

## In the Court of Appeal

# Wyatt -v- Chief Constable of Countryshire Police

The Countryshire police received a tip-off that two middle-aged men, who had convictions for burglary and firearm offences, were planning a nighttime raid on particular premises. Police officers were stationed in the vicinity of the premises and two police marksmen, Earp and Wyatt, were positioned inside the building. Two intruders were seen to enter the building and one of them was shot and fatally injured by Earp. The victim turned out to be a fifteen year old boy, Adam, who was carrying out a burglary with his seventeen year old brother Brian - neither of them had previous convictions and neither was armed. Wyatt, who had already apprehended Brian without any resistance, was horrified when he saw the younger boy gunned down by Earp. Earp had wrongly assumed that Adam was carrying a gun - in fact it was a large torch.

Wyatt suffered a severe psychological illness as a result of the incident and has had to retire from the police force. He claims that the whole police operation was 'botched'. The police officers outside the premises should have realised that the two boys were not the men the police were hoping to apprehend and the fatal shooting of an unarmed fifteen-year-old boy was completely unjustified. Wyatt is now suing the Chief Constable of the Countryshire Police, seeking to hold him vicariously liable for the negligence of the police officers and, in particular, Earp.

On a preliminary ruling as to whether Earp (or other police officers) owed a duty of care to Wyatt not to cause him injury through shock, Dodge J held that no such duty arose. He gave two reasons for his decision:

1. It was not reasonably foreseeable that a mere bystander would suffer nervous shock through witnessing the death of a fellow human being in the absence of a close relationship to the victim. It made no difference that the victim was still only a child or that the death arose from a deliberate act.
2. Wyatt was employed as a police marksman. He knew that circumstances might arise in which he or his colleague would have to use their guns. He was also aware that in these difficult situations there was always a possibility of a miscalculation being made. These were risks which Wyatt could be taken to have voluntarily assumed. It was not, therefore, just and reasonable to hold that Wyatt was owed a duty of care.

Wyatt now appeals to the Court of Appeal against each of the above rulings.

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*This problem is taken from the Observer-ESU-Lovell White Durrant Mooting Competition 1998-99, and was provided courtesy of the English Speaking Union.*