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Native Lives Matter: Claiming Wrongful Death In Honor of Life

By Bree R. Black Horse

On November 8, 2017, Ashland County Sheriff's Deputy Brock Mrdjenovich fatally shot a 14 year-old enrolled member of the Bad River Band of Lake Superior Chippewa Indians, as he stood outside his grandparents' home on the Bad River Band of Lake Superior Chippewa Indian Reservation in northern Wisconsin.

The young boy's preventable death follows similar fatal law enforcement encounters both in and out of [Indian country](#), all of which highlight the need for adequate law enforcement funding, training, and supervision.

In these cases, it is uncertain—in fact unlikely—that prosecutors will [file criminal charges](#). Even if charges are filed, [it is unlikely juries would convict officers who use lethal force, as we can surmise](#) from the series of acquittals and mistrials that have come down across the country this year. Still, regardless of the criminal justice system's limitations, the young boy's family and those who also have survived the death of loved ones in this way can seek some semblance of truth, if not justice, and force lasting governmental reform, through the civil justice system. There is hope.

Surviving spouses, parents, and other next of kin who have lost loved ones to police brutality may bring civil suits based on a law enforcement agency's failure to adequately fund, train, and supervise its cops, as well as for various civil rights violations. Multi-million dollar settlements and jury verdicts have resulted, which, coupled with public outrage, do motivate governments and law enforcement agencies to reform their practices. In these ways, Native life can be honored, although the pain caused the loss never ceases.

I. Ashton County Sheriff's Deputy Mrdjenovich Fatally Shoots The Young Boy On November 8

Deputy Mrdjenovich responded to a mid-day 911 call about a male walking down the street with a knife that matched the young boy's description. Ashland County authorities report that the young boy approached the Deputy while holding a kitchen knife. Although not officially confirmed, this likely occurred *after* the Deputy exited his patrol vehicle with his service weapon drawn. The Deputy alleges that the young boy did not respond to his commands to drop the knife, and instead lunged at him with the knife as the Deputy was trying to retreat. The Deputy shot the young boy twice, killing him.

Ashland County investigators report that the young boy appeared “despondent” in the days leading up to the incident and had returned home from school with the flu on the day of the shooting. Those investigators also report it was the young boy who called 911 to report a man matching his description walking down the street with a knife.

The Ashland County District Attorney appointed a special prosecutor to review the case. The Special Prosecutor will determine whether the shooting was justified or if any changes to the Ashland County Sheriff's Office policies are warranted. Reform does seem needed if you consider the young boy's death as part of a [larger trend in Wisconsin](#), where law enforcement killings are on a steep rise. Data reveals that in the first nine months of 2017, police in Wisconsin have killed more people than in each of the past two years and nearly twice as many as in 2015.

Local and national media outlets have covered the tragedy, including [CNN](#), [NBC](#), and the [Huffington Post](#), and it also prompted CNN to publish, "[The forgotten minority in police shootings](#)." That feature story's lead: "[T]here's another group whose stories you're less likely to hear about. Native Americans are killed in police encounters at a higher rate than any other racial or ethnic group . . ."

II. Questions Regarding Deputy Mrdjenovich's Training and Supervision

Although authorities have revealed few facts regarding Deputy Mrdjenovich's actions on November 8, this fatal shooting raises many questions. Foremost among these questions is whether this shooting was preventable—it likely was—and whether the Deputy had been adequately trained to respond to this kind of situation—it seems unlikely given the circumstances and outcome.

Ashland County authorities have disclosed that the Deputy had worked as an Ashland County Sheriff's Deputy for about a year before he fatally shot the young boy. The Deputy is now on paid administrative leave.

Ashland County authorities have not yet disclosed whether the Deputy had been adequately trained on how to properly deal with this situation. The circumstances and outcome of this law enforcement encounter raise these training-related questions:

- Had the Deputy been properly trained on how to handle encounters with individuals who were potentially suicidal or experiencing a mental health crisis?
- Had he been trained in the use of de-escalation techniques, non-lethal tactics, crisis intervention, or use of lethal force?
- Had he even been trained on how to properly assess the situation, or on the decision-making process that should accompany the use of lethal force?

From the few details authorities have released, it appears that the Deputy responded to the 911 call alone. No tribal or other Ashland County law enforcement officers seem to have responded, at least before the Deputy fatally fired multiple rounds into the young boy. These facts also raise the following questions:

- At any point did the Deputy call for assistance from either tribal or other Ashland County law enforcement officers?

- Did he call a supervisor at any point during his interaction with the young to ask for guidance?
- Had he responded to 911 calls on the Bad River Reservation prior to this incident?
- Why did an Ashland County Sheriff's Deputy and not tribal law enforcement respond to the 911 call?

