

Collateral Estoppel, Except Where it Isn't

McGuire v. City of Pittsburgh, 2022 Pa. LEXIS 1684 (Pa. S. Ct. November 23, 2022) (Wecht, J.), involved a dispute with respect to whether the City of Pittsburgh had a statutory duty to indemnify one of its police officers for a judgment entered against him in a federal civil rights lawsuit.

The Pennsylvania Supreme Court rejected the argument that a finding by a federal jury that a police officer acted "under color of state law" for purposes of Section 1983, 42 U.S.C. [§ 1983](#), necessarily constitutes a "judicial determination" that he also acted within the "scope of his office or duties" for purposes of the Pennsylvania's Political Subdivision Tort Claims Act (["PSTCA"](#)).

As a result of its determination, the Pennsylvania Supreme Court affirmed the lower court decision that the federal jury's finding of state action did not suffice to meet the requirement of Section 8548(a) of the PSTCA "that the employee in good faith reasonably believed ...[the act] was, within the scope of his office or duties," 42 Pa. C. S. §8548 (a), support indemnity under meaning that indemnity from the city was not available under Pennsylvania law.

In late 2012, 16-year-old Shane McGuire and a group of his friends smashed pumpkins and stacked bricks on the doorstep of a home in McGuire's neighborhood. The teens were still on the property when the homeowner—City of Pittsburgh Police Officer Colby Neidig—arrived home with his wife and children. McGuire watched the family's reaction to the vandalism and then banged on the front door and ran away, accidentally tripping over his own brick boobytrap in the process. Neidig heard the commotion, saw McGuire running, and gave chase. After a half-mile pursuit, Neidig caught McGuire, knocked him to the ground, and punched him in the face. Neidig was not wearing his police uniform at the time, nor did he identify himself as a police officer. Neidig called 911 and restrained McGuire until Officer David Blatt, an on-duty City of Pittsburgh police officer, arrived.

Two years later, McGuire filed a federal lawsuit against Neidig, Blatt, and the City of Pittsburgh, asserting excessive use of force in violation of 42 U.S.C. [§ 1983](#), as well as assault and battery claims under state law. Blatt and the City were dismissed from the case at the summary judgment stage, and the claims against Neidig proceeded to a jury trial. Ultimately, the jury returned a verdict in McGuire's favor, finding that Neidig used unreasonable force against McGuire while acting under color of state law under Section 1983, and that Neidig was liable for McGuire's assault and battery claims as well.

The jury awarded McGuire damages for all three claims. After molding the jury's verdict into a single award and adding attorney's fees to that amount, the court entered

judgment against Neidig for \$235,575. Neidig did not seek indemnification from the City of Pittsburgh. Neidig was much more clever than that; it was actually great lawyering on his counsel's part. He assigned to McGuire his right to sue the City for indemnification either under the [Political Subdivision Tort Claims Act \("PSTCA"\), 42 Pa.C.S. §§ 8541-8564](#), or under any other legal theory. McGuire then sued the City in the Allegheny County Court of Common Pleas ("the trial court"), seeking a declaratory judgment that the City was statutorily obligated to indemnify Neidig under [Subsection 8548\(a\) of the PSTCA](#). The trial court held a jury trial in August 2019 and the jury returned a verdict in favor of the City. The jury concluded that Neidig was not acting within the scope of his duties when he assaulted McGuire, meaning that the City was not required to indemnify Neidig under the PSTCA.

McGuire made a bad deal. He had a judgment in federal court, thought that he had a sure thing in the assignment that he obtained, but then found out that a county jury would not find the city to which he paid taxes liable for indemnification.

McGuire then appealed to the Commonwealth Court, which affirmed, in a published decision. On appeal, McGuire claimed that the City was collaterally estopped from arguing that Neidig was not acting within the scope of his office or duties as a City of Pittsburgh police officer when he used force against McGuire because the federal jury had already concluded that Neidig assaulted McGuire while acting under color of state law. In McGuire's view, "color of state law" (for purposes of Section 1983) is synonymous with the "scope of office or duties" language (as used in the PSTCA), and the City therefore was estopped from relitigating the issue in state court. The court, however, held that "the determination in the instant Federal Court Action that Neidig acted under color of law does not dictate that Neidig acted within the scope of his employment" for purposes of the PSTCA. *McGuire v. City of Pittsburgh*, 250 A. 3d 516, 535 (Pa. Commw. 2021), quoted in *McGuire, supra*, at *5. In support of that conclusion, the Commonwealth Court cited federal precedent holding that "a determination that [a police officer] acted 'within the scope of his office or employment' does not inevitably flow from a concession that he acted 'under color of' Pennsylvania law." *Id.* at *5 -*6 & n.9 (citing [Zion v. Nassan, F.R.D. 247, 267-68 283 \(W.D. Pa. 2012\)](#)). As a result, the Commonwealth Court affirmed the trial court's judgment.

