



**John C. Balshy and Janice Roadcap v. The Pennsylvania
State Police and Office of General Council**
2010 Pa. Cmwth. LEXIS
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INTRODUCTION:

Regardless of whether a City, Township, Borough, or the Commonwealth, is insured, an employee is entitled to be defended in most cases at the expense of the government. See, 42 Pa. C.S. §4525, applicable to the Commonwealth, and 42 Pa. C.S. §8548, applicable to Cities, Townships, Boroughs, or any other local agency.

In this case, the Commonwealth negotiated a \$1.2 million settlement, but refused to defend either Balshy or Roadcap, both of whom were Commonwealth employees. When Balshy and Roadcap sought indemnification, this request was denied. In a 2 to 1 decision, the Commonwealth Court affirmed.

FACTUAL BACKGROUND:

In September, 1970, Harrisburg Police discovered the body of 13 year-old John Eddie Mitchell in a detached garage owned by the family of 14 year-old Steven Crawford. It was determined that the cause of Mitchell's death was blunt force trauma to his head.

Parked inside the garage and adjacent to Mitchell's body was a Pontiac station wagon owned by the Crawford family. During the course of the investigation, police discovered what appeared to be blood spatter on the left rear door of the Pontiac. Police investigators processed this portion of the vehicle and were able to lift seven fingerprints and/or palm prints, of which three partial palm prints matched impressions obtained from Crawford. At least one print had a

substance on it that police suspected might be Mitchell's blood. Based on the facts of the case, the presence of Crawford's prints could be explained, unless the substance was blood spatter.

Then-Corporal Balshy, and Walton Simpson, who at all times during the investigation served as either a City of Harrisburg Police Sgt. or a Dauphin County Detective, were two of the officers assigned to investigate the Mitchell case. Balshy and Simpson delivered the partial print to the PSP Laboratory for analysis.

At the time of the investigation, which occurred between 1972 and 1974, PSP chemists engaged in a practice that typically included conducting three separate tests to verify whether a substance detected on evidence constituted human blood. When the evidence was located on a print, i.e. finger, palm or foot, the chemist typically documented precisely where on the print the substance was located. The prints included two separate surfaces: the "ridges" of the print where the skin is raised and the "valleys" or depressed skin between the ridges of the print.

The first test involved dropping a Benzidine reagent onto the substance. If the reagent yielded negative results for peroxidase activity, the chemist would conclude no blood was present and no further tests would be conducted. However, if the Benzidine caused positive peroxidase activity, a reaction noted by a bright blue hue, the particles would fall within a set of possible substances, including chemicals such as potassium dichromate, and potassium permanganate; vegetable juices like carrot juice or potato juice; dry vegetable extracts; leather; or blood. Thus, further testing would be required to confirm whether the substance was in fact blood.

The second test, the "Takayama test", involved more advanced chemical testing to confirm whether the substance was in fact blood. However, this test could not distinguish between human or animal blood. If the substance was determined to be blood, a third test was then performed to establish whether the blood was human blood.

On November 29, 1972, Roadcap, a chemist and serologist employed by PSP, analyzed the palm print taken from the Mitchell crime scene at the request of Balshy. Roadcap was not a fingerprint expert and it was noted that this may have been one of the very few times that she ever received print evidence.

Balshy presented Roadcap with a tri-sheet, carbon copy form, which contained certain typewritten information such as the victim's name, the date, the location, the incident number, Balshy's signature as the requestor of the analysis, the tests Balshy requested, and other general information identifying and describing the item of evidence. The following descriptor was also typewritten on the form: "Blood Analysis of a latent Fingerprint Lift."

On November 29, 1972, Roadcap conducted the first test while Balshy and Simpson were in the laboratory room. Roadcap asked Balshy how much of the print she could use for testing purposes as the portion of print tested would be destroyed as a result of the testing process. Balshy instructed Roadcap to refrain from using the entire print, so Roadcap cut three small strips from the print for her use. Roadcap allowed Balshy and Simpson to remain in the testing room as she performed the preliminary Benzidine test on all three of the strips and Roadcap permitted

Balshy to view the results of the Benzidine test under a microscope. Roadcap states that Balshy would have seen precisely what she viewed under the microscope.

