

FRANSCCELL, STRICKLAND, ROBERTS & LAWRENCE

INSIDE FSRL

FIRM WINS "SUICIDE BY COP" WRONGFUL DEATH TRIAL

On January 18, 2007, a Norwalk jury returned a verdict in favor of the City of Downey and two of its police officers in a high profile "suicide by cop" wrongful death trial. The case is entitled Martinez v. City of Downey, et al., Case No. BC 277402; the trial lasted two weeks.

The suit arose from a vehicle pursuit following an attempt to stop Gonzalo Martinez [decedent] in the City of Downey for suspected driving under the influence. The pursuit entered the southbound Santa Ana Freeway (I-5) at speeds approaching 100 m.p.h. Martinez lost control of his car on a freeway transition and drove off the road-way. Officers approached the car on foot to arrest him. Martinez then tried to run over an officer with his car, prompting gunfire from three separate officers. Martinez was apparently shot in the hand but was able to maneuver back onto the freeway and continue the pursuit.

Eventually, Martinez's car was rammed by a police car, causing him to lose control and collide with a parked car on a

city street. Martinez's car was then pinned against the parked vehicle by a police car which had an operating dash-mounted video camera.

A stand-off ensued, with Martinez ignoring numerous commands by the offi-

"reached his right hand underneath the rear portion of his jacket"

cers to exit the car, put his hands in the air, and surrender. Instead, Martinez remained in his car and smoked a few cigarettes.

Approximately eleven minutes after his car was pinned, Martinez opened the driver's door, stepped out of the car wearing an unzipped jacket, and directly faced the officers.

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FSRL WELCOMES CONRAD CLARK

Conrad began his career as a police officer with the Lynwood and Newport Beach Police Departments, and retired from the Los Angeles County Sheriff's Department in 1979. Conrad then worked with Ralph's Grocery Company, managing Store Security and Special Projects; he later managed their Liability Department.

Having obtained his J.D. in 1990, Conrad worked for FSRL until opening his own practice in 1996. He has recently rejoined FSRL and will be working in the Orange County office.

Welcome back, Conrad!

MSJ WIN FOR FONTANA POLICE DEPARTMENT

In October 2006, FSRL succeeded in obtaining judgment on behalf of the Fontana Police Department in a case involving allegations of excessive force with a taser gun.

The incident in Schmalzried v. City of Fontana, et al., SCVSS122862, began around noon on December 14, 2003,

when a Fontana police officer was transporting a petty theft subject for identification. While transporting the subject, the officer noticed Plaintiff with a little girl and a dog in an abandoned parking lot. As the officer drove by, he observed Plaintiff kick the dog twice. In response, the officer rolled down his window and told Plaintiff to stop.

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FIRM DEFEATS CLASS ACTION WITHOUT A TRIAL

In March 2007, FSRL successfully defeated a class action against the County of Los Angeles, in which the class members claimed that the time between the release orders issued by the court and the actual release of a detainee was unreasonable. Plaintiffs in R.D. Mortimer v. Leroy Baca et al., 00-13002 DDP (SHx) were represented by Stephen Yagman.

The lawsuit was originally brought in 2000 and 2001, alleging that inmates were illegally detained in excess of 24 hours following court orders releasing them. The class was certified in May 2005, and consisted of all detainees in the Los Angeles County jails who were not released within 12 hours of either (a) the expiration of the applicable sentence or (b) a court-ordered release, and who had no outstanding releases, warrants, or holds.

In late 2006, Sheriff Baca moved to de-certify the class, and also filed a dispositive motion asserting that there was no evidence to support Plaintiffs' claim that overdetections were a result of an unconstitutional policy, practice,

or custom. Plaintiffs contended that the overdetections amounted to "deliberate indifference" toward their constitutional rights.

Ultimately, the Court found that out of the almost 51,000 detainees who had been released from the Los Angeles County jails during the class period, only 43 detainees had potentially been detained for more than 24 hours after their release orders. The Court also found that the Los Angeles County Sheriff's Department had taken a number of steps to ensure prompt release of detainees, and that the number of overdetections was being systematically and dramatically reduced. Therefore, the Court ruled that "as a matter of law, the Sheriff's implementation of policies...to effectuate 51,000 releases...is reasonable and cannot constitute a Monell deliberate indifference claim. Accordingly, summary judgment in the Sheriff's favor is appropriate." Michael Allen prepared and argued the Motions.

"SUICIDE BY COP" WRONGFUL DEATH TRIAL

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The officers ordered Martinez to put his hands in the air. In response, Martinez raised his right hand which held a cigarette, and placed the cigarette in his mouth, freeing his right hand. Martinez then reached his right hand underneath the rear portion of his jacket towards his waistband area.

