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Davis v. City of Chicago

Appellate Court of Illinois, First District, Third Division - March 12, 2014 - N.E.3d - 2014 IL App (1st) 122427

Mother of suspect who was killed after being shot by police officer brought wrongful death action against officer and city. Following jury trial and verdict for defense, the Circuit Court granted new trial. City and officer appealed.

The Appellate Court held that:

- Mother waived any objection to opening statement by defense which referred to suspect's pending gun possession charge;
- Such opening statement remarks were not misconduct or made in bad faith, as could support grant of new trial; and
- Such opening statement remarks did not cause substantial prejudice, as could support grant of new trial.

Mother intentionally waived any objection to defendant city and officer's opening statement reference to son's pending gun possession charge, in case in which city and officer sought to introduce evidence of pending charge to support theory that son pointed gun at officer during incident, where mother specifically acknowledged that statement hurt her case but that she would "live with it" and that she recognized that opening statements were not evidence, and at no time did mother ever indicate a change in her position to object to statement.

Opening statement remarks were not deliberate misconduct or in bad faith, as could support grant of new trial following defense verdict in wrongful death action against city and officer, even though court later ruled evidence of pending charge inadmissible. At time remarks were made, court had ruled that evidence of the pending charge would be admissible, and once court made ruling to exclude the evidence, no mention of evidence was made again.

Opening statement remarks did not cause substantial prejudice as could support grant of new trial, even though court later ruled evidence of pending charge inadmissible. There was no other mention of evidence during rest of trial or closing arguments, two-week trial focused on other issues, jury did not send out any questions regarding mention of pending charge, and court instructed jury that opening statements were not evidence.

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