On TRIAL

With Philadelphia Lawyer John Baldante

Victim of Police Shooting Settles with City

Suing the police can be a minefield for the Lawyer, Client and witnesses.

Baldante

Philadelphia lawyer John Baldante represented Carlos McLeod, a man shot by Philadelphia police officer Terrance Jones, in his civil rights lawsuit against the city. The shooting occurred as McLeod was coming to the assistance of a man who had just been shot in the robbery of a variety store.

Jones said he believed McLeod was one of the robbers and that McLeod had a gun. According to Baldante, McLeod, a Jamaican immigrant from New York, claimed Jones shot him as he was trying to pull the shooting victim to the sidewalk and that, after he was hit, Jones shot him again in the groin as he lay on his back on the sidewalk. Jones was in plainclothes at the time of the shooting. McLeod is paralyzed from the waist down. The Parties settled for $2.5 million.

Q: How did you get this case?

A: It was a referral from the criminal attorney who represented Carlos in the criminal violations that were initially charged against him following this incident.

Q: What was he charged with?

A: Multiple criminal offenses, including assault with a deadly weapon against a police officer, all of which were voluntarily dismissed in a few weeks.

Q: Jones rode to the scene with another officer. Did the other officer witness the shooting?

A: No. Officer Gary Harrison did not witness the shooting but he was on the scene shortly after the shooting.

Q: What did you do first?

A: We started by doing some investigation of the witnesses of which we were aware and they seemed to corroborate the version of the incident that my client had given to me.

Q: Who were the witnesses?

A: Some of them were victims of the robbery, others were people who lived in the neighborhood. One witness was a man named Kyle Stancil. He was someone who had visited this variety store at the corner of Wingohocking and Cleveland Streets to purchase a few items.

He was also friendly with the clerk who worked in the store. So they had some conversation and Kyle exited the store. He was parked across the street at the corner of Wingohocking and Gratz Streets. As Kyle was going back to his car he was assaulted by five black males wearing ski masks.

Another witness was the store clerk, whose name was Courtney Stubbs. Courtney was shot three times. It was Courtney that my client was going out to render assistance to when he was shot by Officer Jones.

Two other witnesses were at the scene. One was Tyron Sparks, who lived on Gratz Street near that corner. The other one was Leroy Harrison who also lived on Gratz Street and had witnessed the shooting of my client. Tyron Sparks really didn't witness very much but was able to corroborate the fact that the officer never identified himself as a policeman and was wearing plain clothes.

Leroy Harrison had more specific knowledge about the shooting. He came out on his porch and actually saw the officer fire twice at Carlos McLeod in a manner that was consistent with Carlos' version.

Q: The officer claimed that Carlos had a gun. What did the witnesses say about that?

A: It was interesting. The initial police report indicated that some of these witnesses stated that Carlos had picked up Courtney's gun, the gun that Courtney had dropped following his being shot. All of these witnesses, when I spoke to them, denied that they had ever said that. And none of them had ever seen Carlos with a gun in his hand.

Courtney's recollection was that Carlos was actually holding his hand and his arm, one hand was on Courtney's hand and the other was underneath his armpit, when Carlos was first shot. So that negated the police officer's version that Carlos had picked up the gun at that point in time, because both his hands were occupied.

Leroy Harrison, who saw two of the shots on Carlos, confirmed that Carlos didn't have a gun in his hand.

One of the ironic twists of this whole thing was that the gun found next to Carlos following the shooting was a gun that was registered to [a man] who lived around the corner from where the shooting happened. [He had] the same last name as one of the five black males who was a suspect in the robbery of Kyle Stancil, and our investigation revealed that there was a relationship between the gun owner and robbery suspect. But the police officer never charged any of these other people with the robbery. They were dismissed after being interviewed that night for some reason.

Q: Who investigates an incident like this for you?

A: Well, we hire investigators and some of it we perform ourselves by just going out and meeting with these witnesses and talking to them. There really is no substitute for that, I believe.

