

on the beat

RESPONDING TO LITIGATION AFFECTING LAW ENFORCEMENT

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Police Have No Constitutional Duty to Provide Protection to Individuals Against Private Acts of Violence

By Edward D. Plato

On November 18, 2001, Shala Simmons was living with her minor children and her husband in the City of Inkster. She had a personal protection order against her husband and was attempting to separate from him physically. She went to the Inkster Police Station and claimed she told the police that her husband had become irrational and violent, that he possessed a handgun and that he had threatened her life and that of her children previously if she attempted to leave him. Two Inkster officers were dispatched to her home for a “civil standby” while she removed her children and personal belongings from the home that she and her husband occupied. When police arrived at the home with Shala Simmons, her husband and children were in the home. The officers remained in the house for over 30 minutes while Shala Simmons peacefully took her belongings from the home to her vehicle. However, during one of Ms. Simmons’ trips to the back bedroom, her husband rushed past the officers, slammed the bedroom door shut, and fatally shot her in the head and then turned the gun on himself.

The Estate of Shala Simmons filed suit against the City of Inkster claiming that Shala Simmons’ civil and constitutional rights under federal law had been violated because the officers failed to prevent her husband from killing her and because the city had failed to adequately train and supervise its officers in the handling of domestic violence situations.

The City and the officers filed a motion to dismiss the case arguing that there is no duty under the Constitution for police officers to protect individuals against private acts of violence, such as the fatal shooting of Ms. Simmons by her husband. In response, the Estate of Shala Simmons

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The U.S. Supreme Court has held, as a general rule, that there is no constitutional duty under federal law to provide police protection to individuals against private acts of violence. However, the Sixth Circuit Court of Appeals has recognized two exceptions where liability under federal law may attach. The first is where the victim is in state (police) custody or the state has otherwise restrained the victim from freedom to act on his or her own behalf. The second exception is where the state (municipality) or the police officers have created the danger which placed the victim at risk. However, for the second exception to apply, there must be some affirmative act by the police to create or increase the risk of danger. A failure to act by the police will not suffice to impose liability.

It should be noted that had this case been filed alleging claims under state law in Michigan, the city and the officers may have been protected by the “public duty doctrine” which holds that, in general, a police officers duty is to the general public, not to any one individual, and an officer’s failure to provide protection will not result in liability unless a “special relationship” has been created between the officer and that individual.

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argued that the U.S. Court of Appeals for the Sixth Circuit had recognized two exceptions to the defendant city's argument. The first is where a police officer had taken an individual into custody or incarcerated the individual. The Estate argued that Shala Simmons was essentially in custodial status at the time of her death. Plaintiff further argued that the officers had a duty to protect her from physical harm by her husband who was the subject of an existing personal protection order. However, the court ruled that Ms. Simmons was neither in custody nor restrained from her freedom to act on her own behalf and, therefore, the "custodial exception" did not apply. The Estate further argued a second exception applies where the state (municipality) or the officers created the danger which placed Ms. Simmons specifically at risk. Plaintiff contended that the officers had lulled Ms. Simmons into a false sense of security by their presence at the scene and that she would not have gone to her home to remove her personal property and her children without police protection. However, the court ruled that for this exception to apply, there must be some affirmative act by the police which either created or increased the risk of danger to the individual. In this case, Plaintiff alleged only a failure to provide police protection and the court held a "failure to act is not an affirmative act under the state-created danger theory." The District Court further ruled that "the question is not whether the victim was safer during the state action, but whether she was safer before the state action than she was after it." Therefore, holding that neither exception applied, the case was governed by the general rule that the City's and police officers' failure to protect an individual against private violence does not constitute a violation of civil or constitutional rights.

The author of this article, Edward D. Plato, had the pleasure of defending the City of Inkster and the Inkster police officers in this case. Judge Nancy Edmunds has now issued her opinion as a published decision and, therefore, the case is binding precedent in the Michigan federal courts. *Mary Simmons v. City of Inkster*, 323 F. Supp. 2d 812 (2004).

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