STORAGE NAME: h3517.CJS
DATE: 1/29/2016

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 3517; Relief/Alex Zaldivar, Brienna Campos, & Remington Campos/Orange County
Sponsor: Bracy
Companion Bill: SB 20 by Diaz de la Portilla
Special Master: Parker Aziz

Basic Information

Claimants:	Estate of Alex Zaldivar, Brienna Campos, and Remington Campos
Respondent:	Orange County
Amount Requested:	$400,000
Type of Claim:	Local equitable claim; result of a settlement agreement
Respondent's Position:	Orange County does not oppose the claim bill.
Collateral Sources:	None reported.

Attorney's/Lobbying Fees: The claimant's attorney provided an affidavit stating that the attorney's fees will be waived in order to maximize the claimants' recovery. However, the affidavit provides that costs and lobbying fees are not waived. The affidavit lists costs at $9,103.83[1] and lobbying fees at 5% of the amount awarded.[2]

Notwithstanding the attorney's affidavit, the bill specifically provides the total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to the claim may not exceed 25% of the total awarded under the bill. However, the bill states that taxable costs, which does not include attorney fees or lobbying fees, related to the underlying civil action may be collected in addition to the aforementioned attorney fees and lobbying fees.

The Special Master understands the altruistic motives of claimants' attorneys but to avoid confusion, the bill should be amended to cap attorney's fees, lobbyist's fees, and costs at 25 percent and allow the parties to allocate the percentage pursuant to their individual agreements.

Prior Legislative History: This is the first time this claim has been introduced to the Legislature.

Procedural Summary: This claim was settled before any formal action was filed. The settlement agreement, entered into on September 5, 2014, settles all claims by the Estate of Alex Zaldivar (Estate) and Brienna and Remington Campos for $700,000. The settlement distributes the $700,000 between the parties with $300,000 to the Estate and $200,000 individually to both Remington and Brienna. Orange County has paid $100,000 to each claimant.

Facts of Case: On May 9, 2012, Bessman Okafor and Nolan Bernard forced their way by gunpoint into a home then occupied by Brienna Campos, Brandon Campos, Alex Zaldivar, and William Herrington. They tied the victims up with telephone cord and held them at gunpoint while they ransacked the house and collected valuables to take with them.[3] Unwittingly, the two suspects took an iPhone that was setup to be tracked by Apple's proprietary 'Find my iPhone' feature. The police tracked the phone to the house where the suspects were hiding out. When confronted, Bernard surrendered, and the police found the phone they tracked in his pocket. Okafor ran but was tracked down and apprehended. He had a backpack with some of the other property he and his accomplice had just stolen from the Campos house.

Officers picked up the victims and drove them by the scene where they had apprehended Bernard and Okafor. The victims positively identified the two suspects. Okafor and Bernard were arrested and charged with 14 felony offenses related to the robbery. Both Okafor and Bernard were assigned a $66,000 bond but were authorized to participate in the Home Confinement Unit program if the bond requirement was met, over the objection of the State Attorney. Unbeknownst to the victims, Okafor was placed in the Orange County Home Confinement program after posting bond

[1] This does not include the costs incurred as a result of the Special Master hearing on November 9, 2015, which includes travel and lodging.
[2] If the claim bill is passed, the lobbying fees will total $20,000, with $10,000 from the $200,000 awarded to the Estate of Alex Zaldivar and $5,000 each from the $100,000 awarded individually to Remington and Brienna Campos.
[3] It is unclear what motivated Okafor or Bernard. Brienna Campos admitted to police that she use to sale marijuana but stated she never sold it out of her house.

and being released from jail on June 23, 2012.

The Orange County Home Confinement program, a division of the Community Surveillance Unit in the Orange County Corrections Department, allows defendants awaiting trial to remain at home with their families which allows them the opportunity to be a productive member of society in lieu of being incarcerated. Defendants are given electronic monitoring equipment consisting of a base unit and an ankle monitor which utilizes radio frequency to monitor the defendants. The majority of the ankle bracelets used by the program are not equipped with Global Positioning System technology to provide real-time data on location but rather equipment that sends signals to a monitoring service that documents whether a defendant ventures too far from his or her base unit.

