TRIAL TIPS ON SUBMITTING INTERROGATORIES TO THE JURY FOR PURPOSES OF QI AND GENUINELY DISPUTED FACTS IN POLICE SHOOTINGS

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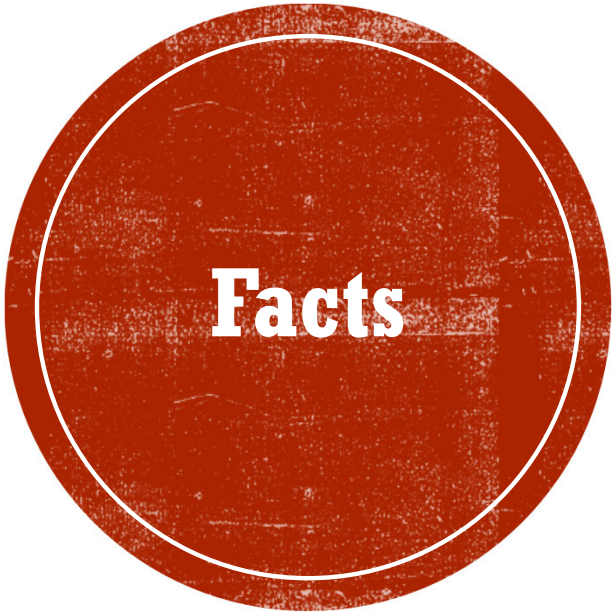
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JOHNNY BANKS V. CITY OF SHANNON HILLS

4:18-cv-259-BSM (E.D. Ark.)
999 F.3d 521 (8th Cir. 2021)



- Domestic dispute between Mr. and Mrs. Banks
- Mrs. Banks called 911; did not say anything to the operator
- Officer dispatched; saw a truck with its hazard lights on blocking another car in the driveway
- Officer heard yelling, announced himself at the door, and attempted to kick the door in
- Mr. Banks "violently opened" the door, yelled, and put his hand above the doorframe.
- Officer was blinded by the inside light and felt a sharp pain on the top of his head from an unknown object hitting him
- Officer fired a shot from his pistol and struck Mr. Banks





Johnny Banks v. City of Shannon Hills



JOHNNY BANKS V. CITY OF SHANNON HILLS

Johnny Banks v. City Of Shannon Hills



Officer's Head Wound



DISCLAIMER: WE DO NOT ENDORSE OR SUPPORT THE UNLAWFUL ACTIONS DESCRIBED OR DEPICTED WITHIN THIS PRESENTATION OR MATERIALS THEREIN.



JOHNNY BANKS V. CITY OF SHANNON HILLS

PROCEDURAL HISTORY

- Claims:
  - Equal protection
  - Negligent hiring
  - Failure to train
  - Ratification
  - Excessive force
- District Court:
  - Granted MSJ on all claims except excessive force—genuine disputes of fact
- 8th Circuit:
  - Disputes of fact
- Supreme Court

TRIAL
MARCH 15, 2023

General verdict given – Hung jury

Then Court gave special interrogatories

1. When Hawkins was dispatched to the Banks's home on February 17, 2017, did the dispatcher tell Hawkins that the only communication heard on the 911 call was a female crying and asking a male to leave?

YES ✓ NO ____ SPLIT____

2. Did the dispatcher inform Hawkins that she had tried to make contact back with the caller but got no answer?

YES ✓ NO ____ SPLIT____

3. When Officer Hawkins arrived at the Banks's home, did he observe a Chevrolet Avalanche truck angled in the driveway with its hazard lights activated?

YES ✓ NO ____ SPLIT____

4. Was a sign affixed to the Banks's front door?

YES ✓ NO ____ SPLIT____

5. Did Hawkins knock on the front door of the residence and announce POLICE DEPARTMENT! POLICE! and receive no response from the occupants of the home?

Special Interrogatories

up.

YES ✓ NO ____ SPLIT____

7. Did Hawkins wait for backup to arrive and then determine that he could not wait any longer and notify dispatch that he was going to make forced entry?

YES ✓ NO ____ SPLIT____

8. Did Hawkins kick the front door with his gun out of his holster and pointed to the ground in a low-ready or Sul position?

