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Police shooting does not result in excessive force

FACTS:

In 2009 Los Angeles police issued an arrest warrant against Abram Bynum on charges of forcible rape, assault with a deadly weapon, and kidnapping. Because Bynum had moved to Columbus, Ohio, the Columbus police were called to assist with the arrest and, on July 7, began surveillance of Bynum's apartment with instructions to arrest him if he left the apartment. When Bynum left the apartment and began to drive away, marked police cars followed. After a chase through city streets, Bynum entered Interstate 70, crossed the median, and accelerated head on into a semitrailer.

After the collision, police car video shows that four officers approached Bynum's badly damaged car. An officer radioed that Bynum appeared unconscious in the driver's seat. Moments later, Bynum regained consciousness, reached toward the floorboard, extended his arms and clasped his hands in a shooting posture aimed at the officers. After being told not "to do it," Bynum repeated his movements. Officers then fired their guns. Bynum again clasped his hands in the shooting posture and the officers responded with a second volley of shots, killing Bynum. A total of 80 shots were fired, 23 of which struck Bynum. Despite Bynum's actions, no gun was found in the vehicle. His mother sued, claiming that the use of force was excessive and that deadly force may not be used simply to prevent the escape of a felony suspect.

QUESTION:

Did the police officers use excessive (deadly) force simply to prevent the escape of a felony suspect in violation of the U.S. Supreme Court decision of *Tennessee v Garner*?

ANSWER ACCORDING TO THE FEDERAL DISTRICT COURT:

The district court refused to grant qualified immunity to the police officers, finding that there was a "genuine issue of material fact as whether the [officers'] actions were objectively reasonable."

ANSWER ACCORDING TO THE SIXTH CIRCUIT COURT OF APPEALS:

The Court reversed finding that the totality of the circumstances gave the officers probable cause to believe that Bynum threatened their safety. The Court contrasted the officer's conduct before and after Bynum's return to consciousness finding that the actions of Bynum resulted in the shooting. The Court found that the officers were not intent upon preventing his escape but rather knew that Bynum could not escape, given his injuries and the damage to his vehicle.

Pollard v City of Columbus, et al., Sixth Circuit Court of Appeals, No. 13-4142 (2015)

This column highlights a recent judicial decision or Michigan Municipal League Legal Defense Fund case that impacts municipalities. The information in this column should not be considered a legal opinion or to constitute legal advice.

