

**IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY,
FLORIDA**

GENERAL JURISDICTION DIVISION

CASE NO. 13-04810 CA 01

SHANIKA A. GRAVES, as Personal)
Representative of the Estate of)
Travis McNeil, and on)
behalf of the Estate of Travis McNeil)
and the survivors of the Estate,)
T.M. and K.J.P.,)
)
Plaintiff,)
)
v.)
)
CITY OF MIAMI, a municipality)
of the State of Florida, and)
REYNALDO GOYOS, in his)
individual capacity,)
)
Defendants.)
_____)

SECOND AMENDED COMPLAINT AND JURY DEMAND

(Fla. Bar No. 318371)

Plaintiff, Shanika A. Graves, as Personal Representative of the Estate of Travis McNeil, on behalf of the Estate of Travis McNeil, and on behalf of the survivors of the Estate, T.M. (a minor) and K.J.P. (a minor), sues defendants, City

of Miami, a municipality of the State of Florida, and Reynaldo Goyos, in his individual capacity, and alleges:

1. This is an action for damages in excess of \$15,000.

Parties

2. Plaintiff, Shanika A. Graves, is the duly appointed Personal Representative of the Estate of Travis McNeil (the “decedent”), having been appointed Personal Representative by the Probate Division of the Circuit Court in and for Miami-Dade County on June 16, 2011. This action is brought by Shanika A. Graves in her capacity as Personal Representative of the Estate of Travis McNeil, on behalf of the Estate, and on behalf of the survivors, T.M and K.J.P. T.M. and K.J.P. are minors and are the son and daughter of the decedent. Today and at the time of his death, both were under the age of twenty-five, and were dependent on the decedent for support.

3. Defendant City of Miami is a municipality incorporated in the State of Florida. Defendant City of Miami operates and is responsible for the Miami Police Department (“MPD”).

4. Defendant Reynaldo Goyos at all times relevant to this action was employed by the MPD. Defendant Goyos is sued in his individual capacity. At all relevant times, he acted under color of state law.

Factual Allegations

Miami Police Department's History of Improper Uses of Force

5. MPD has a long and tortured history of serious systemic deficiencies in its operations, including deficiencies in MPD officers' use of deadly and non-deadly force, which have persisted for over a decade. In 2002, the United States Department of Justice ("DOJ") launched an investigation into MPD's practices in response to allegations that officers used excessive deadly and non-deadly force. It was discovered that, in the year prior to commencing that investigation, thirteen MPD officers were indicted on conspiracy charges for lying and planting physical evidence, including guns, in an effort to undermine the investigations of four officer-involved shootings. The indictments implicated officers at various levels of the chain of command, including supervisory staff, and resulted in six convictions.

6. The investigation uncovered serious deficiencies in MPD's investigative practices and found that officers' use of deadly force was sometimes avoidable. For example, MPD investigators routinely failed to pursue inconsistencies in officer or witness accounts, and left glaring omissions unexplored. DOJ found that these deficiencies led to a heightened risk that MPD officers would use force, including deadly force, excessively. That investigation culminated in a March 2003 technical assistance letter from the DOJ to MPD and to Defendant City of Miami and Defendant's policymakers for police matters.

7. However, DOJ's admonitions were not heeded. In a follow-up

technical assistance letter in January 2006, DOJ recommended that MPD improve accountability by modifying its policies and training to require, among other things, more diligent and thorough investigations by supervisors. It also recommended that MPD improve training for line supervisors and Internal Affairs investigators in interview techniques, assessing the credibility of witnesses, and achieving impartiality in the interview process. This technical assistance letter and recommendations were provided to Defendant City of Miami and to Defendant's policymakers for police matters. MPD made some changes to its policies, and DOJ closed its investigation in 2006.

8. Thus, Defendant City of Miami and its policymakers for police matters were on notice of MPD's deficiencies that led to MPD's pattern of unconstitutional actions.