YES ✓ NO ____ SPLIT____

9. Did Mr. Banks open the door with force with his left hand on the door knob while placing his right hand on the wall head high?

YES ✓ NO ____ SPLIT____

10. When the door opened was Hawkins struck in the head?

YES ✓ NO ____ SPLIT____

11. Was Hawkins struck in the head before he fired his firearm or after he fired his firearm?

Special Interrogatories

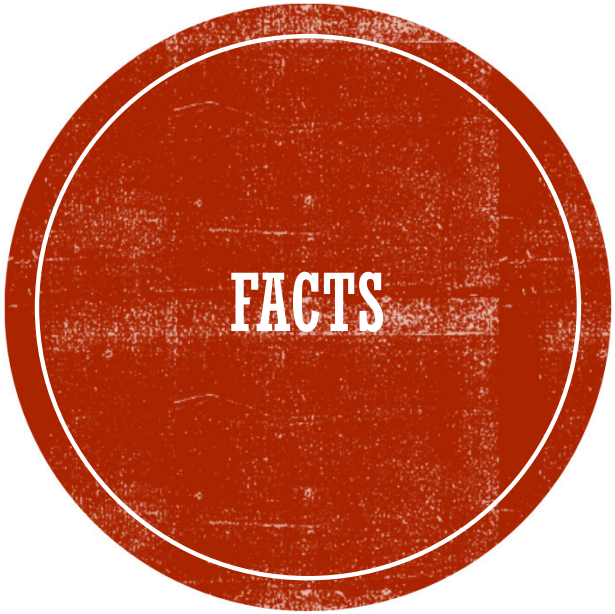
Request for Qualified Immunity

- After getting unanimous special interrogatories on the facts, moved to qualified immunity
- The next day, Court entered order granting qualified immunity:
  - Based on the jury's answers to the special interrogatories and the record made during the jury instructions conference, it is hereby determined that Shelby Hawkins is immune from suit because the force he deployed against Johnny Banks on the night of February 17, 2017 was objectively reasonable under the particular circumstances.
  - "This is a very difficult determination to make because Johnny Banks did nothing to deserve being shot; he simply opened his front door. But, the legal question is not whether Banks did anything wrong; it is whether a reasonable officer in the position of Hawkins [officer] would have believed he was in imminent danger at the time he shot Banks. Based on the record that has now been made, the answer to that question is yes."
  - When the record of the jury instructions conference and the interrogatory answers are matched with the issues of dispute provided by the Eighth Circuit, it is clear that qualified immunity attaches. Banks's excessive force claim against Hawkins is therefore dismissed with prejudice

