



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
01/08/16	SM	Unfavorable
02/08/16	JU	Favorable
02/16/16	CA	Favorable
02/25/16	FP	Fav/CS

January 8, 2016

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 20** – Senator Miguel Diaz de la Portilla
HB 3517 – Representative Randolph Bracy
Relief of Zaldivar and Campos by Orange County

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR LOCAL FUNDS IN THE TOTAL AMOUNT OF \$400,000 (\$200,000 FOR THE ESTATE OF ALEX ZALDIVAR AND \$100,000 A PIECE FOR BRIENNA AND REMINGTON CAMPOS) AGAINST ORANGE COUNTY FOR NEGLIGENCE IN FAILING TO MONITOR BESSMAN OKAFOR, A DETAINEE OF THE COUNTY ON RELEASE WITH AN ANKLE MONITOR WHILE AWAITING TRIAL FOR A HOME INVASION ROBBERY, WHO, ON SEPTEMBER 10, 2012, RETURNED TO THE SCENE OF THE ROBBERY, SHOT AND INJURED BRIENNA AND REMINGTON CAMPOS, AND SHOT AND KILLED ALEX ZALDIVAR.

FINDINGS OF FACT:

On May 9, 2012, at approximately 3:00 p.m., Alex Zaldivar, Brienna Campos, Brandon Campos, and William Herrington were robbed at gun point by two men while at home in Orange County. The incident occurred at a home owned by the parents of Brienna, Brandon, and Remington Campos¹ in

¹ Remington Campos was living at the home but was not at home at the time of the initial home invasion.

which all three lived along with Alex Zaldivar.² The men forced the victims to lie on the floor with their hands tied by electronic cords while they ransacked the house stealing cash, jewelry, and electronics. After the men left, 911 was called and officers from the Ocoee Police Department and the Orange County Sheriff's Office responded. The police were quickly able to locate and arrest Bessman Okafor (Okafor) and Nolan Bernard due to an application on one of the stolen cell phones that allowed its location to be tracked via the internet. Okafor spent nearly 40 days in jail after his arrest and was subsequently released on bond into Orange County's Home Confinement Program. Despite assurances by police that they would be informed, the plaintiffs³ were not aware that Okafor had been released from jail.

On June 24, 2012, Okafor reported to the Home Confinement Program within the Orange County Corrections Office and received an ankle monitor. While in the Home Confinement Program, Okafor repeatedly violated curfew and his ankle monitor base unit lost power or its phone line connection on numerous occasions. However, he was never charged with violating the conditions of his release, never removed from the Home Confinement Program, and never had his bond revoked.

Between the time of Okafor's release and the events of September 10, 2012, the plaintiffs were visited on three occasions by Okafor's mother who offered them various forms of compensation in exchange for not testifying against Okafor. The plaintiffs refused and, after the third time, reported the visits to the Ocoee police.

On the morning of September 10, 2012, at approximately 5:00 a.m., Brienna Campos, Remington Campos, and Alex Zaldivar were at their home sleeping when Okafor and multiple accomplices broke in. They were armed with semi-automatic handguns and an AK-47 assault rifle. They proceeded to drag Brienna, Remington, and Alex from their beds and shoot each one in the head. Brienna and Remington survived the assault and were able to obtain help from a neighbor. Alex died from his wounds.

² Brienna, Remington, and Brandon Campos are siblings and all three lived at the house at the time of the initial home invasion along with Alex Zaldivar. William Herrington was a friend of the roommates who was visiting them on that day.

³ The plaintiffs in this case are the estate of Alex Zaldivar, and both Remington and Brienna Campos.

The neighbor called 911 and Brienna and Remington were admitted to Orlando Regional Medical Center at approximately 6:00 a.m. Both were treated for gunshot wounds to the head and released after an overnight stay. Brienna and Remington's medical bills from the hospital stay totaled approximately \$20,000 each. Both continue to suffer from physical and mental side effects from the gunshot wounds as well as the assault in general.

Testimony revealed that Alex's death has been difficult for his family and friends. Alex was described as a bright and likeable 19-year-old when he was murdered; and his parents, Rafael and Kyoko Zaldivar, as well as his brother Rafael Zaldivar, Jr., have suffered an immeasurable loss from which they will likely never fully recover. Additionally, Alex's death has left permanent emotional scars on Brienna and Remington who witnessed his murder.

Both Brienna and Remington continue to suffer from frequent migraines and Brienna has extensive short term memory loss. Psychologically, both suffer from a significant fear of strangers and trouble sleeping. The physical and psychological effects of the assault have impeded Brienna's and Remington's abilities to function normally and perform everyday activities. For example, Brienna's memory loss hinders her performance in school and Remington's fear of strangers prevents him from allowing his son to play normally with other children.