9. Unfortunately, MPD once again failed to achieve the changes that the DOJ sought. During an eight-month period from 2010-2011, MPD officers shot and killed seven young African-American men, culminating in the February 2011 fatal shooting of Travis McNeil, which is the subject of this Complaint. The shootings gave rise to widespread community concern about MPD's use of deadly force and led to multiple requests for another DOJ investigation. Like the prior investigation, the current investigation also arose during a wave of corruption allegations involving sworn MPD officers and supervisors, including allegations of

extortion and obstruction of justice. As a result, in November 2011 the United States began yet another investigation into MPD's practices.

10. On July 9, 2013, DOJ released the results of its latest investigation. It concluded that MPD engages in a pattern or practice of excessive force with respect to firearms discharges, in violation of the Fourth Amendment to the United States Constitution. It noted that many of the systemic problems that were supposed to have been fixed had reoccurred, evidenced by a steady rise in officer-involved shootings. DOJ also noted that the previous spike in officer-involved shootings may have been avoidable, and that continued, court-enforceable oversight is necessary to ensure lasting reforms.

11. Defendant City of Miami and its policymakers for police matters were on notice of MPD's continued deficiencies, leading to MPD's pattern of unconstitutional actions, that existed from the previous DOJ investigation up until Travis McNeil's fatal shooting in February 2011.

The Operation That Killed Travis McNeil

12. At some point prior to February 2011, MPD agreed to partner with federal law enforcement agencies to engage in a series of operations known as "Operation Southern Tempest."

13. On or about February 10, 2011, a briefing for that night's operation was held at MPD's Special Operations Section building. Upon information and

belief, no “takedown” procedures, use of force protocols, supervision protocols, procedures for vehicle stops, or any other information on how to effectuate the arrests of suspects were discussed. Upon information and belief, MPD failed to have proper protocols in place and failed to conduct any training despite its knowledge of the systemic deficiencies in MPD officers’ use of deadly and non-deadly force. Upon information and belief, MPD failed to coordinate with federal law enforcement agents to ensure that proper takedown procedures, uses of force protocols, and supervision protocols would be in place. Upon information and belief, MPD failed to communicate with federal law enforcement agents to coordinate procedures for vehicle stops, or to agree on protocols for how to effectuate the arrests of suspects.

14. On the night of February 10, 2011, law enforcement officers from the Department of Homeland Security Investigations, the Bureau of Alcohol, Tobacco, Firearms & Explosives, and the City of Miami’s and City of Hialeah’s Police Departments were positioned outside the Take One Lounge (“Take One”) located at 333 N.E. 79 Street in Miami, FL as part of Operation Southern Tempest.

15. Travis McNeil and his cousin Kareem Williams were observed exiting the lounge and getting into a vehicle. Mr. McNeil was driving. Neither was suspected of any criminal activity, and neither was suspected to be armed. In fact, both patrons were frisked before entering the Take One. Nonetheless, the decision

was made to pursue Mr. McNeil's car.

16. Three separate unmarked law enforcement vehicles pursued Mr. McNeil's car. The lead car was driven by Homeland Security Special Agent Timothy Scott, and also contained Miami Police Officer Defendant Reynaldo Goyos, who was sitting in the front passenger seat.

17. At some point, the pursuing law enforcement agents decided to stop Mr. McNeil's car. The law enforcement agents hastily attempted to confer via their radios to determine how to stop the car. Rather than initiate a simple traffic stop, the law enforcement agents decided to use a dangerous, unnecessary, and unplanned technique which involved "boxing" in Mr. McNeil's car. At some point, the agents activated their emergency lights.

18. Noticing the police lights, Mr. McNeil immediately pulled over.

19. Agent Scott, who was driving the lead car, pulled his vehicle around to the left of Mr. McNeil's car and attempted to get in front of it to "box" it in. Mr. McNeil's car slowed to a stop. Agent Scott stopped his vehicle so that its passenger door was less than five feet from Mr. McNeil's driver's door. The second law enforcement vehicle stopped behind Mr. McNeil's car, and the third vehicle stopped to the left of Mr. McNeil's car, boxing him in.

