point did the officers handcuff, strike, or touch the Bravos.

The Bravos sued the City of Santa Maria, Santa Barbara County, the City of Santa Barbara, and individual officers, alleging their Fourth Amendment rights were violated by the issuance and execution of a search warrant whose application failed to disclose that their son was (and had been) incarcerated in prison and, therefore, not only was not present in the home, but could not have been involved in the drive-by shooting or the storage of weapons used in it. They claimed the search warrant was invalid because it was obtained through the intentional or reckless omission of facts "required to prevent technically true statements in the affidavit from being misleading."

The district court concluded that the omission of Javier Jr.'s custody status was not material to a finding of probable cause and that, in any event, the Bravos presented no evidence to support an inference of intentional or reckless conduct on Officer Tanore's part.

The U.S. Court of Appeals for the Ninth Circuit, on appeal, disagreed on both counts. To determine the materiality of omitted facts, the court considered whether the affidavit, once corrected and supplemented, established probable cause. If probable cause remained after this amendment, then no constitutional error had occurred. Here, once the affidavit was supplemented with the challenged omission (Javier Jr.'s sentence imposed over six months prior to the incident occasioning the warrant, and his consequent incarceration in prison at the time of the shooting and the warrant's execution), it could not establish probable cause for the search and "especially [did] not meet the heightened standard of justification required for nighttime SWAT service."

On whether the Bravos made a substantial showing that Tanore deliberately or recklessly omitted Javier Jr.'s custody status, the court, viewing the evidence and drawing all inferences in the light most favorable to the Bravos, concluded that the district court erred in finding Tanore "negligent at most." The Bravos made the required substantial showing that Tanore may have intentionally or recklessly omitted Javier Jr.'s two-year sentence from his affidavit (Tanore testfied that he reviewed Javier Jr.'s rap sheet in preparing the affidavit, and, though he could not recall with certainty whether he had observed the two-year sentence, acknowledged that he may have. The two-year sentence appeared on the rap sheet "a mere two lines below the 'convicted' disposition"). Because a reasonable jury could conclude that Tanore's failure to mention the jail sentence or to follow up and inquire about Javier Jr.'s custody status amounted to at least reckless disregard for the truth, summary judgment was improperly granted. *Bravo v. City of Santa Maria*, No. 09-55898, 2011 U.S. App. LEXIS 24383 (9th Cir. Dec. 09, 2011).

Use of Deadly Force

Scott Rockwell, 27, lived with his parents in Garland, Texas. Scott suffered from bipolar disorder and schizophrenia, had been diagnosed as suicidal, and had attempted suicide more than once. He had stopped taking his prescribed medication and refused to see a doctor. He was hearing voices and was behaving unpredictably, and his parent believed he was using illegal drugs. One evening, he was in his bedroom, hitting the walls and cursing. He came out and raised his fist as if to strike his mother, and his parents called 911. The dispatcher advised responding officers that Scott, a "potentially dangerous subject" was bipolar, schizophrenic, off his medication, and was pounding the walls of his room. The three officers who responded tried to talk with Scott through his bedroom door, as he had barricaded himself in the room. Another unit was called as Scott continued to hit the walls and threaten the officers. The officers decided to arrest Scott (based on a concern that he would harm his parents or himself) rather than wait to get a mental-health warrant. They decided to break down the door.

Once the door was breached, Scott, holding two eight-inch serrated knives, rushed towards an officer and attacked him with the knives, who responded by firing at Scott with a pepperball gun. Another officer saw the knives and yelled "knives" to warn his fellow officers. Scott turned and ran at another officer, injuring him with the knives. The officers responded with live rounds, and Scott died at the scene of multiple gunshot wounds.

The Rockwells, individually and on behalf of their son's estate, sued the officers for unlawful entry, excessive force, and assault and battery. The court below granted the defendants' motion for summary judgment on all claims (and on the excessive-force claims on the basis of qualified immunity), and the Rockwells appealed.

The U.S. Court of Appeals for the Fifth Circuit affirmed. To prove that the officers violated Scott's Fourth Amendment right to be free from the use of excessive force, the Rockwells had to show (1) an injury, (2) which resulted from the use of force that was clearly excessive to the need, and (3) the excessiveness of which was objectively unreasonable. The reasonableness inquiry was objective, and an officer's use of deadly force was not excessive when the officer, at the moment of the threat that resulted in the use of deadly force, reasonably believed that the suspect posed a threat of serious harm to the officer or to others. Here, Scott, a "relatively large man" known to be unpredictable and potentially violent, charged at the officers holding an eight-inch knife in each hand. The evidence indicated all of the shots were fired after Scott exited his room, when he was engaged in an armed struggle with the officers. "Under the totality of the circumstances, then, it was reasonable for the officers to believe that Scott posed a significant and imminent threat of serious physical harm to one or more of the officers." Further, the officers were entitled to qualified immunity on all of the Rockwells' unlawful-entry claims and the claim for warrantless arrest because the law at the time of the incident was unsettled.

Rockwell v. Brown, No. 10-11053, 2011 U.S. App. LEXIS 24980 (5th Cir. Dec. 15, 2011). ML