

Judge won't toss claims in David Sal Silva case

BY JASON KOTOWSKI
The Bakersfield Californian
jkotowski@bakersfield.com

A federal judge Tuesday refused to dismiss most claims, including those involving allegations of excessive force and wrongful death, in a lawsuit filed against Kern County in the death of David Sal Silva.

"This is a resounding victory for us because the judge ruled in our favor in almost all of the claims, both federal and state," said attorney Neil K. Gehlawat of Chain Cohn Stiles, representing several plaintiffs in the case. "We're very pleased with the

judge's ruling in that respect, and believe his ruling is consistent with the evidence in the case."

A trial is set to begin in U.S. District Court in Fresno on May 12.

Chain Cohn Stiles is representing Silva's four children, his mother and the estate of his father, which is now in the care of his brother, Christopher Silva. The law firm of Rodriguez & Associates is representing Silva's girlfriend.

Attorney Daniel Rodriguez could not immediately be reached for comment Tuesday. County Counsel Theresa Goldner

could also not be reached.

The county had asked for summary judgment in the 11 causes of action filed by Silva's family, who allege law enforcement used excessive force in restraining the 33-year-old outside Kern Medical Center just before midnight on May 7, 2013. Silva died while in the custody of deputies after being struck with batons and subdued with a police dog.

The coroner's office ruled Silva died as a result of cardiac arrest from hypertensive heart disease. Methamphetamine found in his system and his chronic heart disease caused his heart to stop, according to coroner's findings.

Plaintiffs allege Silva's death was a homicide and he asphyxiated as a result of being hobbled while deputies applied pressure on his back.

U.S. District Judge Lawrence J. O'Neill gave a mixed ruling Tuesday, granting summary judgment in some instances, but denying most of the motions. Summary judgment is granted if a judge finds undisputed facts and the law are clear an opposing party would not prevail if the matter went to trial.

The following is a partial breakdown of O'Neill's decision as included in court documents:

- Excessive force — Silva's level of cooperation or disobedience during his encounter with law enforcement, and whether he posed an immediate threat, is in dispute. The court denied summary judgment for sheriff's Sgt. Douglas Sword, Deputy Jeffrey Kelly and Deputy Luis Almanza regarding alleged use of force such as baton strikes, punches or kicks.

The court granted summary judgment for six other defendants because they are not alleged to have used "impact force" on Silva.

O'Neill also denied summary judgment for Sword, Kelly and Almanza on the basis of qualified immunity, which is defined as a defense shielding "an officer from personal liability when an officer believes his or her conduct complies with the law."

In examining alleged use of force, including prolonged body-weight force



COURTESY SILVA FAMILY

David Sal Silva and three of his four children, daughters Makayla, Katelyn and Chelsey. Silva, 33, died in May 2013 after deputies say he fought with them and CHP officers who responded to a report of a possibly intoxicated man outside Kern Medical Center.

Plaintiffs allege Silva's death was a homicide and he asphyxiated as a result of being hobbled while deputies applied pressure on his back.

on Silva's back and the use of "hog-tie" restraints, the court denied summary judgment for Sword, Almanza, Deputies David Stephens, Ryan Brock and Tanner Miller, and California Highway Patrol Officers Michael Phillips and Michael Bright. Summary judgment was granted for Deputy Ryan Greer, who applied a spit mask to Silva.

- Denial of medical care — The judge granted summary judgment for the defendants after finding law enforcement made at least one call for medical assistance before Silva had been handcuffed, and paramedics arrived soon after officers hogtied Silva.

- Whether deliberation was practical in baton force — O'Neill found that the plaintiffs "demonstrate a genuine issue of material fact whether officers knew of and disregarded an excessive risk of serious injury or death."



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Kern County District Attorney Lisa Green discusses why she is not filing charges against law enforcement officers in the in-custody death of David Sal Silva. Green made the announcement during a press conference April 11, 2014 at the District Attorney's offices in downtown Bakersfield.

O'Neill wrote that the defendants offered no factual analysis or legal authority to support their motion for summary judgment regarding "alleged impact blows" by Kelly, Sword and Almanza after Silva was in restraints. He

denied the motion.

- Wrongful death — The court denied defendants' motion for summary judgment because "genuine issues of material fact persist." O'Neill said those issues preclude summary judgment.

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