

THE APPEAL

Family of Orlando Prisoner Who Died After Police Dog Bites Gets Legal Breakthrough

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On Aug. 6, 2015, according to Orlando police, 22-year-old Max Gracia was hiding in a lake to avoid being arrested after he used a gun to rob a convenience store. Police then sent in a dog after Gracia who tried to fight it off, according to local news reports. During the struggle, Gracia was bitten on his hands and legs, and was admitted to a public hospital before being taken to the infirmary at the county jail. On top of his robbery charge, he was also charged with “interfering with a police dog.”

Over the course of his imprisonment, Gracia’s health rapidly deteriorated. On the night of Aug. 9, he writhed in bed, moaning, and fell to the floor of his cell, according to legal filings. A member of the jail’s medical staff allegedly accused him of “faking or exaggerating” an illness, and recorded in their notes that he refused treatment.

Hours later, at 5:15 a.m., Gracia was found in his cell not breathing. At 6:09 a.m., he was pronounced dead at the Orlando Regional Medical Center. His autopsy showed that the bites on his left leg led to an E. coli infection and ultimately a blood infection that turned fatal. Gracia died of septic shock with HIV as a likely contributing factor.

In 2017, Gracia’s parents filed suit against jail medical director Robert Buck, Orange County, and four nurses at the jail, alleging that a “culture of neglect” permeated the facility and that medical staff ignored Gracia’s worsening condition. The county and three of the nurses were later removed from the lawsuit.

This year, in April, U.S. District Judge Gregory Presnell ruled that the lawsuit against Buck and nurse Karen Clairmont may proceed to trial; his court order declares that the family has a worthy claim that Buck had demonstrated “deliberate indifference” in his capacity as Gracia’s physician and as the medical director. Buck and Clairmont have filed a notice to appeal. In their legal filings, they deny all wrongdoing.

“No one knew there was a medical emergency,” reads the motion to dismiss filed in 2017 on behalf of Buck, two of the nurses, and Orange County. “There therefore was no serious medical need anyone could have possibly deliberately ignored.”

In an email response to The Appeal, Tracy Zampaglione, spokesperson for the Orange County Corrections Department wrote, “Orange County is no longer involved.” When asked about the

allegations against Buck and Clairmont, Zampaglione wrote, “We do not comment on litigation.” Zampaglione confirmed that Buck is still employed by the county but is no longer medical director of the jail. Clairmont resigned in September 2015 while under investigation, according to Zampaglione.

Although the court order is not a full victory, and the Gracia family’s suit is still in court, they have already overcome what can be an insurmountable challenge. Too often, obstacles enshrined in case law and statute prevent claims of prisoner abuse from ever being heard in court, advocates say. That the case can proceed to trial is an acknowledgment that those who abuse prisoners, either by policy or practice, can be held financially liable, according to advocates.

“Prisons and jails are brutal places and there are tens of thousands of inmates in Florida who have legal claims that call out for redress,” said Daniel Tilley, legal director of the ACLU of Florida. “This ruling is an appropriate recognition that pleading ignorance doesn’t get you off the hook. That people who are charged with providing medical care to individuals in government custody do in fact have to provide care.”

On the day Gracia was admitted to the infirmary, after first being seen at the Orlando Regional Medical Center, Buck was the attending medical official. To treat Gracia’s dog bite wounds, Buck prescribed antibiotics, ibuprofen, and Tylenol with codeine. (He also put Gracia back on his seizure medication.) But then he never followed up or saw Gracia again, according to the court’s order.

“Buck examined an HIV-positive patient with a severe dog-bite wound and deliberately declined to play any active role in his subsequent treatment,” wrote Judge Presnell. “Viewing the facts in the light most favorable to the Plaintiffs, that behavior is the very essence of deliberate indifference.”

Normally, Buck would not initially examine people when they are admitted to the infirmary, but the nurse on staff was out sick the day Gracia came in, so Buck filled in, according to legal filings. In fact, understaffing appears to have been a consistent problem, Judge Presnell wrote.

According to jail policy, which Buck approved, one nurse could be assigned 40 patients, the judge wrote. He also noted that Clairmont, the nurse on duty the night of Gracia’s death, claimed she had not been instructed to call in a physician when necessary to treat patients during her shifts. “While understaffing alone may not be sufficient to show a custom or policy resulting in deliberate indifference, a jury could conclude that persistent, extreme understaffing, when coupled with the failure to involve doctors, would be,” he wrote.

On the afternoon of Aug. 8, 2015, Gracia vomited twice, according to the judge’s order. Elsa Galloza-Gonzalez, another nurse at the jail, wrote in her notes that he showed “no signs or symptoms of infection,” according to the court.

