

Justices: State Trooper Not Protected by Immunity in Excessive-Force Case

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By **P.J. D'Annunzio** | June 05, 2019 at 05:17 PM



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The Pennsylvania Supreme Court has ruled that a state trooper accused of using excessive force during a traffic stop was not immune from suit under sovereign immunity.

The court ruled 6-1 to overturn a Commonwealth Court ruling in *Justice v. Lombardo* that said sovereign immunity made irrelevant the details of an incident in which plaintiff Shiretta Justice was allegedly injured by Trooper Joseph Lombardo during an altercation following a traffic stop over a broken taillight.

A three-judge Commonwealth Court panel held in a **published opinion** that because Lombardo was acting within the scope of his employment and authorized in his behavior, he was protected by sovereign immunity and the trial court erred in denying his motion for judgment notwithstanding the \$160,000 verdict in Justice's lawsuit against him.

However, state Supreme Court Justice Christine Donohue wrote in the high court's **majority opinion** that a reasonable jury could find that Lombardo operated outside the bounds of his duties.

Justice and Lombardo provided different accounts of a Nov. 27, 2013, traffic stop on Interstate 76 in Philadelphia, in which he pulled her over and issued her tickets for driving with a suspended license and failing to use a turn signal. The dispute arose as Justice waited for a friend to give her a ride home from where her vehicle was parked alongside the highway barrier, as Lombardo requested. Justice claimed she was wrestled by Lombardo, causing a sprained arm, wrist and back. Lombardo claimed that Justice was uncooperative and that he only grabbed her arm to pull her into his patrol car.

Donohue said that the Commonwealth Court, in analyzing the case, misapplied the law "in holding that reasonableness and motive are irrelevant to the scope of employment inquiry in this matter. Both are plainly relevant and, based on this record, reasonable minds could have concluded that Trooper Lombardo's conduct was actuated in such a manner so as to evince entirely personal motives rather than a professional purpose, substantiating further the jury's conclusion that he acted outside the scope of his employment."

Donohue continued, "In light of the standards governing scope of employment, it is beyond peradventure that the conflicting evidence adduced at trial presented questions of fact to be resolved by the jury and that various inferences could be drawn from those facts. More to the point, because we must view the evidence in the light most favorable to Ms. Justice, the verdict winner, and give her the benefit of every reasonable inference arising therefrom while rejecting all unfavorable testimony and inferences, we conclude that sufficient competent evidence

exists upon which the jury could have found that Trooper Lombardo acted outside the scope of employment.”

Chief Justice Thomas Saylor and Justices Max Baer, Debra Todd, Kevin Dougherty and David Wecht joined Donohue’s opinion.

Justice Sallie Mundy, however, **dissented** from the majority’s ruling.

“The consequence of the majority’s decision today will be to introduce a chilling effect on troopers performing their duties,” Mundy said. “Rather than strictly construing limitations on exceptions to sovereign immunity, the majority broadly construes a jury’s role in determining what circumstances may be considered outside the scope of employment based on little more than subjective allegations of private motivations on the part of a trooper in the performance of his or her duties. In doing so, the majority undermines the role of the legislature in defining the extent to which sovereign immunity shall apply.”

Justice is represented by Thomas Fitzpatrick of Mincey Fitzpatrick Ross in Philadelphia.

Fitzpatrick said that his client is “extremely excited and certainly she feels justice has begun to lean in the proper direction.”

He added, “It’s an outcome that we expected and hoped for and we thought that it was the appropriate outcome. We’ll see what happens on remand.”

The state police did not respond to a request for comment.

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