



## **Glorieta shooting case back in state court**

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SANTA FE, N.M. — The attorney representing Daniel Pauly and the estate of his late brother, Samuel Pauly, who was killed at his home in Glorieta by a State Police officer in 2011, has moved the case back to state district court after the U.S. Supreme Court in June denied a “writ of certiorari” to review a decision by a federal appeals court last year.

“The Pauly case will continue and we’ll keep fighting it,” said Santa Fe attorney Lee Hunt.

The Supreme Court’s June decision meant the end of the Pauly family’s attempt to prove federal civil rights violations by the State Police.

But liability for violations of state law or the New Mexico Constitution can still be pursued in state court. That’s where Hunt will now pursue claims for wrongful death, state constitutional violations and loss of consortium on behalf of brother Daniel Pauly.

The 2012 lawsuit has a complicated history.

The Supreme Court had previously made one ruling in the case. In January 2017, it determined Officer Ray White, who fired the shot that killed Samuel Pauly, was protected from liability for civil damages under “qualified immunity.”

The high court found that White did not violate any “clearly established” federal law. But the Supreme Court at this point didn’t take a position on whether two other officers at the scene also had immunity. And it left open the possibility that a case could still be made against White, based on how factual disputes about his role in the shooting played out.

The case was returned to the federal 10th Circuit Court of Appeals in Denver for reconsideration.

Last November, a panel of the appeals court found that the case record “supports the claim that Officer White may have recklessly participated in the events leading to Samuel Pauly’s death” and that a “reasonable jury” could conclude “that Officer White acted recklessly by precipitating the need to use a deadly weapon.”

But it still found that White was entitled to qualified immunity because there was no precedent in federal case law to clearly establish what White did was against the law. And since White’s

actions were protected, qualified immunity also extended to the other two other officers at the scene, Kevin Truesdale and Michael Marsical, the appeals court said.

Hunt, the Pauly family's attorney, had argued that Truesdale and Mariscal's conduct is what led to the shooting of Samuel Pauly by White.

"We do think that qualified immunity has gotten out of hand and has almost become complete immunity, and prevents folks like the Paulys from letting a jury decide if what happened is OK," Hunt told the Journal in March.

And Hunt once again took the case back to the Supreme Court.

His arguments were supported by the Cato Institute, a prominent Washington, D.C.-based libertarian think tank that filed a friend-of-the-court, or amicus, brief with the Supreme Court. It said that the contemporary doctrine of qualified immunity "is unmoored from any lawful justification – and in serious need of correction."

Cato maintained that the Pauly case "presents an ideal vehicle for the court to consider and address the maturing contention that the doctrine itself is unfounded."

On its website, the Cato Institute said that the brief would be the first of many in an ongoing campaign "to demonstrate to the courts that this doctrine (qualified immunity) lacks any legal basis, vitiates the power of individuals to vindicate their constitutional rights, and contributes to a culture of near-zero accountability for law enforcement and other public officials."

But the Supreme Court apparently wasn't swayed and rejected taking up the Pauly case for a second time in its June 18 denial.

"The danger of qualified immunity is that it prevents people from holding police officers accountable," Hunt said in a phone interview Wednesday.

Defendants in the case are the state Department of Public Safety; Gordon Eden, who was the department's secretary at the time of the shooting; former State Police Chief Robert Schilling; and officers White, Marsical and Truesdale.

### **Late-night shooting**

The shooting took place around 11 p.m. on Oct. 11, 2011, after Daniel Pauly was involved in a late-night road rage incident on Interstate 25 while on his way home from work at a Santa Fe restaurant. State Police located Daniel Pauly's vehicle outside the Glorieta home where Daniel lived with brother Samuel Pauly and attempted to make contact with the occupants of the home. The brothers reportedly called out, "Who are you?" and "What do you want?"

While the three officers at the scene say they identified themselves as police and demanded that they open the door, Daniel Pauly later said the brothers had no way of knowing who was outside. Believing they may be intruders or the people he encountered while driving on I-25, he fired two warning shots out the back door to scare them off.

"We have guns," he yelled.

The Santa Fe District Attorney's Office later said that evidence showed that Samuel Pauly also fired a shot in the direction of the officers.

Officer White, who arrived after the two other officers, was taking cover behind a stone wall when he fired a shot at Samuel Pauly through a window, killing him. Pauly was 34.