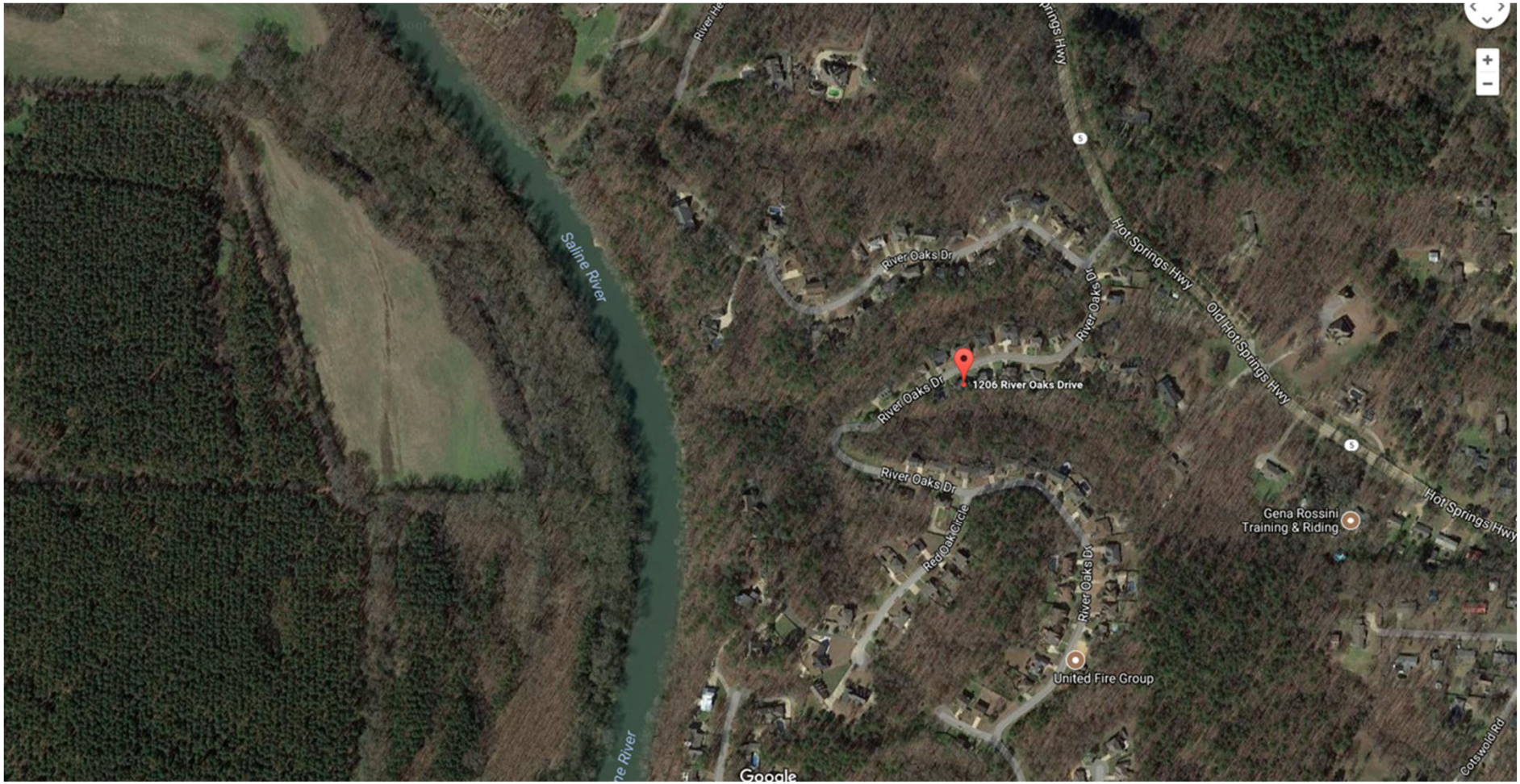
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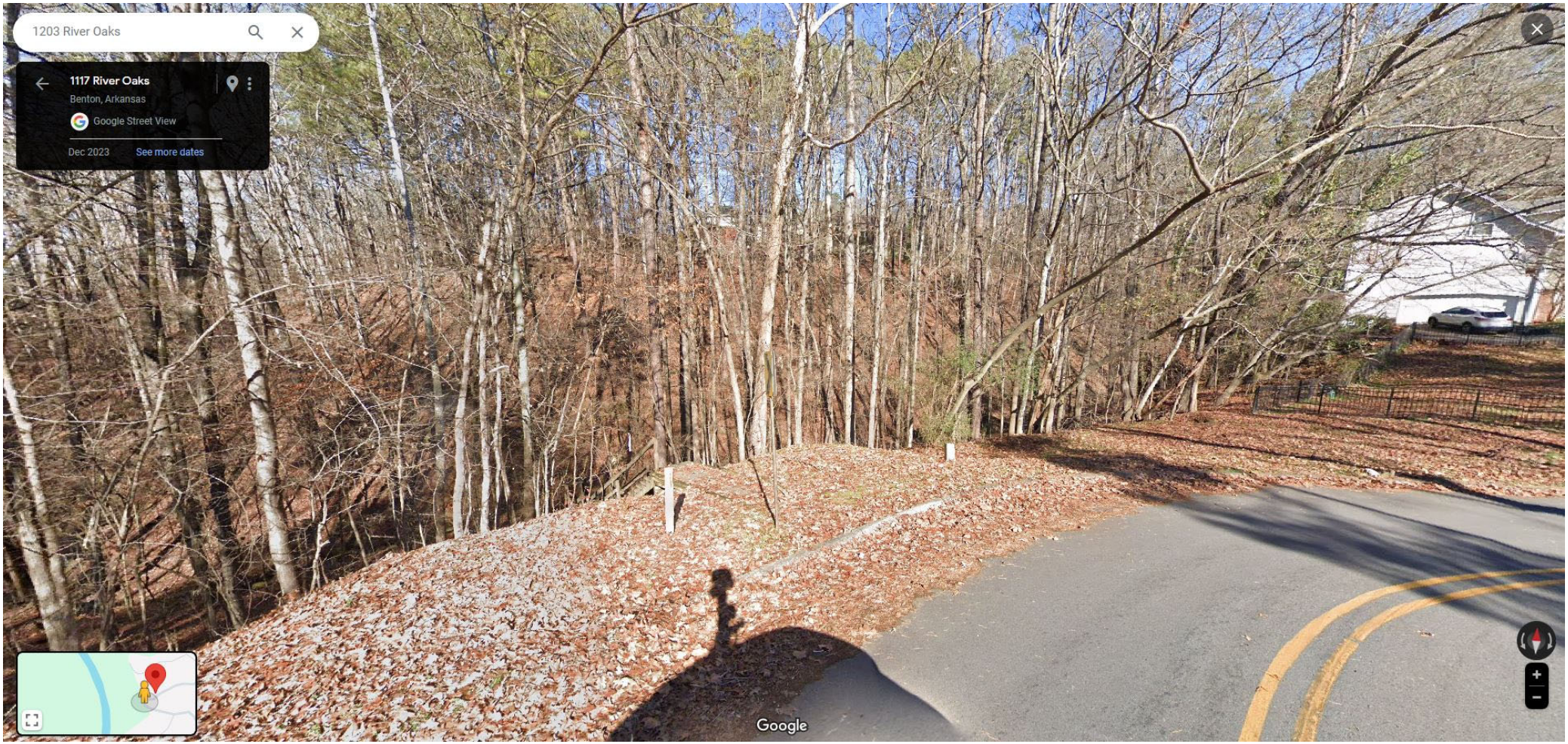
PIPER PARTRIDGE V. CITY OF BENTON

