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Korryn Gaines: Two years later, killing by Baltimore County police continues to raise legal issues

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Attorney J. Wyndal Gordon will make his case in court sometime in the future, but for now, his argument against the overturning of a $38 million award to the family of a Baltimore County woman killed by police can be found in a more casual venue: Facebook.

Gordon, who did not return calls for comment, videotaped himself live on his Facebook page on Tuesday as he drove a car and discussed Baltimore County Circuit Judge Mickey Norman's ruling last week rejecting a jury's award of damages to the family of Korryn Gaines, who was killed after a six-hour standoff with police in her Randallstown apartment in 2016.

"Not only did he get the facts wrong, but I believe his legal opinion is flawed," Gordon said in the 37-minute video he made Tuesday. "The court is not supposed to supplant his judgment for that of a jury."

Norman's ruling has drawn additional interest to what was already a high-profile case. Gaines, who was armed with a shotgun and whose 5-year-old son was with her during the standoff, had periodically posted live video herself as it continued, before police eventually had her accounts shut down. An officer, Royce Ruby, fatally shot her, saying he thought she was about to fire, and Kodi was struck by bullet fragments.

A month later, the Baltimore County state's attorney ruled the shooting justified and declined to charge officers, and Gaines' family filed a civil suit. A jury found that Ruby had acted unreasonably, and their award of damages is one of the largest ever against a Baltimore-area police force.

While it's not unusual for jury verdicts to be overturned, that more typically happens on appeal. Norman, however, is the judge who presided over the civil trial. After the jury ruled in favor of the family, Baltimore County requested a "Judgment Notwithstanding the Verdict," or JNOV for the Latin phrase from which it is derived. It allows judges to overrule verdicts that they think no reasonable jury could have reached — such as if the facts of the case don't support it.

"The motion doesn't get granted often, but it does get granted," said Gregory Dolin, an associate professor at the University of Baltimore Law School. "Juries can go off the rails, especially in an emotional case."

Dolin said he wasn't saying he thought that happened in this case; he hasn't heard the evidence or read the filings.

“But in general, when either the jury goes off the rails or when the judge realizes that the jury's factual findings are legally, as a matter of law, insufficient to sustain a judgment in favor of the winning party,” he said, “a JNOV is appropriate.”

David Rocah, senior staff attorney for the ACLU of Maryland, said such judgments should be limited, and not used by a judge to substitute “his own opinion for the jury’s.”

“They are reserved only for cases where the jury failed,” he said. “The judge’s opinion in this case leaves me with very grave doubts that’s what happened here.”

Rocah said Norman’s opinion “offers no clear argument why their judgment could not be supported by the evidence.”

He also disputed another issue raised in Norman’s ruling: that Ruby is protected by qualified immunity. The doctrine shields public officials from civil liability when performing their duties as long as they haven’t violated a person’s constitutional rights, and the right was “clearly established” law at the time of the incident.

The ACLU is one of a number of groups across the political spectrum that have come out against qualified immunity. They say its use prevents police and other public officials and employees from being held accountable for excessive use of force and other misconduct. The civil liberties group, along with the libertarian Cato Institute and the Second Amendment Foundation, have filed briefs to the Supreme Court in support of cases that challenge the doctrine.

One such case, in which a pretrial detainee in Connecticut was kept in solitary confinement for nearly seven months and brought a civil rights suit against prison officials, was settled out of court. But the groups hope to file briefs in other cases, said Jay Schweikert, a policy analyst with the Cato Institute’s Project on Criminal Justice.

“We’re coming back again, and we’re going to keep looking for these cases,” Schweikert said.

He noted that there are signals that the high court may be open to considering the doctrine, with justices including conservative Clarence Thomas and liberal Sonia Sotomayor expressing concern about it on varying grounds.

But those who defend the use of qualified immunity say police would be hampered in doing their job, which can require making split-second decisions in tense or unclear situations, if they’re going to be held liable for damages such as in the lawsuit filed by Gaines’ family. And, they say, the immunity is qualified — it’s not always going to apply.

“It’s not that they get a free pass,” said Christopher Walker, an associate professor of law at Ohio State University who has written in defense of qualified immunity. “It’s only in circumstances where it’s not clearly established law.”

Walker, who with Aaron Nielson, an associate law professor at Brigham Young University, wrote “A Qualified Defense of Qualified Immunity” for the Notre Dame Law Review last year, said it’s unlikely the Supreme Court, at least in its current composition, would do away with the doctrine. Instead, they argue for greater uniformity in how it’s applied, and, should any major changes be made, that they come from Congress not the courts.

One unusual aspect of the Norman ruling, attorneys said, is that he concluded that Ruby was protected by qualified immunity after the trial was over. More conventionally, the question of

immunity is determined pre-trial or in an early phase of the trial, because the intent is to keep public officials from having to go through the trial if they're not liable for damages anyway, lawyers said..

Norman in his ruling, however, said that while the question came up earlier in the process, it was only after "the facts were fully fleshed out at trial" that the court had a more complete understanding of the evidence.

After hearing that evidence, the jury had concluded that Ruby acted unreasonably when he shot the 23-year-old woman and violated her constitutional rights — specifically, as protected by the Fourth Amendment against unreasonable searches and seizures. Norman disputed that in his ruling, saying Ruby acted reasonably because Gaines was armed and refused commands to put down her shotgun over the course of the standoff.

Gordon disputed that Gaines was about to shoot officers. Additionally, he said in his Facebook video that among the issues he'll raise in an appeal is whether the police, who got a key from the rental office, had even entered Gaines' apartment legally. An arrest warrant, which they had, is not the same as a search warrant, which they lacked, he said.

Kenneth Ravenell, who represents Kodi, declined to comment other than to say he plans to appeal.

A spokesman for the county also declined to comment, citing the likelihood that the case would be appealed.

With lawyers for her family vowing to appeal, appellate judges will have before them a full record of what each side is arguing, said Dolin, the University of Baltimore law professor.

"We have a jury verdict, and we have a judge's legal opinion," he said. "They can reverse [the judge] and re-instate the verdict. Or the court can say the judge got it right."

Another option is ordering a new trial, which could then trigger a new round of appeals, Dolin said.

"Juries," he said, "are somewhat unpredictable."