2016 IL App (1st) 151973-U

THIRD DIVISION
July 6, 2016

No. 1-15-1973

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DANELENE POWELL-WATTS, as Special Administrator of the Estate of Stephon Edward Watts, Deceased, Plaintiff-Appellant, v. CITY OF CALUMET CITY, a Municipal Corporation; WILLIAM COFFEY; and ROBERT HYNEK, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 12 L 4413 Honorable Eileen Mary Brewer Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Mason and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's order granting summary judgment in favor of defendants was affirmed where no genuine issues of material fact existed. Defendants were immune from liability for negligence and no trier of fact could reasonably find their conduct was willful and wanton since decedent lunged at an officer with a knife before any shots were fired.

¶ 2 This appeal arises from the fatal police shooting of Stephon Edward Watts, a 15-year-old boy who had been diagnosed as autistic. Danelene Powell-Watts (Powell), Stephon's mother and the special administrator of his estate, brought this action against the City of Calumet City

(Calumet), as well as Officer William Coffey and Officer Robert Hynek. Defendants claimed absolute immunity under section 4-102 of the Local Governmental and Governmental Employees Tort Immunity Act (Tort Act) (745 ILCS 10/4-102 (West 2012)). Powell argued that, at most, defendants may be eligible for qualified immunity under section 2-202 of the Tort Act (745 ILCS 10/2-202 (West 2012)), which would not provide defendants with immunity should a jury find their conduct was willful and wanton. In granting defendants' motion for summary judgment, the circuit court found a question of fact existed as to which statute applied but determined that, in either case, no jury could find defendants' conduct was willful and wanton because they acted in self-defense, given that the evidence showed that Stephon lunged at the defendant officers with a knife. Thus, the court found that defendants were entitled to qualified immunity at the very least.

¶ 3 On appeal, Powell asserts that a genuine issue of material fact precluded summary judgment. Specifically, she contends that defendants' acts and omissions both before and after Stephon displayed a knife were willful and wanton. In contrast, defendants maintain they are entitled to absolute immunity while alternatively arguing that the court correctly determined they acted in self-defense, negating any finding of willful and wanton conduct. We affirm the circuit court's judgment. Even assuming defendants were not entitled to absolute immunity, they were entitled to qualified immunity as a matter of law, and the following analysis will establish that no trier of fact could find their conduct was willful and wanton based upon all evidence (including Powell's expert who opined that the officers were merely negligent) presented to the trial court.

¶ 4 As a threshold matter, we note that counsel for Powell has taken a rather loose approach in his representation of the facts. In addition, both parties' briefs have presented incomplete recitations of the facts. Illinois Supreme Court Rule 341(h)(6) (eff. Jan. 1, 2016) requires facts to

be stated accurately and fairly with appropriate citations to the record. Additionally, the failure to comply with this rule can result in an order striking the offending brief. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 7. Although we decline to take any action here, we urge counsel to be more diligent in the future.

¶ 5 I. BACKGROUND

¶ 6 In 2012, Stephon lived with his siblings, Powell, and Steven Edward Watts, Sr. (Watts), his father. Stephon had been diagnosed with Asperger's Syndrome, a disorder within the "autism spectrum," and his parents occasionally asked the police to assist them with Stephon, such as when he was unruly and needed to be taken to the hospital. Stephon was five feet, ten inches tall and weighed 185 pounds.

¶ 7 On February 1, 2012, Watts called the non-emergency police line when Stephon refused to go to school. Watts told the dispatcher that he and Stephon had been "tussling." Later in that conversation, Watts attempted to withdraw his request for assistance but, by then, Officer Coffey, Officer Hynek and Officer Jeff McBrayer had already arrived. By way of background and familiarity, each officer knew that Stephon was autistic and had been to Stephon's home on a prior occasion when he wielded a knife. When Watts led the officers downstairs,Stephon emerged from behind a wall and approached the officers while waving a knife. Officer Hynek shot Stephon once and Officer Coffey immediately thereafter fired a fatal shot.