The "color of state law" inquiry turns on whether the public employee *purported* to exercise official state authority, not whether he or she was authorized—or reasonably believed himself or herself to be authorized—to act in a certain way. *McGuire, supra*, at *11. This means that "a police officer may sometimes act both 'under color of state law' and beyond the scope of his or her employment." *Id.* at *12. Thus, indemnity in an excessive force case like this one might turn on factors that largely are irrelevant under Section 1983's "color of state law" inquiry, such as whether the officer reasonably believed that his conduct was authorized by his employer, or whether he was motivated subjectively by a desire to serve his employer. Section 1983's color of law requirement, in contract, only concerns whether a police officer wielded—with or without authorization—state authority. *Id.* at *12 n. 26,

The court determined that it is a moot question as to whether the trial court erred in submitting to a jury the issue of whether Neidig injured McGuire "within the scope of his office or duties". The reason? Because the answer to that question could not possibly affect the outcome of the case, making it an entirely "hypothetical" controversy. According to *McGuire*, "the only question in the state declaratory judgment action was whether it had been "judicially determined" *in the federal case* that Neidig acted in the scope of his office or duties—which McGuire argues is a pure question of law that the court should have answered on its own." *Id.* at *13 (emphasis in original).

The Court stated:

Even if McGuire was correct that "whether Neidig acted in the 'scope of his office or duties' was required to be determined in the Federal Litigation," and that the only question for the state court was whether it had been [determined in the federal case], the judgment still should be affirmed because... the federal jury simply did not consider whether Neidig acted within the scope of his office or duties. In other words, McGuire's second and third issues depend upon us agreeing with the proposition that "color of state law" and "scope of office or duties" mean the same thing—which, as we have explained, we do not.

Id. at [*14](#).

In sum, the Supreme Court rejected the argument that a federal jury's finding that a police officer acted "under color of state law" for purposes of Section 1983 constitutes a "judicial determination" that he acted within the "scope of his office or duties" for purposes of the PSTCA. "Given that conclusion, McGuire cannot prevail on the merits of this appeal even if he were to convince us that the trial court erred in allowing a jury to consider anew whether Neidig acted within 'the scope of his office or duties' when he used force against McGuire." *Id.* at *14-*15.

The Supreme Court declined to consider McGuire's subsidiary issues, and affirmed. Chief Justice Todd and Justices Dougherty and Brobson joined in the opinion. Justice Donohue filed a concurring opinion in which Justice Mundy joined. The Late Chief Justice Baer did not participate in the decision of this matter.

The following bullet points can be gleaned from the decision:

- Off-duty police officer Neidig chased down 16-year-old Shane McGuire and injured him.

- McGuire brought a civil rights case against the off-duty police officer, and a federal jury found that the police officer was acting under color of state law and awarded damages to McGuire.
- Neidig assigned his right to sue the city for indemnification to McGuire.
- McGuire then sued the city in the Allegheny Court of Common Pleas, seeking indemnification.
- The court held that the finding of the federal court jury that the off-duty police officer acted under color of state law was not synonymous with the “scope of office or duties” as used in the state statute.
- In the indemnification claim in Common Pleas Court the jury concluded that Neidig was not acting within the scope of his duties when he assaulted McGuire, meaning the city was not required to indemnify Neidig.
- That decision was affirmed by the Commonwealth Court, and ultimately by the Supreme Court here.
- In other words, one could be acting under color of state law for a federal civil rights case, but when indemnity is sought under state law, a jury could find that the off-duty police officer was not acting within the scope of his duties.
- Therefore, the injured victim will not get paid because he accepted the off-duty police officer’s right to sue for indemnification from the city presumably giving up the right to pursue his judgment against the police officer, and the city did not have to indemnify.

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