Okafor incurred numerous violations in the few short months he was in home confinement. From June 24, 2012 to September 20, 2012 Okafor violated monitoring restrictions over 100 times, an average of over one violation each day. Many times these violations were not sufficiently investigated. Okafor continued to state that the curfew violations were due to a problem with the phone line. On one occasion, an investigator was not able to contact Okafor to resolve a curfew violation. Instead that investigator spoke to Okafor's sister on her cell phone and accepted her confirmation that Okafor was there with no further investigation. Even though employees were required to resolve multiple curfew violations over an hour, nothing was done to resolve Okafor's multiple curfew violations over an hour. Supervisors were required to review the performance of those under their lead, but case managers and field officers in Orange County's Home Confinement program were given 100% accuracy scores even where multiple unresolved curfew violations existed. Furthermore, a confinee is supposed to be "violated" (reported to his or her judge) when a new law violation is committed while on home confinement. Even though the Home Confinement staff knew Okafor committed a new law violation by failing to appear before a Polk County court for a speeding ticket, he was not reported to his judge. Overall, the Orange County Home Confinement program suffered from pervasive failure of its employees to follow policy and procedures.

All the victims were deposed about the robbery and were expected to testify in Okafor's and Bernard's trials. Before trial, the victims were visited twice by Okafor's mother, Cathy, and offered money in exchange for not testifying against the two robbers. On a third occasion, a different person visited the house to make the same request. At no time, however, were the victims threatened with violence. Brienna called the police the second time they were visited by Cathy. The police came and investigated a mysterious car that was left parked across the street.

On the day before his trial, September 10, 2012, Bessman Okafor returned with two accomplices to the same home he robbed in May. They kicked in the front door and forced their way into the victims' home. Only two, Alex and Brienna, of the original four victims were present at the home that early morning as well as Remington Campos[4], brother of Brienna. They made Alex, Brienna, and Remington lay on the ground at gunpoint. As Remington describes the scene, the suspects moved through the house and his friend, Alex, lay shaking on the floor next to him. Brienna states that she heard the suspects asking about the other two people that were witnesses to the previous home invasion robbery. She says that it was evident that they knew those two weren't present because they kept asking about them. Both Brienna and Remington heard three gunshots, and then one of the suspects asked another, "Did you miss?" The victims "played dead" for a couple minutes, then Remington looked up to see his sister raise her head. Alex's body lay lifeless as Okafor and his accomplices fatally shot him. Remington led Brienna out of the house, across the back yard, over the privacy fence and to a neighbor's house where they called for help.

The Orlando Police Department ("OPD") investigated the murder and put together a timeline of events from red light cameras, a personal surveillance camera at a nearby house, Okafor's cell

[4] Remington resided at the home at the time of the May 9, 2012 robbery but was not present.

phone, and his home confinement monitor. By piecing together the information available from these sources it was possible for the OPD to construct a timeline of the events that put Okafor right at the center of the murder of Alex Zaldivar and the shootings of Brienna and Remington Campos. There is little question that Okafor left his house that night, drove over to the house he and Bernard had robbed four months earlier and attempted to silence all the witnesses that might testify against him at his trial which was only hours away.

On September 10, 2012, Okafor's home confinement system showed that he was away from home for over an hour from 4:40 am to 5:40 am. The 911 call from Remington and Brienna, both suffering from gunshot wounds to the head, came in at 5:24 am.

In the aftermath of the carnage, Orange County performed internal audits of their Home Confinement program and eventually shut down the program entirely. Okafor has since been convicted and set to receive the death penalty for his heinous acts against Alex, Brienna, and Remington.

All three victims of the September 10 attack suffered horrific and incalculable damages. Alex Zaldivar, 19 years old at the time of his death, was a student at Valencia College and left behind his parents, Rafael and Kyoko, and his older brother Rafael Zaldivar, Jr. From all the evidence presented to the Special Master, Alex was kind, loving, and had a prosperous future before his tragic murder. Remington and Brienna were treated for their head wounds at Orlando Regional Medical Center. Brienna was shot in the left side of her head and was released after only one night in the hospital. Remington was shot in the back of the head, just above his neck. Along with the psychological pain, Brienna and Remington both suffer from migraines and back pain.