¶ 8 Powell then commenced this action against defendants, ultimately filing an amended, nine-count complaint that asserted willful and wanton conduct and liability under the Wrongful Death Act (740 ILCS 180/1 (West 2012)), as well as the Illinois Survival Act (755 ILCS 5/27 (West 2012)).[1] Powell alleged, *inter alia*, that the defendant officers knew Stephon was autistic

[1] Officer McBrayer was not named as a defendant.

but failed to exercise ordinary care while inspecting the home. Specifically, they failed to determine that no one was in need of assistance, while failing to be physically prepared to handle the situation with less-than-lethal force, and failed to dispatch the proper personnel for a "domestic disturbance involving a physical altercation with a disturbed individual with a history of resistance." Moreover, the officers "[f]ailed to recognize an established pattern of behavior by a mentally disabled individual." Powell alleged that such conduct was willful and wanton, showing a conscious disregard for the safety of everyone in the home.

¶ 9 In their answers to the complaint, defendants asserted they had absolute immunity under section 4-102 of the Tort Act, which essentially applies where the challenged acts or omissions occurred in connection with police protection services. See 745 ILCS 10/4-102 (West 2012). Alternatively, they claimed qualified immunity based on section 2-202 of the Tort Act, which applies to acts or omissions occurring while executing or enforcing any law, so long as the officer's conduct was not willful and wanton. See 745 ILCS 10/2-202 (West 2012). Additionally, Calumet relied on section 2-109 of the Tort Act, which states that "[a] local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable." 745 ILCS 10/2-109 (West 2012). Defendants further asserted they were entitled to use force after Stephon brandished a knife. Subsequently, defendants moved for summary judgment, again asserting they were immune under the Tort Act.

¶ 10 In response, Powell argued that defendants invoked their duty to execute or enforce domestic violence laws when they insisted on seeing Stephon, precluding absolute immunity, and that defendants' conduct was willful and wanton, precluding qualified immunity. Powell essentially argued that defendants disregarded the knowledge they acquired from their prior encounters with Stephon, stating, "Stephon was merely a terrified autistic child trying to run up

the stairs past the Defendant Officers to safety." In support of their respective positions, the parties submitted police reports and transcripts of the depositions of Powell, Watts, the three officers involved and two expert witnesses.

¶ 11 Police reports showed that the police had been to Stephon's home numerous times before the day in question. One police report stated that when Powell wanted Stephon to go to the hospital on August 30, 2010, he threatened to kill himself. The report said he was aggressive, violent and "will fight with weapons." On March 20, 2011, Stephon became upset when told to turn off his video game. He then barricaded himself in the bathroom with a knife, ultimately requiring a negotiator to come to the scene. After throwing the knife out of the bathroom, Stephon was taken to the hospital. Another report stated that Stephon became angry with his mother and punched her in the face when she asked him to hold the door open for her on December 10, 2011. Stephon refused instructions to drop the knife he was holding on that occasion and eventually charged toward an officer, swinging the knife at him. The officer discharged his Taser but did not incapacitate Stephon. Another officer then discharged his Taser and Stephon dropped the knife.

¶ 12 Deposition transcripts showed that Stephon received special education services and had problems at school but took medication to help him focus. Loud noises aggravated him and he would not follow orders when agitated. According to his mother, Stephon was hospitalized three times for acting out over the three or four years before the fatal incident. In addition, psychiatrists and counselors had told his father to call the police when Stephon became agitated and needed help. Powell, meanwhile, testified that Stephon was not violent and never hit police officers but would merely run away from the police while holding a knife. Watts testified,

however, that two officers said they were "surprised that nobody didn't get shot" after one of the prior incidents.

¶ 13 On the day of the fatal encounter, Watts threatened to take the family computer away if Stephon did not go to school, which infuriated the minor. After Watts locked himself in his downstairs bedroom with the computer, Stephon got what family members called a "butter knife" and unlocked the door, something he was known to do frequently. They both tried to take control of the computer and Watts told Stephon he would have to go to the hospital. When Stephon walked away, Watts believed he had gone outside and he then called the nonemergency police phone number, because he felt the police were heavy-handed when he had previously called 911. Watts reflected in his deposition that he believed he had overreacted by calling police which prompted him to try to cancel the police visit, testifying that he "knew Calumet City was going to kill my son."

¶ 14 Officer McBrayer testified that the dispatcher advised him that Watts sounded like he was out of breath and had been in a physical altercation. Officer Coffey similarly testified that the dispatcher said the male who called about the disturbance sounded like he was out of breath and there appeared to be a struggle in the background. In addition, Officer Coffey testified that while driving to the location, he considered his personal experience there as well as information learned from fellow officers, and considered how to deescalate the situation. He was aware of the incident in which Stephon charged at an officer with a knife, even though he was not present. Furthermore, all three officers were previously at the scene when Stephon barricaded himself in the bathroom with a knife. Officer McBrayer recalled that incident when he saw Stephon's house. Given the history of that location, Officer McBrayer waited for more officers to arrive.

