



# Roll Call Reporter

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LEGAL UPDATE FOR MARYLAND LAW ENFORCEMENT OFFICERS

## **Police Constitutional Liability for Deliberate Indifference to Serious Medical Needs**

**Question:** Can a law enforcement officer violate the constitution by failing to procure needed medical care for a detainee, arrestee, or other person in police custody?

**Answer:** Yes. If an officer is deliberately indifferent to the serious medical needs of a detainee, arrestee, or other person in police custody, the officer may be found liable for violating the person's rights under the Fourteenth Amendment.

**Case:** *Barbara Buffington, et al. v. Baltimore County, Maryland, et al.*  
U.S. Court of Appeals, Fourth Circuit  
Decided September 19, 1990

### **The Disappearance, the Suicide Note, and the Search for the Missing Person**

At 4:40 a.m. on March 19, 1987, David Buffington, Jr., was awakened by the sound of his father's car pulling out of the driveway of his parents' house, next door to his. Knowing that his younger brother, James Buffington, 24, was the only person home that night, and that James did not have a valid driver's license, David rushed next door and discovered a handwritten suicide note and guns missing from his father's gun closet, which had

been forced open. David immediately called the police emergency line, then set off in search of his brother. Officer Lewis Harvey of the Wilkens precinct of the Baltimore County Police Department, responding to a broadcast over the police radio describing James as suicidal, went to David's house and met David's wife, Kathryn, who showed him the suicide note. Kathryn described James' history of emotional problems and drug and alcohol abuse, particularly as a teenager. These problems had led to a number of encounters with Wilkens precinct police, and, in fact, Officer Harvey acknowledged to Kathryn that he knew of James' background. Acting Shift Lieutenant Joseph Gribbin soon arrived at the house and read the note. Officer Harvey called the Wilkens station and advised that James was suicidal and armed.

### **The Apprehension of the Suicidal Person, His Detention at the Police Station, and his Suicide While in Police Custody**

The county police apprehended James at 5:47 a.m. When he was seized, James appeared to be intoxicated and had in his possession two rifles and three handguns, all loaded. At 6:25 a.m., Officer Harvey called Kathryn Buffington and informed her that James had been found and was being held at the Wilkens station in protective custody. He told her that James had said that he hadn't committed suicide because he couldn't decide which gun to use.

Several minutes later, David Buffington returned from his search for his brother and called Officer Harvey to confirm that James was being held and to remind him of James' history of emotional problems. David stressed his sense that James was at extreme risk of committing suicide. Officer Harvey stated that preparations were currently being made to take James to Greater Baltimore Medical Center for an emergency psychiatric evaluation. On Officer Harvey's advice, David decided to press criminal charges against his brother to enable the police to hold James in custody if the hospital would not take him on an emergency commitment basis. At the time he spoke to David, Officer Harvey had already prepared the paperwork for arrest and charging.

From the time he was brought into the station, James was handcuffed to a rail beside the booking desk in the receiving room of the police station so he could be observed by the desk officers. It was standard practice to handcuff suicidal detainees to the rail by the booking desk rather than place them in the lockup, where they might be able, quietly and unnoticed, to hang themselves. At approximately 6:15 a.m. that morning, Officers Donald Gaigalas and Ronald Tucker had taken over as desk officers, relieving Officers William Maeser and Patrick Kamberger from that post. Officer Gaigalas, at approximately 6:25 a.m., unhitched James from the rail and took him to an isolation cell, without removing any of his clothing. Officer Gaigalas knew that James was suicidal before taking him to a cell. Although there were numerous detainees in the male lockup, Gaigalas placed James in the female lockup area, and made no provision to keep him under observation. At 7:15 a.m., James was found, hanged from the cell's horizontal bars by a noose fashioned from his pants.

### **The Lawsuit, the Trials, and the Jury Verdict**

The parents of James Buffington brought an action alleging federal constitutional violation under 42

U.S.C. §1983 and pendent state law claims under the wrongful death and survival statutes. Named as defendants were Baltimore County, Chief of Police Cornelius Behan, Sergeant Daniel Yuska, Corporal Joseph Gribbin, Captain Kenneth Kramer, and Officer Lewis Harvey, Donald Gaigalas, Ronald Tucker, and William Maeser.

At trial, the Buffingtons presented expert testimony about the County's deficiencies in suicide prevention at police lockups and other county detention facilities. In the twelve-year period preceding James Buffington's death, there had been 57 suicide attempts in police lockups and other County detention facilities, twelve of which had been successful. And, although in 1984 the police department had adopted the CALEA suicide prevention standards, it did not have any written policies or regulations implementing the standards. The evidence at trial also showed that County police officers received no training in identifying suicidal detainees and in preventing suicide attempts. The first trial ended in a deadlocked jury.

At the second trial, the jury found Officers Tucker and Gaigalas liable under §1983 for deliberate indifference to James Buffington's serious need for some measure of suicide prevention. The County, through its policymaker Chief Behan, and Behan himself were found liable under §1983 on the theory that their failure to train county police officers in suicide prevention evidenced a deliberate indifference to the rights of suicidal detainees. The jury awarded a total of \$185,000 in damages (a large amount by late 1980s standards). Plaintiffs' attorneys were awarded \$430,000 in fees and costs. Defendants appealed.

### **The Decision on Appeal**

On appeal, the Defendants argued that, since James Buffington had not been arrested, they had no obligation under the Fourteenth Amendment's Due Process Clause to take steps to prevent his suicide while in police custody. The United States Court of Appeals rejected this argument. In doing so, the



Court reviewed the cases holding that a pre-trial detainee's right to medical care is at least as great as a convicted prisoner's under the Eighth Amendment, and that right is to be free from "deliberate indifference" to "serious" medical needs. The Court noted that a serious psychological impairment can qualify as such a medical need. In fact, in a then recent case, the Court had recognized that if police knew that a pretrial detainee was on the verge of suicide, a failure to act could be seen as deliberate indifference to a serious need and, thus, unconstitutional. The Court continued that, even if James Buffington was not technically a pretrial detainee, he was still in police custody and, as such, entitled to have his serious medical needs addressed. Since they weren't, and since the evidence established "deliberate indifference," his constitutional rights were violated.

**Note:** A "serious" medical need one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention. A police officer is "deliberately indifferent" to a detainee's serious medical needs only when he or she subjectively knows of and disregards an excessive risk to the detainee's health or safety. It is not enough that the officer should have known of a risk; he or she must have had actual subjective knowledge of both the detainee's serious medical condition and the excessive risk posed by the officer's action or inaction. Thus, a deliberate indifference claim has both an objective component—that there objectively exists a serious medical condition and an excessive risk to the detainee's health and safety—and a subjective component—that the officer subjectively knew of the condition and risk. Deliberate indifference is an exacting standard that requires more than a showing of mere negligence or even civil recklessness, and therefore, many acts or omissions that would constitute medical malpractice will not rise to the level of deliberate indifference. Police officers must be proactive in seeking medical attention for any person in police custody who has been injured,

complains of injury, or whose medical condition (including the ingestion of drugs) is in doubt.

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