20. By stopping Mr. McNeil's car in this way, the law enforcement agents created an unreasonable risk of harm to Mr. McNeil, Mr. Williams, the other law

enforcement officers, and the public at large.

21. Defendant Goyos, riding in the passenger seat of Agent Scott's vehicle, exited his vehicle. Because of the position of the vehicle, Officer Goyos was immediately less than three feet from Mr. McNeil's driver side window, with no cover between them.

22. In violation of proper protocol, Officer Goyos negligently approached the vehicle with his gun drawn and pointed at Mr. McNeil and yelled for Mr. McNeil to show his hands, rather than approaching calmly with his gun holstered. Mr. McNeil's window was down, so Goyos could see him clearly. Neither Mr. McNeil nor Mr. Williams did anything to threaten or provoke Officer Goyos.

23. When Goyos was one foot away from Mr. McNeil's window, Goyos intentionally discharged his firearm three times, fatally wounding Mr. McNeil and striking Mr. Williams twice.

24. No weapons, drugs or contraband were found on either Mr. McNeil or Mr. Williams or in or around the vehicle. Moreover, Mr. McNeil did not give the officers any reason to believe he had committed, was committing, or was about to commit a crime.

25. Mr. McNeil is survived by his now 12 year old son, T.M. and his now 7 year old daughter, K.J.P.

26. Mr. McNeil's death was the result of a policy of negligent and

improper police tactics implemented by MPD. It was also the result of MPD's negligent training and supervision of its officers and the federal agents involved in this operation.

27. Defendant Reynaldo Goyos, at all times material to this action, was a police officer of the City of Miami, acting under color of state law and within the course and scope of his employment with Defendant City of Miami.

28. Plaintiff has complied with all applicable provisions of Section 768.28, Florida Statutes.

Count 1

Defendant City of Miami for Wrongful Death: Negligence

29. Plaintiff repeats and realleges paragraphs 1-28 as if fully set forth herein.

30. This Count One is against the Defendant, City of Miami, for the wrongful death of Travis McNeil.

31. Defendant City of Miami negligently failed to remedy the systemic deficiencies uncovered by the several DOJ investigations throughout the last decade. Defendant City of Miami negligently failed to train and supervise its officers in proper use of force procedures, including deadly and non-deadly force. Defendant City of Miami negligently failed to create and implement a proper plan for cooperation with federal agents for this operation, including negligently failing to put in place protocols for vehicle stops, the arrest of suspects, and use of force.

32. Senior MPD officers City of Miami at the scene negligently failed to take command and failed to control the actions of Goyos and the other police officers who were present.

33. MPD officers, including by not limited to Officer Goyos, negligently caused Mr. McNeil's vehicle to be stopped in an unreasonably dangerous manner.

34. MPD officers, including but not limited to Officer Goyos, negligently approached Mr. McNeil's vehicle with guns drawn, rather than approaching calmly with guns holstered, or retreating to a position of safety.

35. As the direct and proximate result of the Defendant City of Miami's negligence and the negligence of its agents and employees, Travis McNeil was wrongfully killed.

WHEREFORE, on this Count One, as a result of the tragic and untimely death of Travis McNeil, the Estate of Travis McNeil and his survivors claim damages as follows:

A. The Estate has sustained the following damages:

1. Funeral and burial expenses incurred as a result of the death of Travis McNeil that have become a charge against his estate or that were paid on his behalf;

2. Loss of prospective net estate accumulations; and

3. Interest and costs.

B. T.M. and K.J.P., children and dependents of the decedent, have sustained the following damages:

1. Loss of support and services of their father from February 10, 2011 to the present, plus interest;
2. Loss of support and services of Travis McNeil which would have been received by them from their father in the future, with interest thereon, reduced to present value;
3. Loss of parental companionship, instruction and guidance, from February 10, 2011;
4. Great mental pain and suffering from on or about February 10, 2011, and for the remainder of their lives; and
5. Interest and costs.

