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Ingram v. Harper Va., 2007. Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Supreme Court of Virginia.

George INGRAM, Appellant,

v.

Stephen T. HARPER, et al., Appellees.

**Record No. 060739.**

Jan. 12, 2007.

Upon an appeal from a judgment rendered by the Circuit Court of the City of Richmond.

\*1 Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is no error in the judgment of the trial court against Sergeant George J. Ingram ("Ingram"), a City of Richmond police officer.

Ingram's first assignment of error stated that the trial court erred when it failed to rule as a matter of law that the plaintiffs' evidence was insufficient to prove that the first frangible breaching round fired by Ingram was grossly negligent. The trial court instructed the jury without objection that the jury "may accept or discard all or part of the testimony of a witness as [the jury] think[s] proper." Therefore, the instruction became the law of the case. Medical Ctr. Hosps. v. Sharpless, 229 Va. 496, 498, 331 S.E.2d 405, 406 (1985). Consequently, the jury was permitted to accept or discard any of the witnesses' testimony including Ingram's testimony. The plaintiffs' case was supported by the testimony of three expert witnesses; ballistics expert Lama S. Martin, metallurgist expert Dr. George Langford, and standard of care expert William Kenneth Katsaris. Based on the testimony of these experts, a reasonable jury could have found that Ingram was grossly negligent in firing the first shot. Accordingly, Ingram's first assignment of error is without merit.

Ingram's second assignment of error stated:

In the absence of sufficient evidence that the first round fired was grossly negligent, the circuit court erred when it failed to rule as a matter of law that Plaintiffs' evidence of proximate cause was insufficient because the evidence revealed at most only a 50% probability that the round that caused the death of Plaintiffs' decedent resulted from Ingram's alleged gross negligence.

Assignment of error two is premised on the condition that the first assignment of error is correct. As explained herein, the first assignment of error is without merit because a reasonable jury could have concluded that Ingram was grossly negligent in firing the first shot. Therefore, the second assignment of error is also without merit.

Ingram's third assignment of error stated that the trial court erred when it failed to rule as a matter of law that the record in the case provided undisputed evidence that Ingram exercised at least a minimum measure of care for the safety of others such that none of the five rounds fired by Ingram were grossly negligent. This assignment of error is without merit because the evidence was in dispute. Therefore, the issue of gross negligence was properly before the jury for its resolution. Chapman v. City of Virginia Beach, 252 Va. 186, 190, 475 S.E.2d 798, 801 (1996) ("Whether gross negligence has been established is usually a matter of fact to be decided by a jury.").

Accordingly, the judgment of the trial court is affirmed. The appellant shall pay to the appellees damages according to law.

This order shall be certified to the said circuit court.

Va., 2007.

Ingram v. Harper

Not Reported in S.E.2d, 2007 WL 92801 (Va.)

• 060739 (Docket) (Apr. 17, 2006)

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