The plaintiffs sent a settlement demand to representatives of Orange County alleging that Orange County's negligence in operating its Home Confinement Program led to the injuries sustained by the plaintiffs. Ultimately, the plaintiffs settled with Orange County and agreed to release the county of all liability regarding their cases. The estate of Alex Zaldivar settled with Orange County on September 8, 2014, in the amount of \$300,000 of which \$100,000 has been paid by the county. Brienna and Remington Campos settled with Orange County on September 5, 2014, in the amount of \$200,000 each, of which \$100,000 has been paid to each. Orange County is self-insured for such damages up to \$1 million. In the settlement agreements, the county also agreed to an unopposed claim bills filed for the remaining amounts of the settlements on behalf of the plaintiffs.

From the settlement amounts received by each, \$1,442.73 has been deducted from the payment to Remington Campos, \$2,027.65 has been deducted from the payment to Brienna Campos, and \$5,442.73 has been deducted from the payment to Alex Zaldivar's estate to pay for attorney costs. Additionally, \$20,000 has been held in escrow for Brienna, \$40,000 for Remington,⁴ and \$5,000 for the estate of Alex Zaldivar to cover any remaining costs and medical liens. Attorney fees have been waived for all three litigants and lobbying fees will be assessed totaling 5 percent of the amount received from the claim bill (a total of \$20,000 between all three plaintiffs).

CONCLUSIONS OF LAW:

In general, the "responsibility to enforce the laws for the good of the public cannot engender a duty to act with care toward any one individual, unless an official assumes a special duty with regard to that person."⁵ It is demonstrated in the record of the case that Orange County employees acted negligently in ignoring numerous violations committed by Okafor while he was under the control of the Home Confinement Program. Additionally, there are clear economic and non-economic damages to the plaintiffs that were both actually and proximately caused from such negligence.⁶ However, it is less clear whether or not a special duty was owed to the plaintiffs in this case which would give rise to liability.

A law enforcement officer does not owe a duty of care to an individual unless there is a special duty of care created.⁷ Plaintiffs argue that in this case a special duty was created by the plaintiffs' agreement to testify in the armed robbery case against Okafor and by the plaintiffs' actions reporting Okafor's mother to police after she approached them with bribes in order to secure their silence. In order to support their argument, plaintiffs point to the case *Schuster v. City of New York*⁸ which was treated favorably in Florida in *Everton v. Willard*. In *Schuster*, the court states that law enforcement "owes a special duty to use reasonable care for the protection of persons who have collaborated with it in the arrest and

⁴ The escrow account for Remington Campos is larger due to uncertainty at the time regarding the amount of hospital bills and the number of payors of such bills. Remington should be receiving the majority of the funds held in escrow. *Email from Pedro Echarte, Plaintiffs' attorney, on Dec. 23, 2015.*

⁵ 28 Fla. Jur 2d Government Tort Liability s. 49.

⁶ Wrongful death claims are allowed against state agencies and subdivisions by s. 768.28(6)(a)2., F.S., if the original claim is presented to the state within 2 years of the event from which the claim arises.

⁷ *Everton v. Willard*, 468 So. 2d 936, 938 (Fla. 1985).

⁸ *Schuster v. City of New York*, 5 N.Y. 2d 75 (N.Y. 1958).

prosecution of criminals, once it reasonably appears that they are in danger due to their collaboration.”⁹

In *Schuster*, the plaintiff was a young man who informed police of the whereabouts of a notorious criminal who was subsequently arrested. Schuster’s involvement in the arrest was widely publicized and he received death threats of which he notified the police and asked for protection, which was not provided. Though the facts are somewhat similar in this case, the plaintiffs were witnesses testifying for the state, the plaintiffs reported Okafor’s mother to the police, and the police failed to inform the plaintiffs that Okafor was released on bond. There is no evidence that shows that the plaintiffs were threatened by Okafor or his accomplices or that Orange County knew, or should have known, that the plaintiffs were in danger from their participation in the trial.

As such, in this special master’s opinion there is no special duty of care created in this case and therefore Orange County is not legally liable for such damages.

ATTORNEYS FEES:

The plaintiffs’ attorneys have agreed to limit their lobbying and attorney fees to 25 percent. According to the closing statements provided, lobbying fees will be charged in the amount of 5 percent of the amount awarded (\$5,000 from the awards to Brienna and Remington Campos, each, and \$10,000 from the award to Rafael and Kyoko Zaldivar for a total of \$20,000) and attorney fees have been waived. Additionally, lines 69-72 of SB 20 allow attorney costs to be collected. These costs total \$9,103.83, not including costs associated with the Special Master Hearing held on November 9, 2015.

⁹ *Id.* at 537.

RECOMMENDATIONS:

Due to the conclusions drawn above, the undersigned recommends that SB 20 be reported UNFAVORABLY.

Respectfully submitted,

Daniel Looke
Senate Special Master

cc: Secretary of the Senate

CS by Fiscal Policy:

Removes unnecessary language from the bill related to taxable costs.