The next evening, at 7:48 p.m., Clairmont recommended that Gracia be moved out of the infirmary and into general population, according to a report by Dr. Thomas Fowlkes, the medical expert for Gracia’s family. At about 9 p.m., when Gracia was asked to sit up for his medication, he writhed in bed, said, “I can’t do it,” and then slid to the floor, according to Fowlkes’s report.

His report also refers to a note recorded at 9:54 p.m. by Lynn Marie Harter, another nurse at the jail, in which she wrote that Gracia “refused to get up and take his PM medications as ordered.”

When officers arrived about an hour later to transfer him to another cell, Gracia was “unresponsive, groaning lethargically, and laying on the floor,” Judge Presnell wrote. Clairmont allegedly told the officers that Gracia was malingering, a charge that she denies. Two prisoners and an officer moved him to another cell. The judge’s order writes that at no point after Gracia was transferred did Clairmont enter the cell to examine him; she claims that she was monitoring him by live video.

Clairmont recorded in her notes that Gracia had refused treatment and refused to follow orders for the transfer, according to Judge Presnell’s order. A disciplinary report was filed against Gracia for failing to follow orders and for feigning an illness, according to the medical expert’s report.

At about 3 a.m., on Aug. 10, four days after his arrest, a corrections investigator allegedly interrogated Gracia about the disciplinary report, but he was unable to respond, according to the family’s complaint. At approximately 3:30 a.m. Clairmont wrote that Gracia was lying on the floor of his cell, refusing all treatment, according to Dr. Fowlkes’s report.

At about 5:15 a.m. another jail official told Clairmont that Gracia was not breathing. What appeared to be coffee grounds were found on Gracia’s towels and sheets, indicating that his esophagus was disintegrating and that he had vomited blood, according to the judge’s order. Gracia was taken to the hospital and pronounced dead less than an hour later.

Prisoners and their families can face multiple hurdles to having their civil cases heard in court. Once a claim for damages is filed, the plaintiffs must overcome the qualified immunity doctrine. Under Section 1983 of the federal Civil Rights Act, first enacted in 1871, government officials can be held financially liable for violating a person’s rights. However, the doctrine of qualified immunity, the modern version of which was articulated by the U.S. Supreme Court in the 1980s, requires that plaintiffs seeking damages show that the statutory or constitutional right alleged to have been violated was clearly established by law.

The purpose of qualified immunity is to shield government workers from liability for civil damages for unknowingly violating the law. But according to Tilley, of the ACLU of Florida, this requirement has “traditionally only served to permit brutal, gruesome misconduct.” The doctrine, he said, adds yet another barrier for prisoners seeking financial redress and impedes systemic reform.

Critics of qualified immunity span the ideological spectrum—from Supreme Court Justice Clarence Thomas to Justice Sonia Sotomayor. In fact, the ACLU and the Cato Institute, along with several other organizations, filed amicus briefs last year in support of a claim brought by Almighty Supreme Born Allah. “It’s been a very effective doctrine at keeping meritorious lawsuits from going forward,” said Jay Schweikert, a policy analyst with the Cato Institute’s Project on Criminal Justice.

Allah was placed in solitary confinement for nearly a year while awaiting trial at the Northern Correctional Institution in Connecticut. For about seven months of that time, he was confined to his cell for 23 hours a day, and when he was permitted to shower, he had to do so in shackles and underwear. In 2011, he sued Department of Correction officials.

A federal court found that although his rights had been violated, the defendants were protected by qualified immunity. (The case was ultimately settled out of court.) “Defendants were following an established DOC practice,” Circuit Judge Gerard E. Lynch wrote in his opinion. “No prior decision of the Supreme Court or of this Court (or, so far as we are aware, of any other court) has assessed the constitutionality of that particular practice.”

In cases like Gracia’s, proving deliberate indifference is a prerequisite to establishing that a constitutional right was violated, explained Tilley. Overcoming qualified immunity then requires showing that the unlawfulness of the violation was clearly established. In 1976, the U.S. Supreme Court ruled in Estelle v. Gamble that deliberate indifference to a prisoner’s serious medical needs violates the constitutional prohibition against cruel and unusual punishment.

“Deliberate indifference is a mountain to overcome in these types of cases,” said the Gracia family’s lawyer Jason Recksiedler. “Many times that standard can’t be reached and the case never reaches the jury.”

Demonstrating deliberate indifference can be exceedingly difficult, agreed Margo Schlanger, a law professor at the University of Michigan. For Gracia’s case, it would require showing that officials or staff knew about the problem and responded unreasonably, she said.

In their legal filings, Buck and Clairmont argued that they did not act with deliberate indifference and were protected by qualified immunity. Judge Presnell disagreed, and Buck and Clairmont filed an appeal this month of the decision. Schlanger thinks that the Gracia family’s suit is “a classic deliberate indifference case.”

“They disciplined the guy for dying,” she said. “They called him willfully noncompliant when what he was doing was dying.”