Recommendation/Conclusion of Law: Settlement agreements are sometimes entered into for reasons that may have very little to do with the merits of a claim or the validity of a defense. Stipulations or settlement agreements between the parties to a claim bill are not binding on the Legislature or its committees, or on the Special Master. However, all such agreements must be evaluated.

At the outset it will be helpful to note that the law defining a government's tort liability in Florida "has become a tangled web of incomprehensible and inconsistent principles, exceptions, and exceptions to the exceptions."[5] For that reason, it is sometimes difficult to determine whether the government will be held liable in tort or not. With that being said, it is my opinion that Orange County did not owe the claimants a duty of care and therefore is not liable for the injuries they sustained.

Duty

A threshold issue for tort liability is that of duty. All plaintiffs in tort actions must first establish that the defendant owed the plaintiff a duty of care, that is, a duty to act reasonably regarding the injured party's interests. When bringing tort claims against private individuals, duty is often a simple issue to decide. Individuals almost always have a duty to act with reasonable care regarding those they come into contact with. However, when government actions are in question, finding duty becomes more than a perfunctory task. As a threshold issue, this duty analysis is prior to any analysis of sovereign immunity.[6] The Public Duty Doctrine embodies the idea that for some actions, such as law enforcement,[7] a government entity owes a duty to the general public, but not to specific

[5] William N. Drake, Jr., & Thomas A. Bustin, *Governmental Tort Liability in Florida A Tangled Web*, FLA. B.J., February 2003.
[6] *Trianon Park Condo. Ass'n, Inc*., 468 So. 2d at 917 (for "there to be a governmental tort liability, there must be either an underlying common law or statutory duty of care with respect to the alleged negligent conduct.").
[7] *Trianon Park Condo. Ass'n, Inc. v. City Hialeah*, 468 So. 2d 912, 919 (Fla. 1985).

individuals,[8] unless the government has established a special relationship with the individual harmed or the action created a foreseeable zone of risk.[9]

In *State, Dep't of Corr. v. Vann*, 650 So. 2d 658, 659 (Fla. 1st DCA 1995), *approved sub nom.*, *Vann v. Dep't of Corr.*, 662 So. 2d 339 (Fla. 1995), a prisoner escaped from the custody of the Department of Corrections "while away from the prison grounds as part of a work detail providing catering services to a community group at" a nearby school. The escapee killed a woman in the parking lot of a department store in a nearby town.[10] The decedent's estate claimed that the Department was negligent on several grounds, including: "improperly classifying the prisoner (including the failure to follow their own rules and procedures in the method of classification), failing to properly supervise the prisoner, and failing to warn the public of the prisoner's escape."[11] The court held that the state is not responsible for the injuries resulting from the criminal acts of escapees specifically because the state has no duty to protect individuals from such injuries.[12] The same three grounds alleged in *Vann* are alleged against Orange County in the claim at issue, and Okafor's "escape" from home confinement is much the same as the prisoner's escape from work detail. The only distinguishing fact is the target of the escapee's violent act. In the claim at issue, Okafor came back to the place of his original crime to silence witnesses. In *Vann*, the escapee attacked and murdered a random victim. This distinction does not create a special relationship.

In *Parker v. Murphy*, 510 So. 2d 990, 992 (Fla. 1st DCA 1987), a prisoner in the Department of Correction's custody escaped twice, and attacked the same elderly couple both times. The court also held that no special relationship existed between the Department and the victims, and there was no individual duty owed to them.[13] Though the court's opinion does not expound upon why the escapee went back to attack his previous victims, the victims in *Parker* are similarly situated to the victims in this claim. Like *Parker*, the claimants here were victims of violence perpetrated by the same assailant that ultimately escaped home confinement and attacked them again. In *Parker*, the court found that the Department was not liable because no special relationship was created,[14] therefore, a court is likely not to find a duty in this case as well.

In *Brown v. Woodham*, 840 So. 2d 1105, 1106–07 (Fla. 1st DCA 2003), a man was taken into custody for the domestic violence he perpetrated on his wife. During his one week stint in jail, he wrote several letters, which were retained in his file at the jail, describing further violence he intended to perpetrate on his wife upon his release.[15] The court ordered that he be held without bond; however, the Sheriff released him and called the victim to tell her he had been released, but mentioned nothing about the letters.[16] The court held that the Sheriff had a statutory duty in domestic violence cases to consider the safety of the victims and any other person reasonably thought to be in danger before releasing someone,[17] but the court stated that it would pass on the question of whether or not the Sheriff owed a common law duty to the victim.[18] This case, then, is distinguishable because the claimants have not claimed that the county had a similar statutorily created duty.

