



STORAGE NAME: h0969.CVJS

DATE: 2/15/2012

February 15, 2012

SPECIAL MASTER'S FINAL REPORT

The Honorable Dean Cannon
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 969 - Representative Grant
Relief/Melvin and Alma Colindres/City of Miami

THIS IS A CONTESTED LOCAL CLAIM FOR \$2,550,000 AGAINST THE CITY OF MIAMI BASED ON A FINAL JUDGMENT FOR MELVIN AND ALMA COLINDRES AND THE ESTATE OF THEIR SON, KEVIN COLINDRES, TO COMPENSATE CLAIMANTS FOR THE DEATH OF KEVIN COLINDRES, WHICH OCCURRED WHILE IN POLICE CUSTODY.

FINDING OF FACT:

Kevin Colindres, an intellectually disabled and severely autistic 18-year-old, died on January 5, 2007, as the result of injuries he incurred while in custody of City of Miami police officers on December 12, 2006. Kevin was 5'9 and weighed approximately 210 pounds. Kevin would occasionally throw temper tantrums and the family sometimes required the assistance of law enforcement to control his behavior.

On the evening of December 12, 2006, Mrs. Alma Colindres, Kevin's mother, asked Kevin to get dressed and said she would take him to school, which he hated, unless he cooperated with her. In response, Kevin became violent and struck Alma in the face, put his hands around her neck, and threw a chair at her. These actions prompted Nerania Colindres, Kevin's sister, to call 911 at approximately 6:45 p.m.

Officer Kimberly Pile was the first law enforcement officer to respond to the call. Upon Officer Pile's arrival at the Colindres residence, Kevin had calmed down and was no longer engaged in violent behavior. Officer Pile told Kevin that she was there to help and Kevin sat down on the couch next to his mother.

Officer Pile remained on the scene and several backup officers arrived at the home a short time later. Although Kevin initially remained calm, he again became agitated when Nerania mentioned that he should be taken to the hospital to treat his ear, which was infected. At that point, Kevin stood up and began to run in the direction of his bedroom. As he did so, Kevin tripped and fell to the floor, which resulted in a laceration to his head. Officer Pile radioed for medical assistance at 7:15 p.m. Due to a miscommunication between the police department and fire rescue dispatchers, "cut to the head" was misinterpreted as "cut to the hand," which resulted in the call being assigned an "Alpha response," the slowest response level with the least priority.

While Kevin was still on the floor, the backup officers immediately handcuffed Kevin's wrists behind his back and removed him to the front yard. Kevin struggled against the officers' efforts, which resulted in the officers placing Kevin face-down on the ground. The officers then proceeded to attach a hobble restraint device to Kevin's ankles.

With his wrists handcuffed behind his back and his ankles hobbled, Kevin remained face-down in a prone position while being held in place by three officers, contrary to procedures of the Miami Police Department providing that handcuffed and hobbled subjects should be moved to a sitting position as quickly as possible to avoid the risk of asphyxiation. Positional asphyxiation and the procedures regarding the proper use of a hobble device are subjects that the Miami Police Department includes as part of officer training. However, testimony of the three officers revealed they were unaware of the relevant procedures regarding the hobble device and the positioning of subjects in custody.

The officers continued to hold Kevin in a prone position with at least one of the officers applying pressure to Kevin's back making it even more difficult for him to breathe. After being improperly held in the prone position for 10 to 12 minutes, Kevin stopped breathing. The officers did not notice, again violating department procedures by neglecting to adequately monitor Kevin. Kevin's mother advised the officers that she did not believe Kevin was breathing. In response, one of the officers placed an ammonia tube in Kevin's nose, with no effect.

Notwithstanding the obvious fact that Kevin was no longer moving and in distress. The officers kept Kevin in the prone position until the arrival of the paramedics at 7:30 p.m. By that

time, Kevin had been face-down for a total of 15 minutes, and had not been breathing for approximately three to five minutes.