Count 2
Defendant City of Miami for Battery

36. Plaintiff repeats and realleges paragraphs 1-28 and incorporates them by reference herein.

37. This Count Two is against Defendant, City of Miami, for the wrongful death of Travis McNeil under Florida state law which holds a government entity liable for the wrongful acts of its employees and agents acting within the course and scope of their employment and/or agency.

38. Officer Goyos was acting within the course and scope of his employment with Defendant City of Miami when he fatally shot Mr. McNeil on February 10, 2011. Defendant City of Miami is responsible for the actions of its employees while engaged within the course and scope of their employment.

39. Officer Goyos caused bodily harm to Mr. McNeil by shooting and killing Mr. McNeil while Mr. McNeil was sitting in his car. The shooting constituted excessive force and was accomplished without the consent and against the will of Mr. McNeil.

40. As a direct and proximate result of Officer Goyos's actions, for which Defendant City of Miami is responsible, Mr. McNeil died.

WHEREFORE, on this Count Two, as a result of the tragic and untimely death of Travis McNeil, the Estate of Travis McNeil and his survivors claim damages as follows:

A. The Estate has sustained the following damages:

1. Funeral and burial expenses incurred as a result of the death of Travis McNeil that have become a charge against his estate or that were paid on his behalf;
2. Loss of prospective net estate accumulations; and
3. Interest and costs.

B. T.M. and K.J.P., children and dependents of the decedent, have sustained

the following damages:

1. Loss of support and services of their father from February 10, 2011 to the present, plus interest;
2. Loss of support and services of Travis McNeil which would have been received by them from their father in the future, with interest thereon, reduced to present value;
3. Loss of parental companionship, instruction and guidance, from February 10, 2011;
4. Great mental pain and suffering from on or about February 10, 2011, and for the remainder of their lives; and
5. Interest and costs.

Count 3
Defendant Goyos under 42 U.S.C. § 1983
for Violating the Fourth Amendment

41. Plaintiff repeats and realleges paragraphs 1-28 as if fully set forth herein.

42. This Count Three is brought against Defendant Goyos in his individual capacity.

43. Plaintiff's claim for relief is predicated upon 42 U.S.C. § 1983 which authorizes actions to redress the deprivation, under color of state law, of rights, privileges and immunities secured to people by the Constitution and laws of the

United States, and upon 42 U.S.C. § 1988 which authorizes the award of attorney's fees and costs to prevailing plaintiffs in actions brought pursuant to 42 U.S.C. § 1983.

44. The actions of Defendant Goyos, in shooting and killing Travis McNeil, amounted to excessive force and constituted an unreasonable seizure under the Fourth Amendment to the United States Constitution.

45. This Count Three incorporates as much of the Florida Wrongful Death Act, Sections 768.16 - 768.27, Florida Statutes (2010) as is not inconsistent with the purposes of the Civil Rights Act, 42 U.S.C. § 1983. Plaintiff alleges that those sections of the Florida Wrongful Death Act which would preclude recovery of damages for the value of Travis McNeil's life or, alternatively, preclude recovery for the pain and suffering inflicted on his son and daughter, T.M. and K.J.P., are inconsistent with the Civil Rights Act.

WHEREFORE, on this Count Three, as a result of the tragic and untimely death of Travis McNeil, the Estate of Travis McNeil and the son and daughter of Travis McNeil claim damages as follows:

A. The Estate has sustained the following damages:

1. Funeral and burial expenses incurred as a result of the death of Travis McNeil that have become a charge against his estate or that were paid on his behalf;

2. Loss of perspective net estate accumulations; and
3. Attorneys' fees and costs, pursuant to 42 U.S.C. § 1988.

B. T.M. and K.J.P. have sustained the following damages:

1. Loss of support and services of their father from and after February 10, 2011 to the present plus interest;
2. Loss of support and services of their father which would have been received by them in the future with interest thereon, reduced to present value;
3. Loss of companionship and protection of Travis McNeil from and after February 10, 2011;
4. Great mental pain and anguish, from February 10, 2011 and for the remainder of their lives; and
5. Reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 1988.

