

## Civil Rights Update

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### A Fatal Fall in Jail Custody Was Not the Result of Deliberate Indifference

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The Seventh Circuit Court of Appeals addressed Eighth Amendment claims of deliberate indifference for failure to provide adequate medical care and deficient conditions of confinement in *Estate of Simpson v. Gorbett*, 863 F.3d 740 (7th Cir. 2017). Brought by the estate of an individual who died in jail custody, this case reinforces the fact that a tragic occurrence does not necessarily suggest a deprivation of an inmate's constitutional rights. The court affirmed summary judgment in favor of the defendants.

#### Background

The decedent in this matter was an individual who was convicted of drunk driving and sentenced to weekend detention in the Bartholomew County, Indiana jail. *Estate of Simpson*, 863 F.3d at 742. For the second of the decedent's three weekends in jail, he reported to the facility in an obvious state of intoxication. *Id.* at 742-73. Testing at intake revealed his blood alcohol concentration (BAC) to be 0.23%. As a precaution, jail personnel assigned the decedent to a holding cell containing only benches (no beds) until he appeared sober enough to occupy a regular cell. *Id.* Corrections personnel used a "burn-off" chart to estimate how long it would take for the decedent's blood alcohol level to return to zero. *Id.* After roughly 13 hours, it was believed that the decedent was sober and suitable for detention in a regular cell. *Id.* This conclusion was not corroborated through a second BAC test. *Id.* The decedent was moved to a regular cell containing two bunk beds. The lower bunk was already occupied, so he was given the top bunk. *Id.* The bunk was only 30 inches wide; for context, a standard twin bed is 38 inches wide. *Id.*

Complicating matters were the decedent's obesity and the unknown extent of his alcohol problem. *Id.* at 742-43, 747. Although corrections officers did not know the decedent's precise weight (368 pounds), they correctly surmised that he weighed between 350 and 400 pounds. *Id.* at 743. During intake, the decedent denied that he was experiencing alcohol withdrawal symptoms. *Id.* The Seventh Circuit noted that such symptoms, which include delirium tremors, do not normally appear until an alcoholic's BAC approaches zero. *Id.*

The decedent slept for nearly four hours in the small bunk, but then unexpectedly experienced seizure-like convulsions. He fell from the top bunk onto the concrete floor and hit his head. Although corrections officers responded immediately, the decedent was pronounced dead at a nearby hospital. *Id.*

Representatives of the decedent's estate filed a § 1983 suit alleging that county officials, including deputies assigned to the jail, exhibited deliberate indifference to the decedent's serious medical needs and subjected him to inhumane conditions of confinement, all in violation of the Eighth Amendment. *Id.* at 744. The defendants conceded that the

decedent's death was caused by injuries he sustained from his fall, and that the fall was caused by alcohol withdrawal seizures. *Id.* at 743. The defendants successfully moved for summary judgment, and the Estate appealed. *Id.* at 744.

### Conditions of Confinement Claim

A jail's conditions violate the Eighth Amendment when "(1) there is a deprivation that is, from an objective standpoint, sufficiently serious that it results in the denial of the minimal civilized measure of life's necessities, and (2) where [jail] officials are deliberately indifferent to this state of affairs." *Id.* at 745 (quoting *Gray v. Hardy*, 826 F.3d 1000, 1005 (7th Cir. 2016)). Unacceptable conditions of confinement include those that pose a substantial risk to the health or safety of inmates; discomfort is insufficient. *Id.* at 745.

As a predicate finding, the Seventh Circuit found no evidence that the decedent was still intoxicated at the time he was assigned to the upper bunk. *Id.* It noted that deputies initially placed the decedent in a holding cell and kept him there for nearly 13 hours in accordance with a "burn off" chart, all in an effort to his allow his body to process the alcohol in his system. *Id.* Whether he was still drunk when moved is simply not known, since his BAC was not re-tested. *Id.* at 743. As to this point, the Estate failed to meet its burden at summary judgment. *Id.* at 745.