One of the responding paramedics instructed the officers to remove Kevin from the prone position and examined Kevin and discovered that his pupils were fixed, his facial complexion was blue, and he was not breathing. Although Kevin initially exhibited a pulse of 30 beats per minute, he went "flatline" moments later. CPR was then administered and Kevin was transported to the hospital. The prolonged period of respiratory arrest resulted in anoxic encephalopathy (brain death), and Kevin subsequently passed away at Coral Gables Hospital on January 5, 2007.

The Miami-Dade County Medical Examiner concluded that the use of the prone restraint position contributed to Kevin's cardiorespiratory arrest, which in turn caused Kevin's brain death. The Medical Examiner found that the "prone restraint position, and any position that restricts abdominal excursion, will interfere with breathing." The report identified Kevin's agitated emotional state as an additional factor contributing to his death.

Notwithstanding the plain language of the Medical Examiner's report, the Respondent argues that Kevin's cardiorespiratory arrest resulted not from positional asphyxia (i.e., suffocation caused by the prone position), but rather from "excited delirium." However, the undersigned is not persuaded by the opinions of Respondent's expert witnesses, Drs. Dimaio and Mash, and instead credits, as did the arbitrator, the conclusions of Dr. Werner Spitz, the Claimant's expert. Dr. Spitz opined that Kevin's brain death was the result of cardiac arrest initiated by compression of the chest, which in turn was caused by the use of the prone position and the application of force to Kevin's back.

Litigation History: Alma and Melvin Colindres, as the personal representatives of Kevin's estate, filed a wrongful death action against the City of Miami in May of 2007. Following extensive discovery, non-binding arbitration was held on March 25, 2010. The arbitrator found that if "the City of Miami Police Officers had been more attentive to Kevin Colindres after they restrained him, there is a strong likelihood that he would be alive today." The arbitrator concluded that the City of Miami was negligent in its treatment of Kevin. Acknowledging that it was difficult to assess the appropriate amount of damages to compensate parents for the pain and suffering associated with the loss of a child, the arbitrator determined that a judgment of \$2.75 million was warranted. The City of Miami was not bound by the arbitration, and could have proceeded with a de novo jury trial. Instead, the City of Miami decided to limit further litigation costs by agreeing to the entry of a final judgment for \$2.75 million, with the intention of opposing a claim bill. The

Respondent has paid \$200,000 towards the final judgment, leaving a balance of \$2,550,000 sought through this claim bill.

CONCLUSION OF LAW:

The City clearly owed a duty of care to Kevin Colindres while he was in their custody. The City of Miami police officers breached this duty of care, as it should have been obvious to any reasonable person that restraining Kevin for 15 minutes while he was face-down, handcuffed, and hobbled, was dangerously and needlessly interfering with his ability to breathe. The officers further breached their duty of care when they failed to adequately monitor Kevin's breathing.

The greater weight of the evidence supports the conclusion that Kevin would be alive today had the officers not committed these breaches of duty. Accordingly, the Claimants have demonstrated that the negligence of the officers was the proximate cause of Kevin's death. Damages in the amount of \$2,550,000 are reasonable and appropriate.

Source of Funds: Should this claim bill be approved, the first \$225,000 would be paid by Respondent from its Self Insurance Trust Fund. The remaining \$2,325,000 would be provided by Respondent's excess insurance coverage through State National Insurance Company.

Prior Legislative History: HB 1315 by Representative Diaz and SB 54 by Senator Storms were filed during the 2011 Legislative Session. HB 1315 was passed by the Civil Justice Subcommittee and died on the House Calendar. SB 54 passed the Senate Rules Committee, passed the full Senate, but died on the House Calendar.

ATTORNEY'S/
LOBBYING FEES:

The Claimants' attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with section 768.28(8), Florida Statutes. Lobbyist's fees and costs are included with the attorney's fees.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that House Bill 969 be reported FAVORABLY.

Respectfully submitted,

TOM THOMAS
Special Master

cc: Representative Grant, House Sponsor
Senator Storms, Senate Sponsor
Judge Edward T. Bauer, Senate Special Master