¶ 15 Officer Coffey arrived with a gun and a Taser. Officer Hynek was trained to use a Taser but was not carrying it. Apparently, Officer McBrayer was not carrying a Taser. In addition, Officer Hynek and Officer Coffey had been trained to respond to individuals with autism. Officer Hynek testified that some autistic individuals could be agitated by loud noises, direct eye contact, and anything out of the ordinary. In addition, some could not appreciate danger, the implications of their behavior or personal space. Moreover, some had an obsessive attachment to objects, like knives. Officer Coffey similarly testified that autistic individuals did not like unpredictable events and could be poor judges of personal space. They could quickly escalate into tantrum-like behavior. Physical force was to be used as a last resort.

¶ 16 At the front door, the officers learned from Watts that he had been tussling with Stephon, who did not want to go to school. Watts said he wanted to cancel the call but the officers would not leave. Specifically, Officer Hynek testified that they were investigating a domestic disturbance and it would be a violation of Illinois law to leave without checking on everyone. Officer McBrayer also testified that they needed to make sure no one needed medical or police services before they left because they had been summoned for a domestic dispute. Similarly, Officer Coffey testified that while there was no indication that Stephon was injured, they needed to check.

¶ 17 Watts then told the officers that Stephon had left the house and described his clothing. Watts initially denied that he told the officers this so they would leave, but subsequently acknowledged telling investigators that this was his hope, since he believed Stephon may have gone outside. The officers were radioing a description and checking the house when Stephon called out, "Dad, I'm downstairs." Additionally, Officer Hynek saw a steak knife on the kitchen table and pushed it out of view so that Stephon would not grab it if he came upstairs. Officer

Hynek testified he was not anticipating trouble but was trying to avoid a problem. Watts did not tell them that Stephon had been holding a knife because he did not think it important.

¶ 18 According to Officer McBrayer, the police asked Watts to have Stephon come upstairs so they could see him. Officer McBrayer also testified, however, that Stephon refused and instead told them they would have to come downstairs. Officer Hynek testified that the officers did not have Watts bring Stephon upstairs because of Watts' request that an officer accompany him downstairs. The three officers agreed they would not have allowed an officer to go downstairs alone under these circumstances.

¶ 19 The stairs to the basement were divided by a landing part of the way down. In addition, the narrow stairway had a "right-angled ceiling." At the bottom of the second set of stairs, a wall on the right-hand side extended about four feet into the basement. The bedrooms of Watts and Stephon were around the corner of that wall.

¶ 20 Watts, Officer Hynek, Officer Coffey and Officer McBrayer proceeded down the stairs, single file, in that order, with weapons holstered. Officer Hynek also testified that he allowed Watts to speak to Stephon, rather than speaking to Stephon himself, to hopefully deescalate the situation. When Officer Hynek reached the bottom of the stairs, he could see a clenched fist sticking out from around the corner but did not know whose fist it was. Watts testified that at the bottom of the stairs, he turned right and saw Stephon with a knife. While Watts described the knife as being rounded on top with “crinkles," we note that a photograph submitted in support of defendants' motion shows that the knife was pointed but the blade was not serrated. Watts then told Stephon that he and/or the officers wanted to see him.

¶ 21 Watts testified at deposition that he did not have the chance to talk to Stephon about the knife:

> "He bolted past me; he tried to walk up the stairs; he might have walked maybe one foot up the stairs. And he was just waving, like this. He had a knife in his hand, he was just waiving [*sic*], like he - - telling them, get out of my way or something, you know? He's just going back and forth, like that."

Watts went on to state that he did not actually know whether Stephon told the officers to get away but that was how he interpreted Stephon's movements.

¶ 22 Officer Hynek testified that he had one foot on the stairs and the other on the basement floor when Stephon quickly approached him with a knife. Officer Coffey similarly testified that a steak knife-wielding Stephon ran past Watts and made "his way up the staircase." Officer McBrayer, however, could only see Stephon's head. Officer Hynek then said, "knife, knife, he's got a knife," and the officers began backing up. In the process, Officer Hynek fell straight back onto the stairs. Within seconds, Stephon was on top of him, slashing with the knife. Similarly, Officer Coffey testified that Stephon had made it halfway to the landing and was making an "up/down" stabbing motion toward Officer Hynek. Officer Hynek put his left arm over his face in a defensive posture, testifying that. "[a]t that point in time I was in fear of my safety and my life." He reached for his gun and fired into Stephon's right shoulder, which was somewhat raised due to his slashing motions.