4:17-cv-460-BSM (E.D. Ark.)
929 F.3d 562 (8th Cir. 2019)
70 4th 489 (8th Cir. 2023)



- October 17, 2016
- Piper Partridge gets call from school, son Keagan caught with cough syrup
- Going to take to Children's Hospital for help, but stops at home to get insurance card
- Keagan is threatening suicide
- Keagan goes inside, smokes pot, gets gun off top of fridge, goes into woods
- Mom goes down to woods and begs with Keagan to give gun, calls 911 for help


Saline River
River Oaks Dr
River Oaks Dr
River Oaks Dr
River Oaks Dr
River Oaks Dr
Red Oak Circle
River Oaks Dr
1206 River Oaks Drive
Hot Springs Hwy
Old Hot Springs Hwy
Hot Springs Hwy
Gena Rossini
Training & Riding
United Fire Group
Cotswold Rd
Google

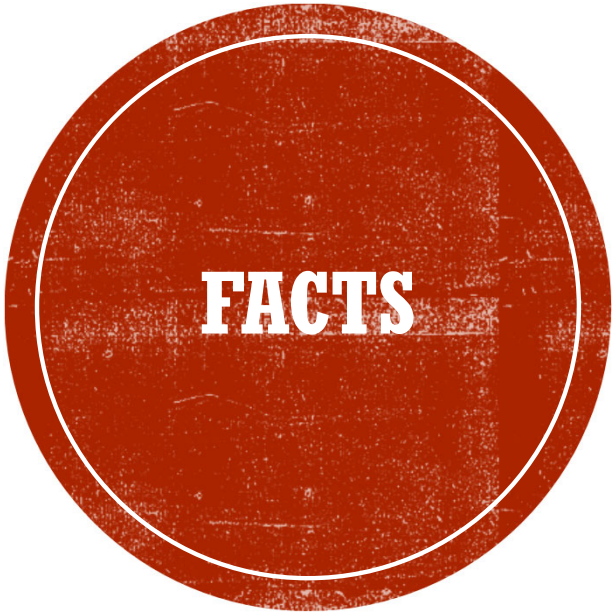

1203 River Oaks
1117 River Oaks
Benton, Arkansas
Google Street View
Dec 2023
See more dates
Google

Partridge v. City of Benton

At approximately 11:44 a.m., Ms. Partridge called 911 stating that she had a juvenile with whom she needed assistance; told dispatcher her son, Keagan Schweikle, had run away, had a gun, and was threatening to kill himself.