Believing that Martinez was reaching for a weapon, three officers fired at him. One officer fired fifteen rounds from an MP-5 sub-machine gun, another fired two "bean-bag" rounds, and the third fired one round from a .9 millimeter handgun. Martinez was killed and no weapon was found on him.

The Plaintiffs [Martinez's parents] contended that the dash-mounted videotape of the shooting and the eyewitness testimony of a neighbor confirmed that Martinez did not place his hand behind his back. They also claimed that the officer who fired the MP-5 sub-machine gun was trying to "get even" with Martinez after Martinez attempted to run the officer down during the first round of shooting. According to Plaintiffs, the other two officers heard the shots and automatically fired as a consequence of what is referred to as "contagious fire" or "sympathetic fire."

Martinez was on a "deferred entry" program due to an arrest three months prior to the incident, for possession of a controlled substance. Martinez also had two prior DUI arrests and an arrest for being drunk in public. On the evening of the shooting, Martinez's parents went to the police station and reported that Martinez had struggled with an alcohol problem for ten years, and that they had attempted to get him into a rehabilitation program. Martinez's father also told police that the night before the shooting, he had slapped his son out of frustration with his drinking. Lastly, Martinez's father told police that Martinez had recently said "before I embarrass the family, I will die." At trial, Martinez's parents denied having made these statements to the police.

Defendants successfully argued that Martinez intentionally precipitated his own death, i.e., "suicide by cop." The jury found in favor of Defendants on all claims. David Lawrence was trial counsel for the City of Downey.

...successfully argued that Martinez intentionally precipitated his own death...

MSJ WIN FOR FONTANA P.D.

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Plaintiff responded, "I can do whatever I want to my dog." The officer stopped his car, got out, and approached Plaintiff.

At that point, a second officer arrived on the scene and began to question Plaintiff regarding whether he had any weapons or other contraband in his possession. Plaintiff became belligerent and the officers placed him against the hood of the patrol car.

Plaintiff resisted the officers' attempts to control him, by trying to push himself up from the hood of the car.

The officers applied a taser to Plaintiff's lower back to gain compliance, and took him into custody.

In the fall of 2006, the City of Fontana Defendants filed a Motion for Summary Judgment on all of Plaintiffs' claims, which included false arrest; assault and battery/excessive force; false arrest and imprisonment; malicious prosecution; negligence; negligent hiring and training; and negligent infliction of emotional distress. The Court granted Defendants' Motion in its entirety and entered judgment in their favor. Christina Sprenger and Jennifer Hall prepared the briefing; Christina Sprenger argued the Motion.

FRANSELL WINS RACIAL PROFILING APPEAL

Plaintiff in Drakeford v. Orange County et al., SACV 02-331 DOC (MLGx) sued 11 Orange County Sheriff's deputies, the Sheriff, an Assistant Sheriff, a 911 operator, a police dispatcher, and the County of Orange for their roles in his stop and detention on October 26, 2001. The District Court initially found Plaintiff was arrested without probable cause during the 15-45 minute encounter with deputies, and that Plaintiff's car was illegally searched; Plaintiff was not subjected to unreasonable force. On appeal, Defendants argued that they each of them acted reasonably under the circumstances, doing their best to respond to a call from an off-duty Sheriff's Sergeant.

As background, Plaintiff's stop resulted from the observations of an off-duty Sheriff's Sergeant who, in light of a spate of Orange County bank robberies involving similar "MOs," called 911 and reported what he observed to be conduct consistent with the MO, as well as two individuals matching prior descriptions. The 911 operator conveyed the information to a police dispatcher who in turn conveyed the information to deputies in the field. After receiving the information, deputies responded to the call, and executed a full-felony stop on Plaintiff's vehicle. The deputies ultimately determined there was no basis to continue to hold Plaintiff and he was allowed to continue on his way.

The District Court granted summary judgment to Defendants, finding their conduct reasonable for purposes of qualified immunity, and finding Plaintiff had failed to demonstrate a disputed issue of material fact with regard to his Monell claims. The Ninth Circuit Court of Appeals affirmed the District Court's judgment in favor of Defendants on those issues. David Lawrence, Christina Sprenger, and Jennifer Hall authored the appeal; David Lawrence presented oral argument.

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SPRING/SUMMER 2007

FRANSCCELL, STRICKLAND, ROBERTS & LAWRENCE

A Professional Corporation

Glendale

100 West Broadway
Suite 1200
Glendale, California 91210

Phone: (818) 545-1925
Fax: (818) 545-1937
www.franscell.com

Orange

500 North State College Boulevard
Suite 1350
Orange, California 92868

Phone: (714) 456-0180
Fax: (714) 456-0181
www.franscell.com

Franscell, Strickland, Roberts & Lawrence
A Professional Corporation
500 North State College Boulevard, Suite 1350
Orange, California 92868