¶ 23 In contrast, Watts testified that the officers had only made it down the first set of stairs when the first shot was fired. At that point, Stephon was approximately eight feet away from Officer Hynek. Watts acknowledged that the police report reflected his demonstration to investigating officers of how Stephon lunged at Officer Hynek, but at his deposition, Watts claimed he did not recall that. Specifically, the report indicates that Stephon, knife in hand, lunged past Watts toward Officer Hynek, who had reached the last stair, and that, according to

Watts, Officer Hynek fired his weapon when Stephon reached him. Notwithstanding the report, Watts testified, "in my mind right now, [the officers] were on the landing." Watts also did not recall signing a diagram which placed the officers on the second set of stairs.

¶ 24 Officer Coffey testified that after Officer Hynek fired his weapon, Stephon remained in the same spot. Watts testified that Stephon "got down, and then he popped back up," without losing his footing: Stephon "looked like he was trying to go up the stairs." Within a second after the first shot was fired, Officer Coffey fired at Stephon from less than a foot away. He did not opt for the Taser, because he feared for Officer Hynek's safety. Stephon then fell to the floor and died. Although the police report represented that Watts said he could understand why Officer Hynek fired the first shot, the report also stated that Watts said neither shot was necessary. Watts' deposition testimony similarly denied conceding the necessity of the first shot. Michael Haag, defendants' ballistics expert, testified that Stephon was shot in the upper right back shoulder area from between 3 and 12 inches away and was shot in the right armpit area from more than 12 inches away.

¶ 25 Afterward, Officer Coffey checked Officer Hynek for knife wounds. While no wound was discovered at the scene, Officer Hynek later discovered a slash mark and blood on his left forearm when he rolled up his sleeve. The wound did not require stitches. In addition, Powell, who had been sleeping upstairs, testified she awoke to a bang. She heard a second bang about 20 seconds later and discovered two police officers in the kitchen. According to Powell, Watts crawled up the stairs and said, "Dona, Calumet City Police come and shot Stephon twice in his head, killing him." As previously detailed, Stephon was not shot in the head.

¶ 26 Ronald Hauri, Powell's expert on police procedures and a former police chief for the City of Waukegan, opined that the officers handled this matter in a "*negligent and unprofessional*

manner." The officers should have, among other things, asked Watts who else was in the house. They may have been able to use Powell as a resource if she was not involved in the disturbance. In addition, the officers failed to ask whether Stephon was armed, even though they knew he was potentially dangerous. Instead, the officers went downstairs, giving Stephon control and putting everyone else in danger. Stephon could see them but they could not see him. Furthermore, the narrow staircase had low headroom and was poorly lit, adding to the danger.

¶ 27 Hauri testified that while officers responding to a domestic disturbance cannot rely on a father's representation that everything was fine, they should not have followed Stephon's instruction for them to come downstairs. Instead, they should have consulted with a supervisor and waited for Stephon to come upstairs, given the high risk situation. Hauri testified, "[the officers] had plenty of time and alternatives to entering the basement and getting into the situation that they faced. Once in that situation, they had not prepared themselves to defend themselves with anything other than a firearm."

¶ 28 Having decided to go downstairs, the officers were correct to not proceed downstairs alone. Nonetheless, they should not have had Watts lead the way because it gave him more control over the situation, while at the same time putting him in danger. Specifically, Hauri testified that persons involved in a potential domestic disturbance should be kept separated. Hauri admitted, however, that he had no particular expertise in autism. Additionally, the officers should have put themselves in a position where they had the ability to use less-than-lethal weapons. They were too close together for Officer Coffey to use a Taser or for the officers to backup. Despite Hauri's testimony that the officers were too close to backup, he also testified that Officer Hynek should have started backing up when he saw someone standing around the corner with a balled up fist.

¶ 29 Hauri testified that Officer Hynek should have told Stephon to drop the knife, but also acknowledged that the knife, which he said had a pointed blade and a serrated edge, posed a threat of death or great bodily harm to the officer. Thus, Officer Hynek was not required to order Stephon to put it down. Similarly, an officer's partner observing the same circumstances would be justified in using deadly force to prevent the officer from sustaining great bodily harm or injury. Nonetheless, Hauri opined that a culmination of the officers' multiple mistakes put them in a situation where they were boxed in when Stephon came toward them with a desire to attack or escape. Due to their own shortcomings, the officers unnecessarily put themselves in a situation where they had to use force.

