

Bound by Protocol: The Ninth Circuit's Ruling on Qualified Immunity in *Perez v. City of Fresno*

Description

The United States Court of Appeals for the Ninth Circuit recently rendered a difficult decision in the case of *Perez v. City of Fresno*. This case stems from an action brought by the surviving family members of Joseph Perez, who asphyxiated and died after police officers, at the direction of a paramedic, used their body weight to restrain Perez while he was prone in order to strap him to a backboard for hospital transport. Perez's family members sued the officers and the paramedic involved under 42 U.S.C. Â§ 1983 for violations of the Fourth and Fourteenth Amendments, and the City and County for municipal liability under *Monell*, based on a failure-to-train theory.¹ After the district court granted the defendants' motion for summary judgment based on a finding of qualified immunity for the officers and the City, the plaintiffs appealed to the Ninth Circuit Court of Appeals.

In May 2017, the dynamics of a routine police response by the Fresno County Sheriff's Office (FCSO) took a tragic turn in an encounter that unfolded rapidly and ended fatally. The incident involved a man named Perez, whose erratic behavior through the streets of Fresno caused a concerned citizen to alert the Fresno County Sheriff's Office (FCSO). Perez was reportedly sprinting, screaming, and taking cover in bushes, behaviors suggestive of a person possibly suffering from severe distress. Before FCSO deputies could arrive, three officers from the Fresno Police Department (FPD) coincidentally ran into Perez. He was in the middle of the road, visibly agitated, waving his arms in their direction, and shouting for what sounded like help. The officers' initial observation was that Perez seemed to be under the influence of some substance—he was talking to himself and claiming that he was being chased and physically hit. Concerned for his safety and that of the officers, given the busy four-lane roadway nearby, the officers decided to restrain Perez by handcuffing him and seating him on the curb. When the dispatched FCSO deputies arrived, they found Perez seated, handcuffed, and surrounded by the FPD officers.

Within the first five minutes of interacting with Perez, one of the FPD officers requested emergency medical services to facilitate an involuntary psychiatric detention. It was reported that the officer initially requested a "code two," believing that Perez was a danger to himself and others. However, a minute and a half after reporting the "code two," the officer increased the request to a "code three." Due to a directional mistake, the ambulance took 14 minutes to arrive on the scene. During the 14-minute window, the situation escalated when, despite the officers' attempts to calm him and instruct him to "sit back down," Perez stood up from the curb and refused to comply. In response, officers took Perez to the ground to prevent him from potentially running into the four-lane traffic. After the takedown, while Perez was on the ground, one officer used his knee to strike Perez's side. The officer proceeded to apply a wrist lock, while another officer described Perez as being combative during these moments. Two additional deputies from the Fresno County Sheriff's Office arrived at the scene and remained in their patrol vehicle, prepared to assist if needed.

Meanwhile, the ground officers were engaged in a struggle to restrain Perez, who, during the altercation, repeatedly hit his face against the ground, causing visible injuries and bleeding. To mitigate further injuries, one officer placed a towel under Perez's chin and face, lifting his head to prevent it

from contacting the ground, as another officer asked Perez if he could breathe, to which Perez responded yes. Perez, lying prone on his stomach, continued to kick his legs and attempt to move. To manage this, the officers used a RIPP restraint on Perez's ankles, connecting it to his handcuffs to limit his leg movements. This restraint was only in place for one minute after the initial application, as it was removed when Emergency Medical Services (EMS) arrived on the scene. When EMS arrived, head paramedic Morgan Anderson immediately retrieved a backboard to secure Perez while he was prone to provide medical transport. As the officers and the paramedics began applying the backboard, Perez yelled that he could not breathe. Despite this, paramedic Anderson instructed one of the officers to sit on the backboard, and the officer complied, holding this position for a minute and thirteen seconds. The officers applied pressure while working with Anderson to secure the backboard, and the paramedics spent an additional two minutes securing him before finally turning him over to his back.

Tragically, it was then discovered that Perez no longer had a pulse. He was transported to the hospital, where he was pronounced dead. The cause of death was determined to be compression asphyxia during restraint, complicated by high levels of methamphetamine in his system, with the coroner officially ruling Perez's death as a homicide. For the 42 U.S.C. Â§ 1983 claim brought by Perez's family members, the district court determined that a reasonable jury could find that the officers violated the Fourth and Fourteenth Amendments by applying pressure to the backboard while Perez was prone. It nonetheless concluded that the officers were entitled to qualified immunity because at the time of the incident the law did not clearly establish, nor was it obvious, that the officers' actions were unconstitutional.

Likewise, the district court granted paramedic Anderson qualified immunity, reasoning that existing law did not clearly establish, nor was it obvious, that Anderson's conduct in providing medical care was unconstitutional. Finally, the court found that evidence presented by the plaintiffs was insufficient to show that either the City or the County were deliberately indifferent to their duty to train their officers on restraint asphyxia.

Perez's family members premised their appeal to the Circuit on three key questions: whether the law enforcement officers were entitled to qualified immunity; whether the paramedic, Anderson, was entitled to qualified immunity; and whether plaintiffs presented sufficient evidence to support their *Monell* claim against the City and the County.

The Ninth Circuit affirmed the district court's grant of summary judgment in favor of the individual officers, the paramedic, and the City and County of Fresno. The Court held that the law enforcement officers were entitled to qualified immunity. In arguing against a finding of qualified immunity for the law enforcement officers, the plaintiffs cited three arguments to advance their claim: first, the officers' actions were obviously unconstitutional; next, Ninth Circuit precedent established from the 2003 case, *Drummond v. City of Anaheim*, clearly established that the officers' actions were unconstitutional; and finally, the officers had deviated from their training protocols.

First, the Court tackled the case comparison, explaining that the facts in both cases were materially different. The Court identified a key distinction: the officers' intervention here was conducted under the paramedic's direction, who was called to the scene to provide medical support and transport. In *Drummond*, no medical personnel directed the police actions. Nothing in *Drummond* clearly establishes that the officers were required to second-guess the paramedics in their effort to provide medical care. Next, the Court found that it was not obvious that applying the backboard as directed by a trained

medical professional would violate the Constitution. Finally, based on the reasons cited above, even if the officers contravened their training, that does not defeat qualified immunity in this case.

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