---

[8] *Id.* at 915.
[9] *See, e.g.*, *Sams v. Oelrich*, 717 So. 2d 1044, 1047 (Fla. 1st DCA 1998).
[10] *Vann*, 650 So. 2d at 659.
[11] *Id.*
[12] *Id.* at 661; *see Dep't of Corr. v. McGhee*, 653 So. 2d 1091, 1093 (Fla. 1st DCA 1995), *approved*, 666 So. 2d 140 (Fla. 1996).
[13] *Id.*
[14] *Id.*
[15] *Brown*, 840 So. 2d at 1106.
[16] *Id.* at 1106–08.
[17] s. 741.2901(3), F.S.
[18] *Id.* at 1106-07.

In *Wallace v. Dean*, 3 So. 3d 1035, 1041 (Fla. 2009), the court found that the Sheriff owed a duty to an individual that passed away after an officer performed a wellness check on her and determined that she was just sleeping. The court found that the Sheriff was no longer operating under his law enforcement duties, for which he owes a duty to the general public, but had undertaken a duty of care regarding the individual.[19] In *Wallace*, the duty is established only after the one who ultimately owed the duty "undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things. . . ."[20] This is clearly not the case in this claim. The County never offered protection nor was aware of any information that may make protection a necessity.

The claimants also allege that the State Attorney in Orange County failed to keep his promise to update them on Okafor's detainment status. Assuming, *arguendo*, the actions of a State Attorney could otherwise be imputed to the County, State Attorneys are quasi-judicial officers that are immune from suit for negligent performance of their duties.[21]

The claimants also called the police the second time a relative of Okafor's visited them to try to dissuade them from testifying. The police investigated a car that was left parked across the street after the visit, but it was "clean." In *Parrotino v. City of Jacksonville*, 612 So. 2d 586, 587 (Fla. 1st DCA 1992) (*Parrotino I*), *reversed on other grounds*, *Office of State Att'y, Fourth Judicial Cir. of Fla. v. Parrotino*, 628 So. 2d 1097 (Fla. 1993), a woman was killed by an abusive boyfriend after the police had been called out on numerous occasions because of his abusive, harassing, and threatening behavior. The police were said not to owe the victim a duty, even though they knew the perpetrator had proven himself willing and able to commit violent acts on her, because no special relationship existed.[22] Even the fact that the claimants made the police aware of the visits from Okafor's family members, none of which were reported to be violent or threatening, is analogous to *Parrotino I*, it cannot establish a special relationship.

No case law unearthed by the special master creates a special relationship between the claimants and Orange County. Claimants rely upon *Everton v. Willard,* 468 So. 2d 936 (Fla. 1985) to support their claim that they're entitled to a special relationship. In *Everton*, the Florida Supreme Court held that a Pinellas County Deputy Sheriff's decision to not arrest a drunk driver was a discretionary decision and immune from liability under sovereign immunity. In holding so, the Court stated:

> A law enforcement officer's duty to protect the citizens is a general duty owed to the public as a whole. The victim of a criminal offense, which might have been prevented through reasonable law enforcement action, does not establish a common law duty of care to the individual citizen and resulting tort liability, absent a special duty to the victim.[23]

The Court further stated, in dicta, that a special relationship "is illustrated by the situation in which the police accept the responsibility to protect a particular person who has assisted them in the arrest or prosecution of criminal defendants and the individual is in danger due to that assistance. In such a case, a special duty to use reasonable care in the protection of the individual may arise."[24] The court only hypothesizes that a special relationship may be established when the above facts are present, but it was not confronted with those facts and did not decide the issue of what duties are owed to a cooperating witness.