Count 4

**Defendant City of Miami under 42 U.S.C. § 1983
for Violating Federal Civil Rights: *Monell* Claim**

46. Plaintiff repeats and realleges paragraphs 1-28 as if fully set forth herein.

47. This Count Four is brought against Defendant City of Miami.

48. Plaintiff's claim for relief is predicated upon 42 U.S.C. § 1983 which authorizes actions to redress the deprivation, under color of state law, of rights,

privileges and immunities secured to people by the Constitution and laws of the United States, and upon 42 U.S.C. § 1988 which authorizes the award of attorney's fees and costs to prevailing plaintiffs in actions brought pursuant to 42 U.S.C. § 1983.

49. The acts and conduct of the Defendant City of Miami's police officers in shooting and killing Travis McNeil constituted excessive force and an unreasonable seizure in violation of the Fourth Amendment to the Constitution of the United States.

50. For the past decade, MPD officers engaged in a pattern and practice of using excessive force, both deadly and non-deadly. Defendant City of Miami had a policy, practice, and custom of using excessive force in violation of the Fourth Amendment. Defendant City of Miami failed to train, supervise, and discipline its employees in, among other things, the proper use of force, with deliberate indifference to the constitutional rights of the people with whom they came into contact. Defendant City of Miami also failed, with deliberate indifference to the constitutional rights of people in and around the city of Miami, to properly train, supervise, and discipline its employees regarding, among other things, situations involving joint task forces with federal agencies and vehicle stops.

51. Senior officers and employees of MPD, as well as Defendant City of Miami and its policymakers for police matters, knew of the pattern and practice of

excessive uses of force, yet, with deliberate indifference to the constitutional rights of people in and around the city of Miami, failed to stop or correct them.

52. Defendant City of Miami's pattern, practice, policy, and custom of engaging in excessive force directly and proximately caused Mr. McNeil's wrongful death.

53. This Count Four incorporates as much of the Florida Wrongful Death Act, Sections 768.16 - 768.27, Florida Statutes (2010) as is not inconsistent with the purposes of the Civil Rights Act, 42 U.S.C. § 1983. Plaintiff alleges that those sections of the Florida Wrongful Death Act which would preclude recovery of damages for the value of Travis McNeil's life or, alternatively, preclude recovery for the pain and suffering inflicted on his son and daughter, T.M. and K.J.P., are inconsistent with the Civil Rights Act.

WHEREFORE, on this Count Four, as a result of the tragic and untimely death of Travis McNeil, the Estate of Travis McNeil and the son and daughter of Travis McNeil claim damages as follows:

A. The Estate has sustained the following damages:

1. Funeral and burial expenses incurred as a result of the death of Travis McNeil that have become a charge against his estate or that were paid on his behalf;
2. Loss of perspective net estate accumulations; and

3. Attorneys' fees and costs, pursuant to 42 U.S.C. § 1988.

B. T.M. and K.J.P. have sustained the following damages:

1. Loss of support and services of their father from and after February 10, 2011 to the present plus interest;
2. Loss of support and services of their father which would have been received by them in the future with interest thereon, reduced to present value;
3. Loss of companionship and protection of Travis McNeil from and after February 10, 2011;
4. Great mental pain and anguish, from February 10, 2011 and for the remainder of their lives; and
5. Reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 1988.

On all counts, Plaintiff requests such other and further as may be just and proper.

JURY TRIAL DEMAND

Plaintiff demands trial by jury.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served this 7th day of November 2013 to Kevin R. Jones, Esq., Assistant City Attorney, by email to kejonas@miamigov.com and DBailey@miamigov.com.

By: Randall C. Berg, Jr.
Randall C. Berg, Jr.