After calling 911, Ms. Partridge continued to plead with Schweikle to "give me the gun, now. Don't make it worse than it is, the police are on their way…you have to give me the gun…it's not worth it, Keagan…they are on their way."





- Numerous officers called to scene, EMS, fire, negotiator, K9 officer for track
- Ellison, Davidson and Speer tracking through woods
- They came to a clearing in the woods and encountered a male subject 15 yards away with no immediate cover
- Officer Ellison was in front with Duco, V-like formation, not ideal
- Officer Ellison said "Hey come here for a second, let me talk to you." No response
- Ellison told Keagan to show him his hands, and Keagan stood with a blank stare on his face looking in Officer Ellison's direction.
- Officer Ellison told Keagan a second time to show him his hands, and Keagan slowly moved his right arm from behind his right leg & saw a black pistol

The Scene



PARTRIDGE V. CITY OF BENTON



- Officer Ellison immediately drew his weapon, pointed it at Keagan and began telling him to "drop the gun" over and over again. Davidson and Speer also draw weapons.
- While yelling at Keagan to drop the gun, Keagan quickly raised his arm and pushed the muzzle up to the right side of his head.
- Ellison continued to tell Keagan to drop the gun, at that time, Keagan moved the gun from his temple and moved the muzzle in the direction of Officer Ellison, Sgt. Davidson, and Detective Speer.
- Officer Ellison fired 3 shots, two hitting and killing Keagan

CLAIMS

- 4th Amendment- excessive force
- 5th Amendment
- 14th Amendment – familial relationship
- City and Chief- failure to train; failure to investigate
- State law- assault and battery
- Wrongful death

MOTION FOR JUDGMENT ON THE PLEADINGS DISTRICT COURT V. 8TH CIRCUIT OPINIONS

- Dismissed all claims

- Keagan had to move the gun to comply with Ellison's commands. The complaint does not tell the direction or speed Keagan moved the gun, how far he moved it before Ellison shot him, or the timing of the facts. The complaint does not give Ellison's views.
- Because this court reverses the judgment on the pleadings on the excessive force claim, the dismissal of the related *Monell* claims is reversed as well.
- Upheld dismissal of 14th Amendment familial relationship claim

PLAINTIFF'S EXPERT

What was the likely position of Keagan Schweinkle's arm as he was shot?

OPINION

Following my review of the materials provided, it is my opinion, expressed with a reasonable degree of medical certainty, that Keagan Schweinkle died after being shot twice in the chest by police. The bullet that penetrated his heart resulted in the injury that caused his death. The path of the bullet that exited Keagan's right back indicates that his right upper arm was lifted nearly completely laterally away from his body when he was shot, consistent with the report that Keagan was holding a gun in his right hand to his head when police found him.
Setara Qassim. Esquire

PLAINTIFF'S EXPERT'S DEPOSITION TESTIMONY

- Dr. Wecht stated that he believes it would be "quite awkward" to move your wrist and point the gun in another direction, but it is anatomically possible.
- The forearm could be in multiple positions while the upper arm is raised laterally away from the body, with the scapula out of the way.
- Although Dr. Wecht believed it would be awkward, he testified that it is anatomically possible that Keagan's upper arm was raised laterally away from the body while his forearm was moving in such a way that the muzzle of his gun was pointed in the direction of the officers.
- Dr. Wecht further stated that his opinion is consistent with Officer Ellison's statement in that Keagan's arm was up and outward from the body.