It is unclear what exactly happened from the time Deputy Mrdjenovich initiated contact with the young boy, to the time the Deputy fatally shot him. At this point, these questions remain unanswered:

- How did the Deputy first initiate contact with the young boy? Did the Deputy try to talk to the young boy or did he just loudly yell commands at the young boy while drawing his service weapon? Did the Deputy immediately get out of his patrol vehicle and draw his service weapon on the young boy?
- How did the young boy respond to the Deputy's initial contact?
- Did the Deputy attempt to de-escalate the situation?
- Why did the Deputy get out of his patrol vehicle? Was the young boy threatening anyone or did he continue to walk down the road unresponsive?
- Did the Deputy, by his own actions, create a situation where he would be forced to use lethal force?
- Did the Deputy fear for his life? Was he justified in harboring this fear?
- Did the Deputy attempt to use non-lethal force weapons such as a Taser, pepper spray or a baton on the young boy before resorting to lethal force?

The Special Prosecutor will likely take these facts into consideration when determining whether criminal charges should be brought against the Deputy. More importantly, the answers to these questions may help reveal whether this tragedy was preventable and whether civil liability exists as a result of the tragedy.

III. Civil Lawsuit For Civil Rights Violations And Failure to Fund, Train, and Supervise

Whether or not the Special Prosecutor brings criminal charges against Deputy Mrdjenovich, the young boy's family and other families who have had loved ones taken from them in this way can seek justice and cause police reform through civil litigation against law enforcement officers and agencies, in either state or federal court.

A wrongful death lawsuit against state or municipal police agencies and officers in tribal court is possible for an on-reservation police shooting of a tribal member, but would likely be hampered by a litany of jurisdictional challenges. Civil claims against non-Indian police officers would almost certainly be challenged in both tribal and federal court based on lack of jurisdiction. *See Nat'l Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845 (1985). This is because the U.S. Supreme Court has steadily eroded tribal civil jurisdiction over non-Indians throughout the last three decades, beginning with its decision in *Montana v. United States*, 450 U.S. 544 (1981). It may be years after a tribal court lawsuit is initially filed before it reaches the merits, if ever. On the other hand, a

similar lawsuit filed in state or federal court is unlikely to meet with the kind of jurisdictional issues that arise in tribal court. *Three Affiliated Tribes of the Ft. Berthold Reservation v. Wold Eng'g, P.C.*, 467 U.S. 138, 148 (1984) (“This Court, however, repeatedly has approved the exercise of jurisdiction by state courts over claims by Indians against non-Indians, even when those claims arose in Indian country.”).

A wrongful death lawsuit predicated on a fatal police shooting can include a variety of potential claims. Possible claims against a state or municipal law enforcement officer include state tort claims, like negligence, battery, assault, outrage, and negligent infliction of emotional distress. In particular, claims may exist for negligent training, supervision, and funding. Police officers and their state or municipal employers also may be liable for civil rights violations, such as those guaranteed by the Fourth and Fourteenth Amendments, under 42 U.S.C. § 1983.

Section 1983 authorizes private parties to enforce their federal constitutional rights in state and federal court, against state and municipal officials like law enforcement officers, who acted under color of state law. Section 1983 does not itself create or establish any federally protected rights. Rather, that statute authorizes a claim for relief to enforce federal rights created by the U.S. Constitution. *Chapman v. Houston W.R.O.*, 441 U.S. 600, 608 (1979). This means that a Section 1983 plaintiff must establish that the defendant violated a right guaranteed by the U.S. Constitution.

The Fourth Amendment to the U.S. Constitution prohibits unreasonable searches and seizures of the person, which includes the use of excessive force against those persons. *Tennessee v. Garner*, 471 U.S. 1 (1985). The Fourth Amendment also requires law enforcement officers to provide post-shooting medical care to victims. *Tatum v. City and Cty. of San Francisco*, 441 F.3d 1090, 1099 (9th Cir. 2006). The Fourteenth Amendment protects individuals against unjustified and unprovoked assaults committed by a law enforcement officer. *Rutherford v. City of Berkeley*, 780 F.2d 1444 (9th Cir. 1986). The Fourteenth Amendment also protects the liberty interest that children and parents have in a relationship with one another and deprivation of this “companionship and society” by a state actor without due process of law is cognizable under Section 1983. *Kelson v. City of Springfield*, 767 F.2d 651 (9th Cir. 1985).

For instance, where an officer fatally shoots an individual, there exists a potential claim under Section 1983 for excessive force in violation of that individual’s Fourth Amendment rights. Another claim exists, also based on the Fourth Amendment, if an officer fails to provide post-shooting medical care. Moreover, the parents or children of a victim also may have a claim based on the deprivation of that relationship, which violates the Fourteenth Amendment. *See, e.g., Strandbery v. City of Helena*, 791 F.2d 744 n.1 (9th Cir. 1986); *Moreland v. Las Vegas Metro. Police Dep’t*, 159 F.3d 365, 371 (9th Cir. 1998). Moreover, a state or municipality also may be liable under Section 1983 for failure to adequately train law enforcement officers and provide police departments with adequate funding. *City of Canton v. Harris*, 489 U.S. 378 (1989); *see also, e.g., Dunn v. Dunn*, 219 F.Supp.3d 1100, 1130 (M.D. Ala. 2016).

Adequate training and supervision of law enforcement officers may be able to prevent deaths like the one that happened on November 8 at Bad River. Although criminal charges are far from guaranteed under these circumstances, tribal families who have lost loved ones in this way can seek justice in the civil realm and force meaningful reform by holding these law enforcement agencies accountable in courts of law.



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