Court Concludes Police Owed No Private Law Duty of Care to Victim of Unexpected Shooting

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In the recent decision of *Barrs v. Halton Regional Police Service*, 2019 ONSC 4403, BLG was successful in having a plaintiff's claim dismissed on a motion for summary judgment. The court concluded that the police defendants did not owe a duty of care to the plaintiff in relation to a shooting that injured the plaintiff on September 20, 2016. At the time of the shooting, the shooter was under surveillance by the police service for unrelated property crimes.

Background

On the afternoon of September 20, 2016, Grayson Delong shot the plaintiff, Randall Barrs, a criminal defence lawyer, in front of his office at Bedford Road and Bloor Street in Toronto. At the time of the shooting, Mr. Delong was under surveillance by a team of Halton Regional Police Service (HRPS) officers in connection with a nighttime commercial break and enter in Burlington, Ontario.

The object of the surveillance was to monitor Mr. Delong's movements, identify any potential associates, and determine his current address. The surveillance officers assigned to the request had never dealt with or had contact with Mr. Delong prior to September 20, 2016.

The surveillance officers began monitoring Mr. Delong's movements in the morning of September 20, 2016. Mr. Delong drove to numerous locations in Toronto, ultimately arriving at Taddle Creek Park in the area of Bedford Road and Bloor Street. By the time Mr. Delong arrived at the park, he had donned a disguise, consisting of a construction vest, construction helmet, and a blonde wig.

The surveillance officers did not know what, if anything, Mr. Delong planned to do. The surveillance officers discussed the matter with each other and decided that while Mr. Delong's actions were certainly suspicious, they did not have sufficient grounds to arrest him in relation to any new offence.

Mr. Delong eventually parked his vehicle on Bedford Road, exited, ran across the street, and unexpectedly shot Mr. Barrs. The surveillance officers did not know, or have any reason to know, that Mr. Delong intended to shoot Mr. Barrs, or anyone, at that time. In

fact, the surveillance officers did not even know of any connection between Mr. Delong and Mr. Barrs.

Mr. Delong attempted to flee the scene and fired additional shots from his vehicle. The surveillance officers promptly responded and one of them shot at Mr. Delong's vehicle in order to prevent him from causing further harm to anyone else. After Mr. Delong was neutralized, the surveillance officers quickly rushed to assist both Mr. Delong and Mr. Barrs and placed Mr. Delong under arrest.

Mr. Barrs commenced an action against the HRPS and the individual officers who were conducting the surveillance of Mr. Delong. Mr. Barrs alleged that the HRPS owed him a duty of care to protect him from being shot by Mr. Delong, and argued that police officers can owe a private law duty of care to some victims of crime. Indeed, he argued that he was part of a "narrow and distinct group" of Mr. Delong's potential victims that day.

The HRPS disagreed, and argued that the police did not owe a duty of care to warn Mr. Barrs or otherwise protect him from being the victim of Mr. Delong.

Decision

The HRPS brought a summary judgment motion, and argued that there was no genuine issue for trial. The court agreed.

The court reviewed, at length, the legal principles in respect of the imposition of a private law duty of care on police officers. The court concluded that the authorities establish the general proposition that duties owed by police officers under the *Police Services Act* are to the public as a whole. However, in limited circumstances, where foreseeable harm and a special relationship of proximity exist, the police have a duty to take reasonable steps to protect citizens from the consequences of that foreseeable harm.

The court reiterated that this "relationship of proximity" must be sufficiently close and direct, in the sense that the actions of the alleged wrongdoer must have a "close and direct" effect on the victim, such that the alleged wrongdoer ought to have had the victim in mind as a person potentially harmed. In conducting this proximity analysis, the court noted that factors are diverse, and depend on the circumstances of each case. Indeed, no single rule, factor or definitive list of factors can be applied in every case.

In this case, the court concluded that no such duty existed. The surveillance officers did not know where Mr. Delong intended to go or what he intended to do on that day. More importantly, the surveillance officers did not know, and had no reason to know, that Mr. Delong intended to commit a violent crime on the afternoon of September 20, 2016 in the Bedford Road and Bloor Street area of Toronto, or anywhere else for that matter. Mr. Delong was not being watched and followed by police officers to see who he would shoot next. Rather, he was being watched in connection with an entirely unrelated property crime investigation. Although there was no dispute that Mr. Delong's behaviour was suspicious, his actions were truly unexpected.

Comment

The court's decision importantly reiterates that only in very limited circumstances will a private law duty of care to a victim of crime be imposed on police officers. Indeed, only when a plaintiff is able to establish a "close and direct" relationship with the police officers, will such a duty be imposed. The plaintiff was unable to do so in this case.

By

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