Q: What problems did you encounter in the investigation?

A: Initially the city was very reluctant to give me documents that we felt were pertinent to the case. Painstaking efforts were undertaken to obtain these documents. Numerous motions had to be filed, some of which the court denied. It was a slow and arduous process.

For example, some of the clothing that was involved in the shooting was initially represented to me to no longer be in existence. And as the case matured, items of clothing and guns that had been retrieved from the scene materialized. We started to be able to put together the case.

One of the most significant aspects of our discovery in the case was finding Carlos' clothes, which helped us recreate the trajectory of the bullets. It's kind of like putting the pieces of a puzzle together.

Carlos had two bullet wounds in his left arm --- an entry and exit wound. The entry wound was to the back of his left arm and exited the front of his left arm, which was consistent with how Carlos said he was shot. He claimed he was holding Courtney's hand when he was shot from the rear and the force of the bullet actually forced his hand to come separated from Courtney's. And the clothing supported that the bullet entered through the rear of his shirt sleeve and exited through the front of his shirt sleeve.

There was also another bullet hole in his back, his thoracic area at about T10, that severed his spinal cord. And the bullet came to rest lodged just posteriorly to his heart. Again, the clothing corroborated that the bullet entered through the back of his clothing.

The real linchpin to our success in this case, I believe, was figuring out how the bullet wounds came about to the lower torso of Carlos' body. He had a bullet wound in his right groin and there was also another bullet wound in his right buttocks.

Adjacent to the bullet wound in his buttocks, but very superficially situated under the skin, was an actual lodged bullet. It didn't make sense that the lodged bullet entered the wound in his buttocks, because it would have had to have made a very extreme left hand turn to have ended up superficially situated. So, we tried to figure out how this bullet ended up lodged there and why there were two bullet holes to Carols' lower torso, but only one bullet left in his body, when the medical records didn't reveal that they removed a bullet from his buttocks or from his groin.

When we got the clothing, we saw that there were holes in Carlos' pants and underware that corresponded to the bullet hole in the right groin, but there were no bullet holes in the seat of his clothing that corresponded to the bullet or the wound in his buttocks.

We figured out that when Carlos was shot in his groin, that bullet went through his pelvis and into his buttocks. According to my client, he was laying down on the pavement at the time he was shot in the groin and when the bullet went through his pelvis and into his buttocks it [exited and] ricocheted off the pavement. It [had] pierced the skin on his buttocks but didn't pierce the clothing, and it ricocheted back up into his buttocks. That made a lot of sense and it explained everything.

Q: Had you not gotten the clothing would you have been able to prove the trajectory?

A: It would have been far more difficult to prove.

Q: Did you have any other problems with the case?

A: The Eastern District, where the case was brought, at times puts difficult constraints upon us with regard to completion of discovery. There were numerous witnesses in this case, not only fact witnesses but people from the police department who were involved in the investigation of this robbery and the shooting, people from the Internal Affairs Division, people from the Mobile Crime Unit who came out and took measurements and that type of thing.

The court essentially allowed us three months within which to complete all of our discovery and some names of these police officers weren't even divulged to us until about three weeks before the discovery deadline date. So, the constraints of the federal court discovery and the amount of time allowed for completion of discovery in this case was burdensome at times.

Q: So you were looking at the clock all the time?

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A: All the time. In fact there were a number of depositions that we just physically never got to because we just never had enough time. The court would not extend the discovery deadline dates to us. We took three days to complete Officer Jones' deposition. And it took us two full days to complete Carlos McLeod's deposition. Some of the other depositions didn't take quite as long but there was virtually no one we deposed who didn't take at least a half a day.

So to take some 20 to 30 dispositions within three weeks and coordinate that with attorneys' schedules was virtually impossible. And the federal courts didn't have a sympathetic ear to extensions. But we managed to get the significant depositions completed.

Q: How did you find out that this police officer had other complaints against him?