¶ 30 The circuit court entered summary judgment in favor of defendants. The court found that an issue of fact existed regarding whether the officers were executing and enforcing Illinois domestic violence laws, and consequently, whether defendants were only entitled to qualified immunity. That being said, there was no genuine issue of material fact in that the officers were entitled to use deadly force in defense of Officer Hynek and, thus, were not willful and wanton. The court found, "[i]t is undisputed that Stephon confronted the officers close range with a knife."

¶ 31 II. ANALYSIS

¶ 32 On appeal, Powell asserts that a genuine issue of material fact exists as to whether the officers' actions were willful and wanton under section 2-202 of the Tort Act. Defendants disagree, alternatively arguing that they are also entitled to absolute immunity under section 4-102 of the Tort Act.

¶ 33 We review the circuit court's ruling on a summary judgment motion *de novo*. *Payne v. City of Chicago*, 2014 IL App (1st) 123010, ¶ 19. Thus, we may affirm the judgment on any

basis in the record, regardless of the circuit court's reasoning. *Harlin v. Sears Roebuck and Co.*, 369 Ill. App. 3d 27, 31-32 (2006). Summary judgment is appropriate where the pleadings, depositions, affidavits, admissions, and exhibits, when viewed in the light most favorable to the nonmovant, show there is no genuine issue of material fact so that the movant is entitled to judgment as a matter of law. *Argueta v. Krivickas*, 2011 IL App (1st) 102166, ¶ 5. In addition, the movant has the burden of production on a motion for summary judgment. *Marshal v. City of Chicago*, 2012 IL 112341, ¶ 49; see also *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 370 (2003) (finding that "[b]ecause the immunities afforded to governmental entities operate as an affirmative defense, those entities bear the burden of properly raising and proving their immunity under the Act"). If a defendant raises an affirmative defense and supports his factual position with documentation at the summary judgment stage, however, the plaintiff must present a factual basis arguably entitling him to a judgment. *Payne v. City of Chicago*, 2014 IL App (1st) 123010, ¶ 18. Speculation and conjecture are insufficient to withstand a motion for summary judgment. *A.M. Realty Western LLC v. MSMC. Realty, L.L.C.*, 2016 IL (1st) 151087 ¶ 86.

¶ 34 Assuming that defendants are not entitled to absolute immunity under section 4-102 of the Tort Act, Powell does not dispute that defendants were enforcing domestic violence laws, as contemplated by the qualified immunity provision found in section 2-202 of the Tort Act. Section 2-202 states, "[a] public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes *willful and wanton conduct*." (Emphasis added.) 745 ILCS 10/2-202 (West 2012). In addition, section 1-210 defines willful and wanton conduct as "a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property." 745 ILCS 10/1-210 (West 2012). Furthermore, "[t]his

definition shall apply in any case where a 'willful and wanton' exception is incorporated into any immunity under this Act." *Id*. Nonetheless, our supreme court has stated that this statutory "definition of willful and wanton conduct is entirely consistent with this court's long-standing case law." *Harris v. Thompson*, 2012 IL 112525, ¶ 41; see also *Pfister v. Shusta*, 167 Ill. 2d 417, 422 (1995) (finding that as a hybrid between negligent and intentionally tortious acts, willful and wanton conduct can be only degrees more than ordinary negligence or only degrees less than intentional wrongdoing, depending on the facts).

¶ 35 When viewed in the light most favorable to Powell, no jury could find that defendants' conduct was willful and wanton. The defendant officers insisted on ensuring that Stephon was safe, notwithstanding that Watts wanted them to leave. Plaintiff's expert witness testified that the officers were "negligent" and never opined that they were willful and wanton or that their actions exhibited a reckless indifference for or conscious disregard for the safety of others. Hauri agreed that defendants could not simply accept Watts' assertion that everything was fine. When Stephon indicated he was uncomfortable coming upstairs to them, they agreed to come downstairs to him. Officer Hynek hid a knife that was exposed on the kitchen table, in case Stephon decided to come upstairs. Nothing contradicts Officer Hynek's testimony that he was merely avoiding trouble, not anticipating it. Furthermore, Officer Hynek testified that he allowed Watts to speak to Stephon as a de-escalation technique. Accordingly, quite the opposite of recklessness, defendants displayed great concern and regard for Stephon's safety in several respects. To the extent that Powell has raised arguments regarding the safety of herself and Watts, the injuries at issue here derive from the death of Stephon, not any physical harm to his parents.