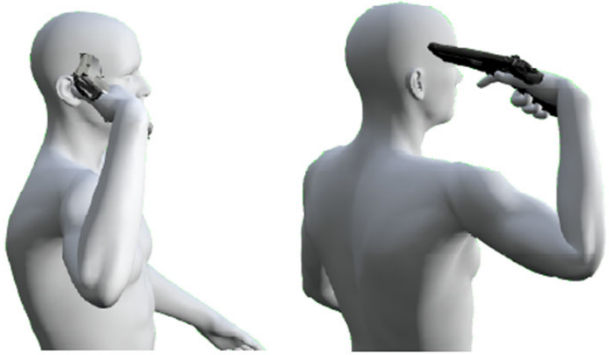




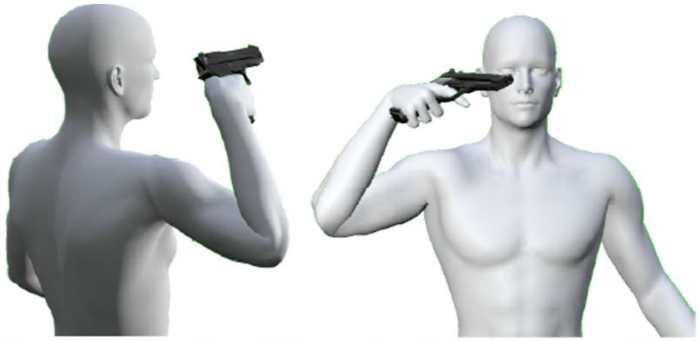
WECHT'S DEPOSITION TESTIMONY

Partridge v. City of Benton

DEFENDANTS' EXPERT



With the brachium so elevated, slight movement of the remainder of the upper extremity easily moves a weapon from a position of immediate threat to the subject to one of immediate threat to others.[2]



Such a position can be achieved in multiple scenarios with the brachium remaining elevated. In a dynamic process, the remainder of the upper extremity can be rapidly shifted while the brachium remains in very near the same position as initially.[3]



MOTION FOR SUMMARY JUDGMENT DISTRICT COURT V. 8TH CIRCUIT OPINIONS

- Granted summary judgment and dismissed all claims

- A forensic pathologist, Dr. Cyril H. Wecht, found it highly unlikely that Schweikle pointed his gun at the officers before being shot. Dr. Wecht testified that, based on Schweikle's autopsy, pointing his gun at the officers would have required "a very awkward, highly atypical, unnatural twisting of the wrist." While Schweikle's pointing his gun at the officers may have been "anatomically possible," it would have required "a very abnormal movement." A jury might conclude, based on Dr. Wecht's testimony, that Schweikle did not "awkward[ly]" and "unnatural[ly]" twist his wrist to point the gun at the officers before being shot.
- True, Dr. Wecht concedes it was "anatomically possible" for Schweikle to point his gun at the officers. This does not mean that Schweikle did point it at the officers. A jury must determine whether Schweikle moved his gun into an "anatomically possible" but "very awkward, highly atypical" position before being shot.



- Claims going to trial:
  - Excessive Force
  - Assault and Battery
  - City/Chief: Failure to train and Failure to investigate
- Filed Motion for Judgment on the Pleadings on City/Chief claims and Motion to Bifurcate (denied)
- THEY DIDN'T CALL DR. WECHT!
- General verdict first, then special interrogatory (for Ellison)

COURT'S INSTRUCTION NO. 12

CITY OF BENTON

To sustain their claims against the City of Benton, plaintiffs have the burden of proving, by a preponderance of the evidence, that Keagan Schweikle was deprived of his constitutional rights because of a City custom, policy, ordinance, regulation, or decision. Plaintiffs have advanced two theories in support of this claim: (1) failure to train, and (2) failure to investigate.

FAILURE TO TRAIN

To prove that Schweikle was deprived of his rights as a result of the City's failure to train its police officers, plaintiffs have the burden of proving each of the following elements by a preponderance of the evidence:

First, the City of Benton's training practices were inadequate; and

Second, the City of Benton was deliberately indifferent in failing to train employees, such that the failure to train reflects a deliberate or conscious choice by the City of Benton; and *Third*, as a direct result, Schweikle was injured.

If you find from the evidence that each of the elements has been proved, then your verdict must be for the plaintiffs. If you find that any of these elements has not been proved, then your verdict must be for the City of Benton.

FAILURE TO TRAIN

Partridge v. City of Benton

CLAIMS AGAINST THE CITY & FORMER CHIEF KIRK LANE

FAILURE TO TRAIN

- Ellison had ALETA, on the job training, and continuing training
- Mental health training at ALETA (nothing after that pre-shooting)
- "No plan to deal with Keagan" – Mark Geragos
- No mental health training with the K9

FAILURE TO INVESTIGATE

To prove that Schweikle was deprived of his rights as a result of the City's failure to investigate prior accusations of excessive force, plaintiffs have the burden of proving each of the following elements by a preponderance of the evidence:

First, the City's investigation procedures were inadequate;

Second, the City's failure to investigate prior accusations of excessive force was deliberately indifferent and reflects a deliberate or conscious choice by the City; and

Third, Schweikle was shot as a result of the City's failure to investigate prior allegations of excessive force.