A: That information was divulged during depositions. Because of the time constraints we proceeded with the officer's deposition before interrogatories and requests for production had been fully answered.

One of the packages of information that had not been produced at that time was the police officer's history with complaints through IAD. A lot of information was first discovered by us through his disposition. It was interesting to see the police officer's version of those incidents compared to what IAD had recorded based on the complaints of those civilians.

Q: In each case he had some sort of justification?

A: In his own mind he did, yes.

Q: I've read in the newspaper he is no longer a police officer on the street but is he still in the department?

A: I don't believe that he has been officially reprimanded for this even to this day. As I understand it, there has been another incident that [resulted in him being] taken off the street temporarily. I don't know if he is still off the street or if he's been placed back on the street.

Q: What's Carlos McLeod's condition?

A: Carlos was rendered a complete paraplegic from T10 down, which meant that he had some very subtle bowel and bladder function but for the most part was incontinent with both bowel and bladder.

He had to catheterize himself to urinate. He had virtually no sexual function. He could not and would not ever be able to walk again. His upper extremities were intact.

Q: If you went to trial would he be on the stand describing this?

A: We went through great lengths to conduct a "day in the life" video. Carlos was indigent before this accident. Afterward his financial situation worsened, naturally, and he became homeless. He was admitted to a homeless shelter in New York City and he remained there for about 10 months so that he could qualify for Section 8 housing.

He was from Jamaica and he was here in the United States on a green card. So he didn't qualify initially for Section 8 housing, even though he was a paraplegic. So the only way he could qualify was to become homeless for a period of 10 months and qualify through that circumvented manner.

He then obtained some housing and realized that in order to do anything with his life, because he was only trained as an auto mechanic, he now was going to have to go back to school and get his GED.

So he did something that was pretty miraculous. He would travel from the Bronx, New York, down to midtown taking three or four buses in a wheelchair every day and would attend classes to obtain his GED following this incident. And he did eventually, to his credit, get his GED.

Q: Is he working?

A: No. He would like to get a job repairing wheelchairs. It fulfills his mechanical talents. You would think if anyone's empathetic toward someone in his condition it would be manufacturers of wheelchairs. He hasn't gotten a job at this point in time.

Q: What damages were you claiming? I'm assuming you weren't claiming wage loss.

A: We did project a future lost earning capacity. He didn't have past lost wages to speak of, but because of his condition he certainly had vocational horizons that were closed off to him. So there was a claim in that regard. It wasn't a tremendously significant claim -- somewhere in the vicinity of about $300,000.

Q: What else?

A: For the past medical damages, $246,000. And the other aspect of his economic losses involved his future custodial care needs. That's a significant number. Our estimate was about $1.1 million. The defendants estimated in the area of $750,000 and that includes a number of things; household help, modifying a home so it's wheelchair accessible, certain types of therapies and procedures he'll need and monitoring into the future.

Q: Has he gotten the settlement money?

A: Not yet. Part of the agreement was that the monies would be distributed during the calendar year 1996. We've gotten him a line of credit until then.

Q: Did the settlement include language that the city wasn't admitting liability?

A: The release probably has that boiler plate language. But they are obligated to file some sort of report to be accountable to taxpayers as to why this type of settlement was made. Those reports very frequently have some candid acknowledgments concerning the difficulty of their position in the case.

Q: Do you have any idea of how many brutality suits the city has had to settle in the last year?

A: I know that the city's police department is going through a trying time right now. I don't know the number.

Q: This is a sensitive issue for the police department. Aren't your witnesses worried about testifying?

A: Very much so.

Q: And would a lawyer handling a case like this worry as well?

A: Yes, it can be an intimidating process to some extent. I know every witness I spoke to was very reluctant to come forward because they feared retaliatory conduct. I can't say whether or not those feelings are justified, although if you look at some of the things that are happening in the 39th District these days you'd have to believe that some of those feelings are [justified]. It is unsettling to think that those feelings are justified.

