finding of the jury regarding officer Austin's excessive use of force, for that of its own, based on its own independent evaluation of the video camera evidence," Judge Michele D. Hotten wrote in the court's controlling opinion. "The issue of whether the force used was objectively reasonable under the circumstances was a question for the jury to resolve."

Benjamin Rosenberg, the estate's attorney, praised the high court's decision and alluded to the nationwide protests that have followed the videotaped death of George Floyd while being held down by Minneapolis police last week.

"Police officers don't get a pass when they use excessive force," said Rosenberg, of Rosenberg Martin Greenberg LLP in Baltimore.

"That message couldn't be more timely," he added. "The jury's role is to decide what happened and that's what they did."

Acting Baltimore City Solicitor Dana P. Moore, whose office represented Austin, did not immediately return a message Wednesday seeking comment on the high court's decision.

Chief Judge Mary Ellen Barbera and Judge Robert N. McDonald joined Hotten's opinion.

In dissent, Judge Joseph M. Getty credited Austin's trial testimony that less deadly force would have been futile against the bigger and quicker Blair. Getty cited U.S. Supreme Court and 4th U.S. Circuit Court of Appeals decisions in saying an objectively reasonable officer can resort to deadly force based on a sound belief that an attacker presents a threat of serious physical harm without violating the Constitution's Fourth Amendment prohibition on unreasonable seizures.

"The Fourth Amendment does not permit judges or juries to 'Monday morning quarterback' the decisions of a police officer facing an imminent and serious threat because it only requires that the seizure fall within a range of objective reasonableness," Getty wrote. "Officer Austin had sound reason to believe that Mr. Blair posed a threat of serious physical harm, justifying the use of deadly force. Anything more — including the suggestion that officer Austin 'wait and see' if Mr. Blair is armed, or engage in hand-to-hand combat – edges dangerously close to the level of certitude the Constitution does not require… precede the act of self-protection."

Getty was joined in dissent by Judges Brynja M. Booth and Lynne A. Battaglia, a retired jurist sitting by special assignment.

The Court of Appeals rendered its decision in *Estate of Jeffrey Blair, by personal representative Tiauna Blair v. David Austin*, No. 35, September Term 2019.

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