¶ 36 Assuming defendants made mistakes in attempting to secure Stephon's safety, those mistakes did not negate testimony showing that Stephon's safety was of paramount concern. In

addition, defendants' knowledge that Stephon was previously in possession of a knife did not require them to ask Watts whether Stephon had one on this occasion. Any rational person would believe that Watts would have relayed such information. Hauri's testimony does not change the result, but rather reflects the appropriateness of the trial court's ruling. Had Hauri specifically opined that defendants were "willful and wanton" as opposed to "negligent and unprofessional," one could certainly argue that there was a question of fact on liability in this matter. Powell never produced that sort of testimony.

¶ 37 Although Hauri believed defendants had plenty of time to wait before going downstairs, he failed to address the possibility that waiting may have been harmful to Stephon had he been injured. In addition, Hauri opined that the defendant officers should have called a supervisor, but before the officers went downstairs, nothing indicated that anything extraordinary was occurring. In addition, Hauri testified that defendants lacked sufficient room to back up, yet, he also stated that they should have backed up sooner. Furthermore, Hauri acknowledged he was only speculating that Powell may have been a resource. Similarly, Hauri testified that Officer Hynek should have ordered Stephon to drop the knife but acknowledged that this may not have been effective and, more importantly, acknowledged that Officer Hynek was not required to do so. Moreover, Hauri opined that defendants should have used a Taser to dry stun Stephon but testified that there may not have been enough time. Simply put, Hauri's speculation does not somehow provide plaintiff with enough evidence to avoid summary judgment. It also merits mention that Hauri acknowledged that the force used when Stephon displayed a knife was reasonable.

¶ 38 Section 7-1(a) of the Criminal Code states as follows:

> "A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony." 720 ILCS 5/7-1(a) (West 2012).[2]

The defendant officers testified that Stephon was essentially on top of Officer Hynek when he and Officer Coffey shot Stephon. Additionally, their testimony was corroborated by physical evidence showing Stephon was shot at close range, as well as Officer Hynek's testimony that his arm was cut, and Watts' own statement to the police. Specifically, Watts told the police that Officer Hynek fired his weapon when Stephon reached him. Watts testified in his deposition, however, that Stephon was eight feet away from the officers when they shot him. Even taking Watts' testimony as true, the evidence nonetheless shows that the threat of death or great bodily harm to Officer Hynek was imminent. Even in his deposition, Watts testified that Stephon "bolted" past him while waving a knife. Although Powell disingenuously takes issue with defendants' representation that Stephon was moving rapidly, Watts' use of the word "bolt" is entirely consistent with defendants' combined recollection. Thus, Stephon was rapidly closing any distance between Officer Hynek and himself. We also find disingenuous Powell's contention that there was a dispute regarding the type and size of the knife Stephon was holding. The photograph of the knife in the record clearly shows a sharp, pointed knife without a serrated

[2] We note that Powell has not cited or developed any legal argument with respect to 7-1(b) of the Criminal Code, which grants immunity for "the use of force justified under this Section *** unless the use of force involves willful or wanton misconduct." (Emphases added.) 720 ILCS 5/7-1(b) (West 2012)."

edge. This was not a butter knife. We observe that no evidence contradicted Officer Coffey's indication that he lacked sufficient time to use a Taser, and further note that in the past, a single Taser discharge was insufficient to incapacitate Stephon.

¶ 39 Under these circumstances, any officer would reasonably believe that force was necessary to prevent imminent death or great bodily harm to Officer Hynek. In addition, defendants did not show an utter indifference or conscious disregard for Stephon's safety. On the contrary, defendants correctly determined that their concern for Stephon's safety did not take precedence over Officer Hynek's right to be defended from imminent death or great bodily harm.

¶ 40 III. CONCLUSION

¶ 41 Having considered the record in the light most favorable to Powell, no genuine issue of material fact exists. Even assuming defendants acted improperly, their improper conduct did not rise to willful and wanton conduct. While the death of this young man is truly tragic, the legislature has determined that defendants should be immune under these circumstances.

¶ 42 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 43 Affirmed.