I know that I, myself, because of the volatile nature of some of the discovery that was conducted in the case, started to actually entertain some of those thoughts. But you try to put it behind you and proceed with the case. Mr. McLeod's interests were far greater than whatever fears I had during this case.

Q: How did you convince your witnesses they should testify despite their fear?

A: The only thing I could think to say to them was to appeal to their sense of what's right. For the most part they tried to do what was right. Not all of my witnesses were model citizens, except Leroy Harrison, who in my opinion was our key witness. He really had an unblemished past. That's a degradated neighborhood. Not everyone's past was quite as clean. I just appealed to their sense of what's right.

Q: How were you going to convince a jury what a "non-model" citizen said was true?

A: My philosophy on that was I was going to allow the physical evidence to speak for itself. I think the strength of my case rested with the physical evidence. And to some extent the testimony of Leroy Harrison. But I don't think the city would have been capable of proving that the shooting occurred as they described it. Once I offered expert testimony that logically explained the trajectory of the bullet, and how these wounds were suffered by my client, the city would have had to come forward with their own experts to disprove that.

Q: Who were your experts?

A: There was a Dr. Robert Catherman, the forensic coroner out of Camden County for a number of years, a Dr. Halbert Fillinger, who was a forensic coroner in Philadelphia and is currently serving in that capacity in Montgomery County. There was a Dr. Leon Krebbs, who is a Ph.D. He was a firearms expert and also had experience in dealing with the trajectory of bullets and looking at clothing to see where the markings of the gun made an imprint on either the clothes or the body. We had a criminologists named Leonard Territo, who was an expert in police misconduct. He had been involved as a consultant for the police department in Miami, so he is familiar with this type of behavior and was well-published on these issues of what is proper police protocol.

Q: Would you rather have gone to trial than to settle?

A: Any time you settle a case it's an emotional letdown. I think any trial attorney will tell you that. But I try not to let my ego interfere with what's in the client's best interest. My client wanted to settle the case, and it would have been very hard to tell him to turn down $2.5 million when he was living an indigent life style.

Q: What advise would you give another lawyer handling a case like this, with the understanding each case is different based on the particular facts?

A: One of the important things to do is prepare your case as much as possible before you place it into suit. Formulate those items of discovery that you need so that you can make your request for information simultaneous with the filing of the suit. That way the deadline dates the Eastern District places upon lawyers in cases like this will not be so harsh to the discovery process.

Another thing: lawyers should be aware that conspiracy can be proven based on a single occurrence but [they] must be very careful to analyze the facts to determine if the case fits into the very narrow exception created by Grandstaff [v. City of Borger, 767 F.2nd 161 [5th Cir. 1985].

Under the section 1983 and 1985 statutes, proving conspiracy is very difficult because you generally need to prove a pattern of conduct over time and that's an arduous burden to place on the plaintiff, especially in the Eastern District where discovery proceeds at a rapid-fire pace.

Grandstaff dealt with the situation where only one incident was used to prove a pattern of conduct against a state agency under the conspiracy theory. Grandstaff followed -- and appeared to expand -- the landmark case dealing with conspiracy, Monell. In Grandstaff, the court gave rhetoric to the possibility that a conspiracy theory could be maintained using one isolated incident if the facts supported that a number of individuals had to have conspired for the civil rights violation to have occurred.

The case dealt with a situation where 18 police officers simultaneously shot the victim. The court said it was inconceivable that all 18 officers made the same mistake. We had argued Grandstaff in our brief in the McLeod case because we thought some of the conduct of the officers in the Mobile Crime Unit and in IAD supported a claim for conspiracy.

It seemed to boil down to a very fact-specific analysis of what might fit into the Grandstsaff exception.

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More than 2,000 citizen complaints were filed against Philadelphia police officers from 1989 to last month. The Philadelphia Inquirer reported last week that the city has paid more than $20 million in the past 28 months to resolve at least 225 lawsuits against officers. The McLeod Award represents the largest to date.