---

[19] *Wallace*, 3 So. 3d at 1052.
[20] *Id.* at 1051.
[21] *Office of State Att'y, Fourth Judicial Cir. of Fla. v. Parrotino*, 628 So. 2d 1097, 1098-99 (Fla. 1993) (*Parrotino II*).
[22] *Parrotino I*, 612 So. 2d at 589.
[23] *Everton*, 468 So. 2d at 938.
[24] *Id.*

The *Everton* court cited *Schuster v. City of New York*[25], a New York Court of Appeals decision from 1958, to support its illustration of a special relationship. The *Schuster* court explained that "the public . . . owes a special duty to use reasonable care for the protection of persons who have collaborated with it in the arrest or prosecution of criminals**,** once it reasonably appears that they are in danger due to their collaboration."[26] Arnold Schuster volunteered to help the FBI apprehend a fugitive when he recognized a picture of a gentleman in a "wanted" poster.[27] Schuster's role in apprehending the fugitive was well publicized, and shortly afterward, Schuster started receiving death threats.[28] He notified the police of the threats and requested protection, but the police told him not to worry about the threats and declined to give him protection. Unlike *Schuster*, the claimants here were never threatened with violence and never requested police protection. Therefore it did not reasonably appear that they were in danger due to their cooperation with authorities. *Schuster* and its progeny, in order to establish a special relationship, require the police, through promises or action, to affirmatively accept a duty to protect the victim and for the victim to rely upon such affirmative action.[29]

In this case, there is nothing in the record to show that anyone from Orange County gave affirmative assurances to the victims that they would be protected or guarded nor is there anything in the record to show the victims asked for protection. While Okafor's relatives did visit Brienna to pay her from testifying, they never threatened violence and Brienna never requested protection from the police. No Florida court has held that being called to testify creates a special relationship.

There are, in fact, situations where law enforcement officers owe common law duties to individuals without a special relationship. They owe common law duties to certain individuals who are within a foreseeable zone of risk that was created by the officer's actions.[30] However, none of the foreseeable zone of risk cases go so far as to establish a zone of risk where the victim has become a witness against the assailant. Orange County owed the claimants a duty when they had Okafor in custody after the armed robbery and brought the claimants over to identify him. If Okafor would have escaped police custody and harmed the claimants when they were brought over to identify their assailant, Orange County would have been liable. This foreseeable zone of risk quickly vanishes when the parties are no longer in close proximity to one another.

Finally, the claimants main argument is that a duty was established when the claimants began to assist in the prosecution of Okafor by identifying him and his co-defendants, being deposed by the State Attorney, and by agreeing to be witnesses against Okafor.[31] Unfortunately, the case law does not support such a finding based on those facts. The County neither establishes a special

---

[25] *Schuster v. City of New York*, 5 N.Y.2d 75 (1958).
[26] *Id*. at 81.
[27] *Id*. at 536
[28] *Id.*
[29] *Cuffy v. City of New York*, 69 N.Y.2d 255, 260 (1987).
[30] *Sams v. Olerich*, 717 So. 2d 1044, 1047 (Fla. 1st DCA 1998) (holding that a police officer owed a duty to those in the emergency room while he was detaining a patient); *City of Pinellas Park v. Brown*, 604 So. 2d 1222, 1225 (Fla. 1992) (holding that a high speed pursuit created a foreseeable zone of risk to those around but did not constitute negligence *per se*); *but see Milanese v. City of Boca Raton*, 84 So. 3d 339, 343 (Fla. 4th DCA 2012) (holding that the police did not create any zone of risk when they released an intoxicated individual who was injured on railroad tracks near the police station).
[31] The claimants emphasize the County's failure to notify them of Okafor's placement in Home Confinement, and they may argue that this special duty required only that the County notify them of Okafor's placement in the Home Confinement program. However, notification would not have protected the claimants. They point to no actions that they would have taken in response to knowing Okafor was released that would have prevented this tragedy. The claimants may argue that they would have requested police protection if they knew Okafor had been released, but this request would not have established a special relationship because the County had no evidence that the claimants lives were in danger. That failure to notify is, thus, not a legal cause of the claimants' injuries.

relationship nor creates a foreseeable zone of risk by seeking assistance in prosecuting a crime. To create a special relationship, the government must somehow accept or undertake the duty to protect the individual. A foreseeable zone of risk requires some actual proximity to a dangerous situation created by the government. The claimants may argue that danger is reasonably foreseeable where the person in custody has expressed a desire and willingness to commit violence against a specific victim.[32] But, as discussed above, the *Brown* court left that question open. Even so, there is no evidence that Okafor threatened the claimants with violence.

