

## STUDENT HANDOUT A:

The following cases demonstrate some court rulings regarding positional asphyxia and qualified immunity.

### **Richman v. Sheahan, No. 07-1487, 2008 U.S. App. Lexis 200 (7th Cir.).**

In the case of Richman v. Sheahan, deputy sheriffs were not entitled to qualified immunity in a lawsuit alleging that they used excessive force in removing a morbidly obese man from a courtroom after he was found in contempt of court. Several deputies allegedly placed themselves on his back while he was on the floor causing him to die. Hostility by the deputies to the man could support a finding that they were trying to punish him at the time. Both Fourth Amendment and Eighth Amendment claims were reinstated.

Marcella Richman appeared in the Circuit Court of Cook County, Illinois, to challenge a traffic citation. She was accompanied by her son, Jack Richman, who planned to testify as a witness. The Richmans waited in the courtroom for several hours before their case was called, and then the judge continued the hearing to a future date. The Richmans attempted to ask a question but the judge quieted them, and when Jack continued to speak, the judge ordered him restrained.

Two Cook County sheriff's deputies began to take him into custody and twelve more deputies then entered the courtroom. According to the complaint, the fourteen deputies attacked Jack, forced him to the floor, sat on and handcuffed him. Jack, who was physically disabled and required the use of a cane, did not resist the deputies' attempt to restrain him, nor did his mother, who was restrained by four other deputies. While Jack was handcuffed and on the floor, he emptied his bladder and bowels, and he appeared to have stopped breathing. Paramedics rendered emergency assistance at the scene and then transported him to a hospital, where he was pronounced dead.

Marcella Richman's amended complaint seeks damages against the deputies in their individual capacities pursuant to 42 U.S.C. sec. 1983, alleging that the deputies' conduct violated her and her son's right to be free from unreasonable searches and seizures under the Fourth and Fourteenth Amendments. The complaint also includes sec. 1983 claims against Cook County Sheriff Michael Sheahan in his official capacity, alleging that he failed adequately to train and supervise the deputies in their duties "to refrain from using excessive force in effecting seizures of citizens." The complaint also includes claims against the deputies under the Illinois Wrongful Death Act, 740 Ill. Comp. Stat. 180/1, and the Survival Act, 755 Ill. Comp. Stat. 5/27- 6./2

### Study Questions

Review the above case to determine the issues.

Why were the deputies denied qualified immunity?

Was there apparent knowledge of a danger to the arrestee?

Was the force and tactics used by the deputies an exaggerated response to the incident?

What factors should have been considered in determining the use of force?

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**Drummond v. City of Anaheim, No. 02-55320, 343 F. 3d 1052 (9th Cir. 2003). [2003 LR Dec]**

Officers' alleged actions of pressing their weight onto the neck and torso of a mentally ill detainee as he lay handcuffed on the ground and begged for air, constituted an excessive use of force for which the officers were not entitled to qualified immunity.

On March 25, 1999, Brian Drummond's fiancée Olivia Graves called the Anaheim police. Drummond, who had a history of mental illness (bipolar disorder and schizophrenia), had run out of medication and was hallucinating and paranoid. Graves asked the police to help her take Drummond to the hospital to receive medical assistance.

Four Anaheim police officers responded to Graves' call; among them were Kristi Valentine, a rookie, and Christopher Ned, her training officer. The officers determined that Drummond was not a danger to himself or others - the criteria for an involuntary psychiatric detention under CAL. WELF. & INST. CODE § 5150. The officers therefore refused to take him into custody, for transport or otherwise. Graves alleges that the officers were "not very professional," and were "joking around" throughout the encounter. Later, Drummond voluntarily accompanied Graves to a medical facility to obtain the lithium that had been prescribed for him, but he had neither medical insurance nor enough money with him to obtain the drugs and left without them.

The next night, the Anaheim police were again called to help protect Drummond; his neighbor, David Kimbrough, called the police because he was afraid that Drummond was going to hurt himself by darting into traffic. Officers Ned, Valentine, and Brian McElhaney, responding to the call, found Drummond in a 7-Eleven parking lot; Ned and Valentine recognized him as the subject of the call from the night before. Drummond, who was unarmed, was hallucinating and in an agitated state, and the officers called for an ambulance to transport him to a medical facility, pursuant to § 5150. Before the ambulance arrived, however, the three officers decided to take him into custody, "for his own safety."

Independent eyewitnesses saw Officer Ned "knock Drummond to the ground[,] where the officers cuffed his arms behind his back as Mr. Drummond lay on his stomach." Although Drummond offered no resistance, McElhaney "put his knees into Mr. Drummond's back and placed the weight of his body on him. [Ned] also put his knees and placed the weight of his body on him, except that he had one knee on Mr. Drummond's neck."

Drummond weighed only 160 pounds at the time of the incident; although there is no indication of McElhaney's weight in the record, Ned weighed approximately 225 pounds at the time. With the two officers leaning on his neck and upper torso, Drummond soon fell into respiratory distress. Two eyewitnesses verified that "Mr. Drummond repeatedly told the officers that he could not breathe and that they were choking him. He also told them that he was thirsty and needed a glass of water. The officers however continued to put their weight upon Mr. Drummond's back and neck." One of these eyewitnesses, Victor Calleja, stated that although McElhaney and Ned were "obviously causing [Drummond] to have trouble breathing," "[t]he officers were laughing during the course of these events."

