

VERDICTS & SETTLEMENTS

CIVIL RIGHTS

EXCESSIVE FORCE

Wrongful Death

SETTLEMENT: \$500,000.

CASE/NUMBER: Heidi Gray, Austin Smith, Marilyn Costello, Bryant Smith v. City of Placentia / CV 06-97-GW.

COURT/DATE: USDC Central / April 7, 2008.

JUDGE: Hon. George H. Wu.

ATTORNEYS: Plaintiff - Ronald O. Kaye (Kaye, McLane & Bednarski, LLP, Pasadena).

Defendant - Mark Monachino, Daniel K. Spradlin (Woodruff, Spradlin & Smart, Costa Mesa).

FACTS: On Dec. 22, 2004, several calls had been made to the Placentia Police Department that Brian Smith had been under the influence of controlled substances, and was suicidal. Brian Smith was viewed by percipient witnesses as yelling in the street, touching cars as they drove by, and driving recklessly. He was stopped by the Placentia Police Department in the housing complex where he lived. He was aggressive toward the officers, but complied with their directions to pull over, and after exiting his car aggressively on two occasions, returned to his vehicle.

Five Placentia Police Department officers ultimately showed up at the scene and Brian Smith shouted at the officers, alternating between saying gibberish, cursing them, and asking for help. He did not threaten them. There is a dispute about whether his hands were always outside of the car in compliance with the officers' commands, or whether they reached down for the floorboard. Ultimately, Brian Smith was tasered and exited the vehicle. He approached one officer and was tasered again. There is also a dispute about whether he fell on the floor and had convulsions. After being tasered for a second time, Brian Smith stood up moved aggressively in the direction of officer Madrigal with his hands open. He took a few steps and was shot and killed by Officer Madrigal.

There is an additional dispute about the distance between Brian Smith and Officer Madrigal, from 4 feet to approximately 20 feet, but ballistics appears to show that he was at least 7 feet away.

PLAINTIFFS' CONTENTIONS:

The plaintiffs contended that the officers violated Placentia Police Department's own policy in dealing with individual's with psychological disorders, in that there were multiple officers shouting commands at Brian Smith at the same time, they rushed a confrontation with Brian Smith when he was contained and back-up and a canine unit were on the way, they did not engage in a calming conversation with him and exacerbated an already volatile situation when they did not slow everything down. Brian Smith presented no serious threat to the officers, no weapon, no history of violence, no threats to the officers and no civilians were on the street and at risk. The training of the officers required them to not rush to confront Brian Smith, nor taser him.

The plaintiffs also contended that officer Madrigal engaged in excessive force when he shot an unarmed man who, although admittedly was aggressive and could be seen as charging, presented no risk of significant harm to the officer or risk of death. There were five officers surrounding Brian Smith at the time.

The plaintiffs further contended there were substantial damages in that

Brian Smith's primary survivor is his son Austin, 8 years old at the time of the shooting, who was represented by his guardian ad litem, his mother, Heidi Gray. Although Brian Smith showed little earning potential, did not contribute significant financial resources to raising the child, evidence demonstrated that Brian Smith was very involved in Austin's upbringing, was an important disciplinarian and the primary "fun-guy" in Austin's life. Austin Smith was in constant contact with his father.

RESULT: The case settled for \$500,000.

OTHER INFORMATION: Issue was whether defendant Officer Raul Madrigal engaged in excessive force when he shot and killed Brian Smith. Brian Smith had complied with many of the commands of the officers, but he was very aggressive and irrational. Before he was shot, Brian Smith asked for help, but after being tasered twice by the officers, appeared to rush at officer Madrigal, possibly intending to attack him. There was no threat of a weapon, but Brian Smith was significantly larger in size than officer Madrigal. Also, Brian Smith appeared to be under the influence of controlled substances, had left a suicide note, and engaged in unpredictable, dangerous behavior in his automobile prior to being confronted by the officers. But Brian Smith had no history of violence and was somewhat compliant to the officer's commands.

Other issue was whether defendant city of Placentia was liable for their lack of training of their officers in dealing with an individual who appears to be suffering from a psychotic disorder.

FILING DATE: Feb. 7, 2006.