Roadcap concluded that the print tested positive for Benzidine, which indicated the possible presence of blood. She recalled viewing a “very intense blue color” under the microscope. Balshy admitted to having viewed the same reaction under the microscope.

Roadcap explained that as each event occurred during her analysis, she recorded handwritten notes. After concluding the Benzidine test, specific to what is at issue in this case, she handwrote the follow observations on the carbon copy paper:

“Positive reaction was obtained from the reaction of reagents and the fingerprint powder.”

“This reaction was greater along the ridges of the fingerprint, however, numerous particles in the valleys also gave positive reactions.”

Further, in the “remarks” section of the report, Roadcap appears to have originally written: “a positive reaction was obtained with Benzidine reagent. This indicates the presents of blood in the fingerprint impression.” However, Roadcap modified the report by crossing out the words “in the fingerprint impression” and added additional language so that the second sentence ultimately read: “this indicates the presence of blood, deposited by the donor of the fingerprint impression.”

Sometime during the testing and reporting process, Roadcap again altered her original notes by completely crossing out with a black magic marker the following language: “greater,” “finger,” and “however, numerous particles in the valleys also gave positive results.” She then inserted new remarks which read in significant part: “this reaction was only along the ridges of the print pattern.”

Of critical note, any reference to Roadcap’s original observation that “numerous particles in the valleys also gave positive reactions,” was completely obliterated from the report.

The official typewritten report reflecting the conclusions of the Benzidine test reads as follows:

When the palm print impression was treated with Benzidine reagent a positive impression was obtained. This indicates the presence of blood deposited by the donor of the palm print.

The report is dated November 29, 1972. Roadcap admitted that no further tests were conducted on the print in 1972; thus, the above conclusions were based exclusively on the results of the Benzidine test.

A second report dated September 6, 1974, reflects that it was not until two years later that Roadcap performed the more precise Takayama test to confirm that the substance was blood.

The report that was made available by Roadcap for use at trial by all parties, the court, and the experts, was the obliterated copy. The original, unobliterated copy was not made available. In

fact, Roadcap claims that she never shared the unobliterated version with anyone, and that she never discussed its contents with anyone. All three carbon copies of Roadcap's original, unobliterated notes were reportedly "lost" at some point during the investigation.

CRIMINAL PROSECUTIONS OF CRAWFORD:

Crawford was arrested and charged with murder. Crawford was tried and convicted before three different juries after prior convictions were reversed. The medium of transfer was the key piece of information in the case because as the prosecution argued, the finding of blood originating on the palm print and then being deposited onto the vehicle could place the depositor (Crawford) at the crime scene during or immediately after the murder occurred. In all three trials, Roadcap testified that the particles were blood and had to have been deposited when the [palm print] was deposited. When asked how she was able to make that conclusion, she testified under oath, "I came to that conclusion because of the fact that there were no...suspected blood particles in the valleys of the print. It followed only the ridges." Likewise, during the three trials, Balshy responded under oath to the question of whether he saw any reddish-brown substance along the valleys of the print, "no, sir, I did not."

In 2001, approximately 23 years after Crawford's third conviction, some children randomly came across a briefcase placed in front of the home of the late Sgt. Simpson for garbage collection. Inside the briefcase was a photocopy of the original, unobliterated version of Roadcap's notes. The document was turned over to the Dauphin County Public Defenders' office, and that office began to raise questions surrounding Roadcap's motive for amending her lab notes to the extent they appeared to conflict with her in court testimony. An inquiry into Roadcap's actions yielded concerns that she and Balshy may have conspired to alter Roadcap's November 1972 notes so that potentially exculpatory evidence would be hidden. The new evidence led to the filing of a petition for post-conviction relief in December of 2001. Ultimately, the Dauphin County District Attorney's office determined that Crawford would be entitled to relief in the form of a new trial. As a result, the District Attorney's office decided to enter a Nolle Prosequi and to discharge Crawford for the stated reasons of stale evidence, deceased witnesses, unwillingness of the victim's family to engage in a fourth trial, and the general interest of justice. The Commonwealth did not represent that the withdrawal of the charges was due to Crawford's innocence in the Mitchell murder.