Approximately twenty minutes after Drummond was taken down, Officer Gregory Sawyer arrived at the parking lot. The officers then obtained a "hobble restraint," which they used to bind Drummond's ankles. One minute after the restraint was applied, Drummond went limp, and the officers realized that he had lost consciousness. They checked his pulse, and then removed the handcuffs and hobble restraint and turned him over, onto his back. The officers attempted to perform CPR on Drummond until the paramedics finally arrived.

Although Drummond was revived approximately seven minutes after losing consciousness, he sustained brain damage and fell into a coma. He is now in a "permanent vegetative state."

### Study Questions

Review the above case to determine the issues.

Why were the officers denied qualified immunity?

Was there apparent knowledge of a danger to the arrestee?

At what point were the officers made aware that a danger existed?

Was the force and tactics used by the officers an exaggerated response to the incident?

What factors should have been considered in determining the use of force?

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### **Cruz v. City of Laramie, No. 99-8045, 99-8049, 99-8050, 239 F.3d 1183 (10th Cir. 2001).**

Federal appeals court rules that hog-tie restraints should not be used when it presents a significant risk to a suspect's health or well being because of diminished mental capacity, whether based on intoxication or a mental condition; officers were individually entitled to qualified immunity, but inadequate training claims against city could go forward in lawsuit over death of naked man who died after being restrained with hog-tie.

On June 10, 1996, in late afternoon, the Laramie Police Department received a complaint that a man, later identified as Thomas C. Cruz, was running around naked. Officer Troy Jensen, the first to arrive on the scene, found the naked Cruz on an exterior landing of an apartment building, jumping up and down, yelling, and kicking his legs in the air. Officer Bonnie Noel then arrived and, immediately upon seeing Cruz, called for an ambulance. A few seconds later Officer Richard Michel reached the scene. The officers sought to calm Cruz and tried to persuade him to come down the steps. Their efforts initially were not successful. After several minutes, however, Cruz descended and approached the officers who met him at the bottom of the steps with their batons drawn. Cruz attempted to go past the officers. During the ensuing struggle the officers wrestled Cruz to the ground and handcuffed him face down. Cruz continued to yell and flail about. The officers asked Cruz what kind of drugs he had taken but received no response.

Officer Ben Fritzen then arrived and, after assessing the situation, applied a nylon restraint around Cruz's ankles to abate the kicking. The officers fastened the ankle restraint to the handcuffs with a metal clip. The parties dispute the resulting distance between Cruz's ankles and wrists. The district court found sufficient evidence in the record to support an inference that Cruz was "hog-tied" because the separation was one foot or less. If that distance were two feet or more, it appears that it

would have been deemed a "hobble restraint." Appellee contends that the terms are interchangeable, both referring to the technique whereby officers' fasten an individual's hands and feet together behind the individual's back.

Shortly after Officer Fritzen applied the restraint, Officer Michel turned Cruz's head to check the reaction of his pupils to sunlight. Cruz had calmed markedly after officers completed the arm-leg restraint. Just before the ambulance arrived, Officer Noel noticed that Cruz's face had blanched. The restraint was removed. Immediately upon reaching the scene the ambulance emergency team began CPR. Cruz was pronounced dead on arrival at the hospital. Autopsy results showed a large amount of cocaine in his system.

Ronald Cruz, the decedent's brother, brought the instant action against the officers, individually and in their official capacities, the City of Laramie, and Chief of Police Bill Ware, both individually and in his official capacity. The action invokes 42 U.S.C. § 1983, and advances a state law negligence claim under the Wyoming Governmental Claims Act. The affidavits of experts provide two different causes of death, one concluded that Cruz's position while on the ground contributed to his death, the other concluded that his death resulted solely from cocaine abuse. Defendant police officers' and the City of Laramie's motions for summary judgment were denied and these appeals followed.

The following are some excerpts of the court's ruling:

*"We do not reach the question whether all hog-tie restraints constitute a constitutional violation per se, but hold that officers may not apply this technique when an individual's diminished capacity is apparent. This diminished capacity might result from severe intoxication, the influence of controlled substances, a discernible mental condition, or any other condition, apparent to the officers at the time, which would make the application of a hog-tie restraint likely to result in any significant risk to the individual's health or well-being. In such situations, an individual's condition mandates the use of less restrictive means for physical restraint."*

*"In Johnson v. City of Cincinnati, the Southern District of Ohio found sufficient information existed in the law enforcement community to put the authorities on notice that positional asphyxia was a problem nationwide."*

*"In addition to the case law highlighting problems associated with the hog-tie restraint, appellee provided the district court with numerous articles and other materials discussing "sudden custody death syndrome" and noting the relationship between improper restraints and positional asphyxia. The articles detail the breathing problems created by pressure on the back and placement in a prone position, especially when an individual is in a state of "excited delirium." These breathing problems lead to asphyxiation. The materials provided to the district court include police handbooks, Justice Department symposia, various journals and periodicals, and newspaper articles detailing deaths of individuals while in custody. Given the extent of the case law, and the "legally-related" literature available to law enforcement personnel detailing the serious dangers involved in application of the hog-tie restraint, it is apparent that officers should use much caution in applying the hog-tie restraint."*

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