

Maine

DrummondWoodsum

ATTORNEYS AT LAW

ATTORNEYS KASIA PARK AND ED BENJAMIN OBTAIN DISMISSAL OF DOUBLE FATALITY POLICE SHOOTING CASE



Kasia Park



Ed Benjamin

Judge Lance Walker of the U.S. District Court for the District of Maine granted the Motion to Dismiss filed by Drummond Woodsum Attorneys Kasia Park and Ed Benjamin on behalf of Vassalboro Chief of Police Mark Brown in a case arising out of the deaths of Ambroschia Fagre and her boyfriend Kadhar Bailey in Vassalboro on February 10, 2017. The incident began when Maine State Police Lt. Scott Ireland was investigating a report he had received about a Dodge Durango that was parked on his neighbor's property. Lt. Ireland found the vehicle on a camp road with a female occupant who was seemingly unconscious inside. Once awakened, the female, later identified as Ambroschia Fagre, told Lt. Ireland that she was waiting for her boyfriend, later identified as Kadhar Bailey, to return to the vehicle. Lt. Ireland noted that Ms. Fagre was "lethargic" and seemed "out of it."

Lt. Ireland was joined at the scene by Kennebec County Sheriff's Office Deputy Sgt. Galen Estes, who told Ireland that he was investigating a report of a burglary in the area. After noticing footprints in the snow leading from the vehicle toward a nearby home, Lt. Ireland attempted to contact the homeowner by phone, without success. Lt. Ireland reached a relative of the homeowner, who advised that the homeowner had been tied up at gunpoint and his home had been ransacked. Lt. Ireland went to the home to investigate, asking Sgt. Estes to stay at the Durango with Ms. Fagre. At the home, Lt. Ireland learned that, after tying up the homeowner at gunpoint and ransacking the house, the perpetrator had stolen the homeowner's pickup truck and left the scene.

Back at the Durango, Vassalboro Chief of Police Mark Brown had joined Sgt.

Estes, and was asked by Estes to stay there with Ms. Fagre while Estes continued his burglary investigation. Lt. Ireland began to search the area, eventually finding the homeowner's pickup truck parked nearby on a snowmobile trail. Tracks from the pickup led back toward the area where the Durango was parked. Lt. Ireland advised Chief Brown of the armed home invasion and his belief that the suspect (Bailey) was then heading toward Brown's location at the parked Durango. At that point, Chief Brown saw Bailey approaching with a handgun. Chief Brown drew his weapon and ordered Bailey to stop. Despite Chief Brown's commands to stop, Bailey continued to approach him. Chief Brown took cover on the driver's side of the Durango, while Ms. Fagre remained seated in the front passenger seat. Chief Brown fired once at the approaching Bailey, and then sought cover behind a snowbank. Bailey returned fire, before jumping into the Durango and began to flee the scene. Chief Brown fired once more at Bailey as he drove away.

Maine State Trooper Jeffrey Parks was arriving in the area at that time and heard the gunfire of Chief Brown and Bailey. Trooper Parks stopped his cruiser in the center of the road to block it off, then got out of the vehicle. As Bailey drove the Durango toward Trooper Parks' cruiser, Parks sought cover behind a nearby snowbank. Trooper Parks fired several times at the Durango as it approached, and then crashed, into his cruiser. At the time Trooper Parks fired, Ms. Fagre had ducked down in the Durango's front seat. Trooper Parks later told investigators that he was not aware there was a passenger in the vehicle because Ms. Fagre couldn't be seen from his vantage point. One of Trooper Parks' bullets passed through the engine compartment and dashboard of the Durango, striking Ms. Fagre in the head and killing her. After the Durango crashed into Trooper Parks' cruiser, Lt. Ireland, who had returned to the area, approached it from the rear on the driver's side. When he saw Bailey reaching for something in the vehicle, Lt. Ireland fired, killing Bailey. Bailey's handgun was later found between the seats. Ballistic testing proved that the bullet that had struck Ms. Fagre was fired by Trooper Parks.

Ms. Fagre's mother, as her personal representative, filed a lawsuit against Chief Brown, Lt. Ireland, and Trooper Parks, claiming that they had jointly violated her daughter's right to be free from the use of unreasonable force under the 4th Amendment, and were also liable under the 14th Amendment for depriving her of her life without due process by failing to protect her. Attorneys Park and Benjamin filed a Motion to Dismiss on behalf of Chief Brown, claiming that, on the facts asserted in Plaintiff's Complaint, he could not be liable, as a matter of law. The court accepted the argument of Attorneys Park and Benjamin that Chief Brown was entitled to a dismissal of the 4th Amendment claims because he had not subjected Ms. Fagre to any force or otherwise "seized" her, and that he could not be held legally liable for Trooper Parks' use of deadly force.

Regarding the claim that Chief Brown was liable for failing to protect Ms. Fagre, the court ruled that Chief Brown could not be held responsible for failing to protect Ms. Fagre under the so-called "state created danger" doctrine that was being asserted by Plaintiff. The court ruled that Chief Brown had left Ms. Fagre undisturbed, and in no worse a position with respect to Bailey than she was when Chief Brown first arrived on the scene. The court ruled that it was not conduct on the part of Chief Brown, as a "state actor," that had created the danger to Ms. Fagre, it was the conduct of her boyfriend, Bailey. The court further accepted the position of Attorneys Park and Benjamin that, even if the facts asserted in the Complaint could somehow be regarded as supporting such a due process/failure to protect claim, Chief Brown was entitled to qualified immunity in any event, because he had committed no violation of clearly established law.