

August 3, 1989

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
BRIAN SYLVESTER V. CITY OF SAN DIEGO, ET AL.

Plaintiff, a 20 year-old unemployed man, brought the above action for negligence and battery against the City and individual police officers after he was shot by police.

On October 17, 1985, at approximately 11:00 p.m., officers responded to plaintiff's house after receiving a loud music complaint from neighbors. As two officers walked through a vacant lot next to plaintiff's garage, plaintiff suddenly emerged from the garage with a hammer in his hand, faced the officers a few feet away and suddenly began to raise the hammer into a striking or throwing position. At the point the hammer was raised above plaintiff's head one of the officers fired a shot while the second officer was drawing her gun and plaintiff was hit in his left bicep. Plaintiff turned and ran into the garage where he was taken into custody.

Plaintiff contended the officer who fired was negligent or committed battery alleging that plaintiff did not raise the hammer and that the use of deadly force was excessive. The City and officers contended that the officers acted in self defense reasonably believing that they were threatened with death or great bodily injury and that under such circumstances the use of deadly force was justified. Plaintiff sought \$150,000 in damages.

The case was tried over five days between July 3, 1989 and July 27, 1989 in San Diego Superior Court before a jury and the Honorable Arthur Jones.

On July 31, 1989, after one hour and fifteen minutes of deliberation, the jury found by special verdict that the officer was not negligent and did not commit battery and that therefore his actions were justified. Judgment was then entered on behalf of the City of San Diego and the individual officers.

Deputy City Attorney Sim von Kalinowski tried the case on behalf of the City of San Diego and the individual officers.

Respectfully submitted,
JOHN W. WITT
City Attorney

JWW:SvK:dk:Lit.(x043.1)

Attachment

RC-89-31