

*Michael Devine, Administrator (Estate of Timothy Devine) v. Louis Fusaro, Jr., Et Al (AC 42164)*

The plaintiff brought this wrongful death action on behalf of the decedent who committed suicide during a standoff with law enforcement officers. Prior to his death, the decedent was notified by Groton Police Department that he was under investigation for alleged misconduct. The decedent then informed the Groton Police Department that he was contemplating suicide. Later that evening, the police located the decedent at the University of Connecticut Avery Point campus with a handgun. The Groton officers attempted to negotiate with the decedent. When they were unsuccessful in doing so, the police captain requested assistance from the State Police tactical unit. Shortly thereafter the tactical unit arrived, and with them were the defendants.

The police and tactical unit continued to negotiate with the decedent for several more hours. Following hours of unsuccessful negotiating, the defendants were given the command to use less than lethal ammunition on the decedent. After being struck by two rounds of less than lethal ammunition, the decedent put his handgun to his temple, stating “don’t make me do this.” The defendants were then ordered to fire a third round of less than lethal ammunition. After being struck by the third round of less than lethal ammunition, the decedent raised the handgun to his head and shot himself in the temple, resulting in his death.

The defendants filed a motion to dismiss, claiming the action was barred by sovereign immunity. The trial court determined that the allegations set forth in the complaint satisfied the four criteria for sovereign immunity as articulated in *Spring v. Constantino*. The trial court granted the defendants’ motion to dismiss and the plaintiff appealed.

The issue presented to the Court in this appeal is whether the trial court properly applied the criteria set forth in *Spring* to determine if the defendants were being sued in their official, rather than their individual, capacity. The Court held that the trial court properly ruled that the

defendants were being sued in their official capacity and the claim was therefore barred by the doctrine of sovereign immunity. In reaching this decision, the Court applied the four criteria established by the Connecticut Supreme Court. The criteria are: “(1) a state official has been sued; (2) the suit concerns some matter in which that official represents the state; (3) the state is the real party against whom relief is sought; and (4) the judgment, though nominally against the official, will operate to control the activities of the state or subject it to liability.”

In regard to the first criterion, both the plaintiff and defendants concede that as police officers, the defendant’s held positions as state officials, and therefore the first criterion is met. In regard to the second criterion, the Appellate Court found that the action did concern a matter in which the officials represented the state. The Court reasoned that the alleged facts set forth by the plaintiff in no way suggest that the defendants were acting outside the scope of their official duties. In firing the less than lethal ammunition, the defendants were taking direct orders from their superiors. The complaint does not allege that the defendants ceased to act pursuant to their official duties during the course of the incident. Therefore, the second criterion is met.

The Court next determined that the third criterion was met as the state is the real party against who relief is sought. The Court rejected the plaintiff’s argument that the trial court should have considered the fact that the plaintiff had specifically pleaded that the action was against each of the defendants in their individual capacities. The Court reasoned that in their operative complaint, the plaintiff pleaded that “the action was brought against each of the defendants ‘who [were] employed as law . . . enforcement officer[s] by the state of Connecticut and acting under the color of law.’” This statement indicates that the plaintiff did not seek to sue the defendants in their individual capacity, but rather in their official capacity as officers of the state.

The Court additionally reasoned that “even if the plaintiff specifically pleaded against the defendants in their individual capacities, that fact would not be determinative of whether the state or the individual is the real party in interest.” The Court also found that because the injuries for which the plaintiff is seeking damages were caused by the defendants while they were carrying out their official duties, the state is the real party against who relief is sought.

Lastly, the Court found that the fourth criterion is met as the judgement would operate to control the activities of the state or subject it to liability. The Court reasoned that a judgement rendered against the defendants in this case would impact how law enforcement officers will respond to similar situations in the future. The Court is specifically concerned that a judgment against the defendants would deter law enforcement officers from using less than lethal ammunition in the future.

Ultimately, the Court determined that because the four criteria were met, the defendants were sued in their official capacity rather than their individual capacity, and the action is therefore barred by sovereign immunity. The Court held that the trial court properly granted the defendant’s motion to dismiss.