

LUVAUL V. CITY OF EAGLE PASS
408 S.W. 2d 149 (Tex. Ct. of Civ. App. 1966)

Action: Negligence, nuisance, or battery.

Facts: The plaintiff was arrested by a city police officer and taken to the county jail. A disturbance ensued at the jail. The disturbance was not of plaintiff's making.

The police officer shot plaintiff with a tear gas gun at close range. Plaintiff lost the sight of both eyes.

After plaintiff was shot, medical aid was not furnished for eight hours.

Summary judgment was granted in favor of defendant. Plaintiff appealed.

Held: City was immune from liability for torts of employees committed in exercise of governmental functions.

WALL V. ZEEB
153 N.W. 2d 779 (N.D. Sup. Ct. 1967)

Action: Assault and battery.

Facts: Defendant was an on-duty police officer. Plaintiff was sitting in his car when defendant approached the parked automobile. Plaintiff was asleep or unconscious with an open can of beer in his hand. Plaintiff refused to disclose his identity. Defendant contends he placed plaintiff under arrest. An altercation occurred, plaintiff ran into a house owned by his mother. Defendant pursued plaintiff, armed with the tear gas gun and a flashlight. Defendant tried to remove plaintiff from the house and during a scuffle the tear gas projector discharged.

The tear gas instrument used by defendant was a "Hercules Tear Gas Fountain Pen Projector". It was made of metal, had an overall length of five inches, a barrel length of one and three-fourth inches, weighed two ounces, and fired a .38 caliber tear gas cartridge.

In the trial court the verdict and judgment was in plaintiff's favor.

Defendant appealed.

Held: Reversed and remanded for a new trial. The court erred in instructing the jury that a tear gas gun was a "firearm" and that defendant had the burden of proving he acted reasonably.