

In excessive force suit, verdict seen as hinging on credibility

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In the end, it came down to who was more credible, according to the lawyers on both sides of a recent police brutality case decided in U.S. District Court in Providence.

The civil rights action was filed by Brandon L. Dawkins against the Pawtucket Police Department and two of its officers, Michael Costigan and Christopher Miller. The suit sought damages and declaratory relief under 42 U.S.C. §1983, with the jury returning a verdict for the plaintiff in his claim that police officers used excessive force when apprehending him in a 2012 arrest.

The parties agreed to some of the underlying details of the case, including the fact that Dawkins pointed a handgun at another man during an altercation and then fled.

After being called to investigate the alleged felony assault, officers embarked on a search for the plaintiff, who was eventually observed discarding his gun and taking refuge under the deck of a house. Arriving on the scene, Costigan drew his service weapon and ordered the plaintiff to come out.

From that point in the narrative, the accounts begin to diverge.

The plaintiff said that he complied with the officer's request. According to Dawkins, as he emerged from under the deck, Costigan grabbed him by his sweatshirt, straddled his back, and forced him face down onto the ground.



he was treated for lacerations that required stitches and staples.

In bringing suit, the plaintiff complained that the officers deprived him of his federally protected rights to be free from unreasonable force during a seizure. He also brought state claims of negligence and assault and battery.

story didn't add up.

"For example, the first officer claimed that Dawkins was reaching for his waistband," he said. "I thought, 'Who reaches for his waistband if he doesn't have a weapon?' In my mind, that was backfilling the story."

In the end, the win could be largely attributed to the discrepancies in the defendants' version of events, Daly concluded.

Overcoming factual challenges

Notwithstanding a successful verdict, the case did pose challenges for Daly.

"One of the issues was that our client pleaded guilty to resisting arrest," he said. "But it was a take-it-or-leave-it thing for him. After the incident, he was charged with five crimes. He accepted a plea agreement to felony assault, felon in possession of a firearm, and resisting arrest, for a recommended four years. If he didn't accept the plea, it could have been 20 years."

In his closing, Daly said he tried to make the jury appreciate the difference in time that Dawkins was facing: He had committed the other two crimes, so he felt he had to take the plea.

"I think the jury understood that his decision was a logical one," Daly said, adding that the case offers a lesson for other practitioners.

"Just because your client pleads guilty to resisting arrest, it doesn't necessarily mean the end of a police brutality case," he said.

Also challenging, Daly said, was that his client wasn't particularly sympathetic in that he had pulled a gun on someone prior to his interaction with police.

"We went into trial knowing that we couldn't hide or sugarcoat anything. But, of course, he shouldn't have been beaten up," he said.

The verdict will not be appealed, consistent with the parties' settlement on damages. Daly said the jury returned with questions for Judge John J. McConnell Jr. several times, eventually indicating that it would find liability while continuing to deliberate on damages.

At that juncture, the parties reached a

settlement, details of which the attorneys declined to specify to Lawyers Weekly.

Civil pro bono program

Daly took on the case through the U.S. District Court's civil pro bono program.

Daly took a detour from his customary practice areas of business and maritime law in representing Dawkins. Joining him on the case was his Pierce Atwood colleague Ronald M. LaRocca.

According to acting U.S. District Court Clerk Frank Perry, the program was adopted in 2014 and recognizes that there are occasions when it may be in the interest of justice to appoint counsel to assist a pro se party of limited financial means in a civil case.

"It offers a unique opportunity for practitioners to gain experience in civil litigation in federal court while providing a valuable community service," Perry said.

There are currently 25 attorneys on the panel, and the court has appointed pro bono counsel in five cases since the program's inception, he reported.

"It was a great experience for us," said Daly, who was the first participating attorney to proceed to trial with a case. "We did not hesitate to take it on."

Indeed, the possibility of trial work was what initially drew the litigator to the program.

"While it was an opportunity to do pro bono work, it also offered me the chance to bring a case to trial, and that was attractive," he said. "And in this case, while the discovery and fact development were a lot simpler than the types of issues we typically handle, the subject matter, police brutality, is obviously very important to the public."

DeSisto agreed on the merits of the program, noting that it can provide a chance for lawyers to gain experience.

"It's something to take a look at, because it's an opportunity for lawyers to try good cases and have successful outcomes at a time when there are not a lot of trials," he said. **RILW**



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— Michael J. Daly, Providence

He maintained that the officer began punching and hitting him on his face and head with his fists and gun while yelling racial insults. Dawkins described losing consciousness when he was hit in the back of the skull. When he came to, he was facedown with his hands cuffed behind his back. Miller then approached and pepper sprayed his face while he was on the ground.

The defendant officers described a different set of events.

Costigan said that when he gave the order to come out, the plaintiff made a quick move in an apparent attempt to escape.

Under his recounting of the facts, Costigan pulled Dawkins out and ordered him to lie on his stomach, but he refused to cooperate and attempted to turn over while reaching for his waistband. Fearing that there could be another weapon, Costigan forced the plaintiff to the ground and delivered several closed fist strikes to his face.

After Miller arrived and used the pepper spray, Costigan was able to handcuff the plaintiff and take him into custody.

The defendant officers argued that their actions were reasonable and prudent under the circumstances.

Dawkins was taken to the hospital, where

After hearing the evidence, the jury found the defendants liable. The parties reached a confidential settlement on damages.

A matter of credibility

Plaintiff's attorney Michael J. Daly of Pierce Atwood in Providence said the case boiled down to which version of events the jury believed.

"It was completely a factual dispute. It was not an argument as to whether it was too much force or an appropriate use of force, because during discovery and trial, both officers admitted that if what the plaintiff said was true, it would constitute police brutality. But the officers had a different description of the events," Daly said.

In brief comments, the attorney for the defendants, Marc DeSisto of Providence, agreed that the outcome hinged on credibility.

"It's often the case in civil rights cases of this nature that there are credibility issues, where you either believe the plaintiff or the defendants," he said. "The plaintiff's counsel did an outstanding job of presenting the plaintiff's case and cross-examining my clients. That carried the day."

Daly said a couple of details in the officers'