CRAWFORD'S FEDERAL LAWSUIT:

In 2003, Crawford filed a civil lawsuit against Roadcap, Balshy, The Estate of Sgt. Simpson, the Commonwealth, the County of Dauphin, and the City of Harrisburg. Subsequently, the Commonwealth, the County of Dauphin and the City of Harrisburg were dismissed. The matter proceeded to trial against Roadcap, Balshy and the Estate of Sgt. Simpson. After three days of trial, the parties entered into a settlement agreement and Balshy and Roadcap sought indemnification from the Commonwealth.

I. Administrative hearing before Hearing Officer Jackie Lutz, Esquire

At the administrative hearing on Balshy and Roadcap's request for reimbursement of attorneys' fees, the critical testimony before the hearing officer was that of Christopher Carusone, a former deputy General Council with PSP. According to Carusone, Roadcap admitted to him that she and Balshy had had a conversation after she showed him her lab notes and that Balshy "began to theorize about what the defense could do with the fact that there were particles, blood particles in the valley" and Balshy informed Roadcap "the defense could cross-examine her in an effort to try to show that the print was in fact on the vehicle and that the blood had splattered onto it [before or after Mitchell was murdered]." Carusone also testified Roadcap admitted to him that she was aware the palm print contained particles in the valley, but purposefully obliterated this information in her report and did not testify at the trials concerning particles in the valley.

Both Roadcap and Balshy testified at the administrative hearing. Roadcap denied making any of the incriminating statements recounted by Attorney Carusone. Balshy confirmed he went back to the lab with Roadcap and Simpson and viewed the palm print through the microscope. Balshy maintained that his testimony during all three Crawford criminal trials was truthful.

The Office of General Council (OGC) determined that Balshy and Roadcap acted maliciously, outside the scope of their employment, and in bad faith, and that therefore, they were not entitled to indemnification or reimbursement of the legal fees they incurred when they retained private counsel to represent them as defendants in the lawsuit.

II. Section 8525 Legal assistance

When an action is brought under the governmental immunity statute against an employee of the Commonwealth, and it is alleged that the act of the employee which gave rise to the claim was within the scope of the officer's duties of the employee, the Commonwealth, through the Attorney General, shall defend the action, unless the Attorney General determines that the act did not occur within the scope of employment. In the latter case, if it is subsequently determined that the act occurred within the scope of employment, the Commonwealth shall reimburse the employee for the expense of his legal defense in such amounts as shall be determined to be reasonable by the Court.

In this 2 to 1 decision, the majority found that both Roadcap and Balshy engaged in willful misconduct amounting to a bad faith exercise of their authority, and conduct outside the scope of their employment. The dissent reached a different conclusion. In the dissenting opinion, the Honorable Dan Pelligrini pointed out that in the midst of trial, the Commonwealth reached a \$1.2 million settlement with Crawford without any admission of liability. Balshy and Roadcap each settled their individual liability for \$1,000.00 also without an admission of liability. Because the Commonwealth has 11th Amendment immunity and is not subject to money damages, the only possible reason for it to settle an action brought against it is if some state actor was guilty of an independent negligence that the Commonwealth had agreed to defend and indemnify. Otherwise, the Commonwealth could have been dismissed from the case as a matter of law, leaving the state actors to their own devices. Thus, by the very act of settling with Crawford, the Commonwealth admitted that other state actors were entitled to a defense and indemnification by the Commonwealth. In other words, their actions would have had to have been within the scope of their official duties as Commonwealth employees. Instead, the Commonwealth agreed to pay the

vast majority of the settlement, leaving Balshy and Roadcap liable for a nearly de minimus amount of damages when compared to the sum total of the settlement.

Judge Pelligrini analyzed 42 Pa. C.S. §8547 and §8548 of the Political Subdivision Tort Claims Act. He determined that since 42 Pa. C.S. §1983 overlaps conduct covered by the Sovereign Immunity Act, the procedure set forth in §8525 of the Sovereign Immunity Act for indemnification apply to constitutional torts pursuant to §1983. Because the Act's procedure mandates that a "court" determine whether a Commonwealth employee should be reimbursed for counsel fees and damages, according to Pelligrini, the Office of General Council lacks subject matter jurisdiction to make the determination.

REMARKS:

It remains to be seen whether the Pennsylvania Supreme Court will grant a discretionary review of this decision.