

## Holland v. Farrell & City of Phila., No. 2:16-cv-01900-JS (E.D. Pa. Jan. 5, 2017)



On April 22, 2014, Philippe (Phil) Holland had finished another late-night delivery in West Philadelphia for Slices & More Pizzeria and Grill.

The 20-year-old college student walked back to his parked car nearby when two men exited their vehicle and approached him. Fearing he was about to be robbed—one was carrying a flashlight and the other had a gun drawn—Phil quickly got into his car. He shifted into reverse and then

into drive to exit his parking spot. The two men then fired a combined 14 shots at Phil, forcing him to lose control of the vehicle and crash into a fence.



The two men, Mitchell Farrell and Kevin Hanvey, were plainclothes police officers in an unmarked police car who never identified themselves or showed any badges. They had heard a report on the police scanner of gunshots fired in the area, but no description of the alleged shooter or the exact location was provided. The police brought Phil to the hospital in the back of the police car even though his head, face, and leg were riddled with multiple bullets and he was not armed.

When Phil's mother called **Tom Kline, of Kline and Specter in Philadelphia**, to ask for guidance, the firm knew it had to help. "It was a horrific situation," said Kline, who represented Phil along with Dominic Guerrini and Tracie Palmer of Kline and Specter. "He was a college kid working two jobs at the time, and what happened to him was completely devastating and completely avoidable."

Due to inoperable bullet fragments in his brain, Phil suffers from a seizure disorder; he has had numerous seizures that occur without warning. In 2015, Phil sued Farrell and Hanvey for assault and battery in Pennsylvania state court. A little over a year later, he filed a civil rights suit in the Eastern District of Pennsylvania against the officers and the city of Philadelphia, alleging they had violated his constitutional rights under §1983 of the Civil Rights Act by engaging in unlawful and excessive use of deadly force. Phil also alleged that the city failed to train its officers regarding the use of deadly force and the proper conduct for plainclothes police officers.

Filing one lawsuit in state court and another in federal is not the norm in these cases, but Kline said it was a strategic decision. Assault and battery are much more straightforward claims than §1983 lawsuits, and he knew they would face an uncertain battle in federal court. "The law in federal court on this issue is not very well settled, which is something you run into often in these cases," Kline said.

Palmer noted many §1983 cases turn on the question of qualified immunity: whether a government officer who has been sued for monetary damages for constitutional violations can claim this immunity as a complete defense to liability. Palmer said, "That boils down to: Could or should the officer have known that his conduct was unconstitutional or that he was violating the plaintiff's constitutional rights?"

Guerrini added that the law in this area is very fact-specific. "We had distinguishable facts in this case. It was not a high-speed chase. It was not one of the typical cases you see about the use of deadly force in federal court.

Through the state court process, we could develop our record to help where we were going with the federal civil rights claim once we filed that suit,” he added.

For nearly two years, Kline and his team conducted an abundance of document discovery and depositions—14 depositions in the state case alone. The day before jury selection was supposed to start in the state court action, the city agreed to settle for a record \$4.4 million.

In addition to the monetary award, the settlement contained an agreement with the Philadelphia Police Department for system-wide implementation of training protocols for current and new plainclothes officers. They include the creation of written rules on plainclothes officer attire; proper placement and display of patrol badges; and prohibited and permitted activities and interactions with the public, such as how and when to identify themselves as officers. The city will also require new plainclothes officers to watch a training video before new assignments and as part of roll call. These new protocols must be implemented by July 1.

Before the lawsuit, no policies existed—written or otherwise—governing the conduct of plainclothes officers. Guerrini said the only training was done on the job. “The problem with that is, it’s not uniform. If it’s not written down somewhere, then you can’t measure someone’s conduct by it and see whether that officer complied and if his or her actions were reasonable,” he said.

Palmer said the facts motivated the city to settle. “It knew and recognized that this was a very unfortunate outcome and that Phil was not remotely at fault for the situation. He was caught in a completely unjustified shooting, and I think the city recognized it was ultimately indefensible.”

Palmer noted that Phil’s fear that he was about to be robbed and his inclination to drive away were totally reasonable. “He was acutely aware, as someone who delivers pizza and presumably carries around cash, that he was a target. That’s what flashed through his mind when he saw two people who were not wearing police uniforms, did not have badges, and did not identify themselves before they started to move toward him.” Phil’s prior experience contributed to his heightened fear: He had been the victim of an attempted carjacking before.

Farrell and Hanvey have been on desk duty since the shooting, and disciplinary action is pending. A force review board found that they violated the police directive against shooting into a moving vehicle and exhibited poor police tactics. Typically, the next step would be a police board of inquiry hearing to determine guilt.

Palmer emphasized that the nonmonetary aspect of the settlement in Phil’s case—and in any case—underscores the vital role of the civil justice system. “We are uniquely set up to be able to identify large systemic issues that are behind a lot of the harm and injuries that befall our clients. By being able to shine a light on these issues and negotiate for reforms as part of the resolution of these cases, not only can we get our clients what they deserve, but we can achieve better outcomes for the community going forward. That’s extremely important to us.”

As for Phil, now 23, his seizures have impaired his ability to drive and complete college, but Kline said Phil remains undeterred.

“He’s a fighter,” Kline said. “It’s miraculous to have survived a bullet to the face, and he’s extremely grateful he’s alive. His goal is to graduate with his bachelor’s degree. We’re all in awe of what he is capable of, especially given the pain he has endured.”