

A New Low in “Negligent Marketing” Gun Lawsuits

Chutzpah is one of those wonderful words that has worked its way from Yiddish into English. Like many words, it can carry a variety of related meanings from, “arrogant nerve” to “gutsy beyond reason.” One of my favorite examples of *chutzpah* is the story of the kid who murders his parents, then throws himself on the mercy of the court because he’s an orphan! But I have now an example of *chutzpah* that far exceeds that.

Shortly after Christmas in 1998, four Riverside police officers approached a car in a closed gas station. The car was locked; the engine was idling; the driver, a black 19 year old named Tyisha Miller, was either asleep or unconscious in the car. Her friends had called the police, believing that she was in need of medical attention – as indeed she was, being quite drunk on gin.¹

When the police arrived, they saw a handgun in her lap. They woke her up by smashing in the car window. The police claim that she picked up the gun in her lap at this point (an unsurprising reaction, under the circumstances), and so they shot her to death in self-defense. The four white officers involved gave sufficiently disappointing explanations of why they took the actions that they did that the Riverside Police Department fired them, and they barely escaped criminal charges by the district attorney.²

I think almost everyone can agree that Ms. Miller should not have had a gun on her lap, nor should she have had a gun in her possession while drunk. Under the circumstances, alone at night in Riverside, however, it was an understandable if poor decision. The usual civil rights activists came to Riverside to express their unsurprising

¹ “D.A. Clears Riverside Officers in Fatal Shooting of Black Woman,” San Francisco *Chronicle*, May 7, 1999, A7.

² *Ibid.*

indignation about what they insisted on seeing as an act of racism.³ Even if you don't quite accept racism as an explanation for why the police shot Ms. Miller to death, the actions the police took are nothing of which to be proud.

So, what does this have to do with gun liability suits? There is a gun liability suit filed in connection with this case. Were the guns of the police officers alleged to be defective? No. The City of Riverside is suing Lorcin Engineering for "negligently marketing and distributing the .38-caliber gun Miller had..."⁴ Ms. Miller's gun was never fired – indeed, it wasn't even capable of firing. But nonetheless, the City of Riverside has decided that how Lorcin marketed that gun was responsible for Miller's death at the hands of the Riverside Police Department.

Never mind that the police fired all twelve of the fatal bullets. Never mind that Miller was the victim of at least an extraordinary lapse in judgment by the police. Never mind that Ms. Miller, being 19 years of age, could not lawfully purchase a handgun in California, and so there must have been at least one illegal transfer before she acquired the gun. Never mind that Ms. Miller having a loaded handgun was illegal, and in plain sight while unconscious was incredibly stupid. It's *still* Lorcin's fault!

Here we have the new definition of *chutzpah*. Four police officers shoot and kill a woman who they had been asked to help, where the officers are so clearly negligent that the police department fires them, and the police chief resigns⁵ – and the City decides that the

³ Tom Gorman and Julia Ha, *Los Angeles Times* reprinted as "Race Protest Over Decision Not to Charge Cops Who Shot Teen," *San Francisco Chronicle*, May 11, 1999, A4.

⁴ Lisa O'Neill Hill and John Welch, Riverside (Cal.) *Press-Enterprise*, April, April 7, 2000, <http://www.inlandempireonline.com/news/stories/040700/guns.shtml>.

⁵ *Ibid.*

one party that wasn't present at the event, and had no involvement in it at all – is at least partly responsible. If the City of Riverside wins this lawsuit, there is no justice.

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