

Green v. Ingram

Virginia Supreme Court

March 3, 2005

This case discusses the lines between the various degrees of negligence that is, ordinary negligence, gross negligence, and conduct which leads to punitive damages, willful and wanton negligence.

The case involves a police officer in the City of Richmond who was taking part in a search with a warrant. The police broke a window at the front of the dwelling and yelled that they were the police and had a warrant, at that moment the defendant police officer was to have “shot” his way into the dwelling through the back door.

The way the officer was supposed to “shoot” his way in was to use a shotgun with frangible bullets. He was supposed to aim the bullets at a 45 degree down angle at the location of the deadbolt lock and dislodge it. Frangible bullets are made of compressed zinc powder, and upon impact with a very hard substance like metal will turn back into powder, thereby eliminating any deflection or ricochet. The defendant officer fired the gun at the door at the spot where he thought the deadbolt was. The door did not open, so he continued to fire four more shots, each aimed an inch lower than the previous one. Note, of course, that a deadbolt should be horizontal to the door knob, not below it. Therefore, it was wrong to continue to fire below the door knob into the wood of the door. One of the bullets did go through the wood and a fragment struck and killed the plaintiff’s decedent inside the dwelling, hence the lawsuit.

There were several defendants at one time, including the manufacturers and the sellers of the bullets, but in this case, after some maneuvering, the plaintiff and the police officer were the only ones left on the appeal.

Since the case was against a municipality the gross negligence standard applied. Judge Randall Johnson overruled a motion to strike after the plaintiff’s case. The defendant then put on no evidence and renewed their motion. This was denied, and the case went to the jury, which hung. The defense then again renewed their motion and this time Judge Randall granted it. Hence the appeal.

The Virginia Supreme Court reversed 4-3, Judge Lemons writing the opinion, and held that there was an issue of gross negligence here for the jury. Gross negligence is “that degree of negligence which shows indifference to others as constitutes an utter disregard of prudence amounting to the complete neglect of the safety of [another].” However, they also decided that the trial court was correct in striking the punitive standard, since that requires willful and wanton. This carries, said the Court, the idea of knowledge and purpose. If the officer had known that the plaintiff was on the other side of the door and disregarded her safety that might have been sufficiently willful and wanton.