The court then assessed whether assigning a morbidly obese person to a small upper bunk satisfied the deliberate indifference standard. *Id.* at 745-46. The court ruled that, although there is always a risk of serious injury from falling onto a concrete floor from an upper bunk, there was no evidence here suggesting an elevated danger of such a fall. The decedent slept without incident for several hours before his convulsions, and the record was devoid of any indication that anyone else—obese or otherwise—had fallen from a similar bunk. *Id.* at 746-47. Under the circumstances, the court could not find that the decedent's bunk assignment was so objectively dangerous as to deny him "the minimal civilized measure of life's necessities." *Id.* at 746 (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). The court acknowledged that it may have been uncomfortable for the decedent to occupy such a small bunk, "[b]ut there is a difference between discomfort and danger." *Id.* at 746.

### Failure to Provide Adequate Medical Care Claim

The plaintiff Estate further asserted that the defendants failed to provide adequate medical care for the decedent's obesity and alcoholism. *Id.* at 747. It was undisputed that obesity and alcoholism are both objectively serious medical conditions. *Id.* The court's analysis thus focused on whether the defendants were deliberately indifferent to those conditions. At summary judgment, it was the Estate's burden to present sufficient evidence to raise a question of material fact about whether the defendants knew about a specific risk associated with the decedent's health, but ignored it. *Id.* The Estate was unable to carry this burden.

The court first examined the decedent's obesity and easily turned away the notion of deliberate indifference based exclusively on this physical characteristic. *Id.* The court remained "in the dark" as to a specific medical risk the decedent's obesity presented such that the defendants should have acted differently. *Id.* The choice of bunk question was already decided through the Estate's conditions of confinement claim. Without any guidance as to a deprivation of medical care relating to the decedent's obesity, summary judgment on behalf of the defendants was appropriate. *Id.*



As for the decedent’s alcoholism, the court encountered the same problem. Although corrections personnel knew that the decedent was convicted of DUI and arrived at the jail drunk, there was no evidence suggesting that they understood him to be an alcoholic. *Id.* There was also no evidence that they understood that the decedent was in danger of suffering withdrawal symptoms, such as tremors or convulsions. *Id.* at 748. The court noted that the defendants “tailored their care” for the decedent because he was intoxicated, and only moved him to his assigned cell after they believed he was sober. *Id.* They did not observe anything to suggest the convulsions to come. Since there was no evidence showing that the defendants were aware of the decedent’s alcoholism, the Estate could not demonstrate deliberate indifference to that condition. *Id.*

### Conclusion

The defendants understood they were charged for caring for an obese detainee who showed up to the jail in an intoxicated condition. They reasonably believed that they addressed the intoxication by monitoring him in a bunk-less holding cell for more than half a day. Using a “burn-off” chart and their own common sense, they waited until they reasonably believed the decedent was sober before moving him to a regular cell. Although the decedent’s assignment to an upper bunk was, in retrospect, unfortunate, there was no evidence to support the idea that the assignment was made in deliberate indifference to a particular danger to this decedent. The death in this case was tragic, but it was not the result of constitutionally tortious conduct by jail personnel.

### About the Author

**John P. Heil, Jr.** is a partner in the Peoria office of *Heyl, Royster, Voelker & Allen, P.C.*, where he chairs the firm’s drone law practice group and is vice-chair of the business and commercial litigation practice group. He also regularly defends complex civil rights cases, *qui tam* actions and catastrophic tort suits in state and federal court. Prior to joining *Heyl Royster* in 2007, Mr. Heil was an Assistant State’s Attorney in Cook County for eleven years. He received his undergraduate degree from Bradley University in 1993 and his law degree from Chicago-Kent College of Law, with honors, in 1996. He is a member of the Illinois Association of Defense Trial Counsel, the Federal Bar Association, the Illinois State Bar Association, the Peoria County Bar Association, and the Abraham Lincoln American Inn of Court.

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