If you find from the evidence that each of the elements has been proved, then your verdict must be for the plaintiffs. If you find that any of these elements has not been proved, then your verdict must be for the City of Benton.

FAILURE TO INVESTIGATE

Partridge v. City of Benton

CLAIMS AGAINST THE CITY & FORMER CHIEF KIRK LANE

FAILURE TO INVESTIGATE

Ellison had 12 uses of force– all investigated, all within policy (except one)

Only one involved shooting someone else

2 involved shooting dogs

1 involved a minor



1) 4th Amendment Excessive Force – No Liability

2) Assault – No Liability

3) Battery – No Liability

4) City- Failure to Train - $15 million

5) City- Failure to Investigate - $15 million

6) Chief – Failure to Train- $1 million

7) Chief – Failure to Investigate - $1 million

Partridge v. City of Benton

CLAIMS AGAINST THE CITY & FORMER CHIEF KIRK LANE

Jury awards $32 million in 2016 officer-involved shooting of Saline County teen

By Destin Davis ddavis@bentoncourier.com Feb 5, 2024 Updated Feb 8, 2024



DEFENDANTS' PROPOSED SPECIAL INTERROGATORIES: CITY LIABILITY CLAIMS

Plaintiffs claim that the City of Benton had a policy, practice, or custom which led to Keagan's constitutional violation. Plaintiffs also claim that the City of Benton and/or Kirk Lane failed to train Kyle Ellison. The Court will resolve the claims based on your answer to the following questions of fact about the incident. Here are the questions you must answer:

1. Did the City of Benton have knowledge of prior unconstitutional conduct committed by Benton employees that was factually similar to Officer Ellison's conduct in this case?
   YES _____ NO _____
2. If your answer to #1 is yes, was the misconduct investigated?
   YES _____ NO _____
3. If your answer to #2 is yes, was the officer exonerated or was the officer disciplined?
   YES _____ NO _____
4. Did Kirk Lane have knowledge of prior unconstitutional conduct committed by Benton employees that was factually similar to Officer Ellison's conduct in this case?
   YES _____ NO _____
5. If your answer to #4 is yes, was the misconduct investigated?
   YES _____ NO _____
6. If your answer to #5 is yes, was the officer exonerated or was the officer disciplined?
   YES _____ NO _____
7. Did Officer Kyle Ellison receive on-the-job training and education at a police academy?
   YES _____ NO _____



WHAT DID WE DO NEXT???

LOS ANGELES V. HELLER, 475 U.S. 796 (1986)

- "Neither [*Monell*] nor any other of our cases authorizes the award of damages against a municipal corporation based on the actions of one of its officers when in fact the jury has concluded that the officer inflicted no constitutional harm."
- "The necessary predicate for liability of the City and individual supervisors…is a finding that the [] officers who shot [plaintiff] used excessive force under the circumstances… Where there is no underlying constitutional violation, the presence or absence of policies which permit the use of excessive force '... is quite beside the point.'" *Reynolds v. City of Little Rock*, 893 F.2d 1004, 1007 (8th Cir. 1990) (quoting *City of Los Angeles v. Heller,* 475 U.S. 796, 799 (1986).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

PIPER PARTRIDGE, individually and as next of kin to KEAGAN SCHWEIKLE and as special administratrix of the ESTATE of KEAGAN SCHWEIKLE; DOMINIC SCHWEIKLE, individually as father and next of kin to KEAGAN SCHWEIKLE — **PLAINTIFFS**

v. — **CASE NO. 4:17-CV-00460-BSM**

CITY OF BENTON, ARKANSAS; KYLE ELLISON; and KIRK LANE — **DEFENDANTS**

ORDER

The renewed motion for judgment as a matter of law [Doc. No. 149] submitted by the City of Benton and its former police chief Kirk Lane is granted, the verdicts entered against them are vacated, and all claims against them are dismissed with prejudice.

QUESTIONS?