Finally, finding a special relationship based solely on the fact that an individual becomes a witness in a criminal case would open the proverbial floodgates of liability for government agencies. It would require individual protection for every witness in a trial where the defendant is released on bond.[33] The Public Duty Doctrine "also rests on the need to prevent the chilling of the law enforcement processes, as well as the availability of other remedies against private parties who initially created the danger which caused the damage."[34]

Therefore, for the legal and policy reasons laid out above, this Special Master finds that Orange County owed no duty to the claimants here.

In a strict legal analysis, because I find that there was no duty, there is no need to expound upon the issues of sovereign immunity, breach, causation, and damages. However, if the Legislature chooses to pass this claim under legislative grace, then I will discuss those issues and find that, if a duty did exist, Orange County did act negligently, that negligent action was the cause of the claimants' injuries, and those injuries substantiate the amount sought by the claimants. However, because Orange County owed the claimants no duty of care, it is not legally liable for the injuries caused by Okafor.

Breach

If there was a duty of reasonable care, although one does not exist as described above, Orange County clearly breached it. Okafor violated curfew on 129 separate occasions, 39 of those were for more than half an hour. The confinement program's policy was to report and investigate excessive violations of curfew. This meant making contact with the confinee to ascertain the reason why curfew was violated to determine whether there was a significant excuse or the confinee should be reported to his judge to determine whether or not the confinee would remain in the program or be remanded into custody. Orange County failed to do that. They also failed to properly ascertain the reason for a 59 hour outage of the phone line connecting Okafor's monitoring station to the confinement program's office.

Causation

On the night of the murder, Okafor violated curfew several times for more than 30 minutes each time. If Orange County had properly reported and investigated this activity, the murders may have never happened. Moreover, the County failed to properly investigate and report several other previous curfew violations that could have very likely led to Okafor's being removed from the program.

---

[32] *See, e.g., Brown v. Woodham*, 840 So. 2d 1105, 1106 (Fla. 1st DCA 2003) ("It is reasonably foreseeable that a victim of domestic violence, such as Michelle Stroba, would seek protection for herself and her family while under threat of physical violence and harm from William Stroba. The Gadsden County Sheriff owed a special duty to Michelle Stroba, as a victim of domestic violence, and to her reasonably foreseeable protector, Robert Brown.")

[33] *See* Mary Babb Morris, *Effect of Special Relationship; Public Duty Doctrine*, 28 Fla. Jur 2d Government Tort Liability § 18.

[34] *Id.*

Damages

On, September 10, 2012, Alex Zaldivar was shot twice in the head and died shortly thereafter. His two friends, Brienna and Remington Campos were shot in the head as well, but survived. Brienna continues to suffer short term memory problems that have made schooling extremely difficult for her. Remington suffers from headaches and back pain. Both have suffered unspeakable, lasting emotional harm from their experience. They had to play dead in a pool of their friend's blood and watch him bleed to death as they anxiously waited to see if their fate would be the same as his.

Conclusion

Therefore, although the damages in this case are truly horrendous, and the actions of Orange County's home confinement program fell below their own operating procedures, Florida law does not recognize a duty owed to the claimants by Orange County. The claimants rightly seek justice as recompense for the wrongs they have suffered, unfortunately, the law points not to Orange County but to Okafor and his co-defendants as the objects of its wrath.

Passing this claim bill may set a precedent in finding a special relationship with every witness in criminal proceedings where none currently exists in law. However, the Legislature is not bound by this report, jury verdicts, settlement agreements or past legislatures. Any claim bill passed is an act of legislative grace.[35] The Legislature may wish to make Alex's family, as well as Brienna and Remington whole for the criminal actions of Okafor. Though not legally responsible, the Legislature may feel called under a moral obligation to pass this claim bill to reconcile the inaction of Orange County's now defunct Home Confinement program.

For the reasons set forth above, I recommend that House Bill 3517 be reported **UNFAVORABLY**.

Respectfully submitted,

Parker Aziz, Special Master Date

cc: Representative Bracy, House Sponsor
Senator Diaz de la Portilla, Senate Sponsor
Daniel Looke, Senate Special Master

[35] *Gamble v. Wells*, 450 So. 2d 850, 853 (Fla. 1984).