



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
1/08/16	SM	Favorable
01/22/16	JU	Favorable
02/09/16	CA	Fav/CS
	FP	

January 8, 2016

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

Re: **CS/SB 44** – Community Affairs Committee and Senator Garcia
HB 3509 – Representative Nunez
Relief of Susana Castillo by the City of Hialeah

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$455,000 BASED ON A SETTLEMENT AGREEMENT WITH THE CITY OF HIALEAH FOR THE DEATH OF ANDREA CASTILLO DUE TO THE NEGLIGENT OPERATION OF A PATROL VEHICLE BY ONE OF ITS POLICE OFFICERS.

FINDINGS OF FACT:

At about 9:45 p.m. on October 19, 2012, Marco Barrios (Barrios) stopped his 2012 Jeep Compass facing north at the stop sign on E. 9th Court that intersects with E. 49th Street in Hialeah, FL, waiting to turn left to go westbound on E. 49th Street after purchasing gas. Twenty-one year old Andrea Castillo was seated in the front passenger seat of the vehicle being operated by her boyfriend, Barrios.

At the same time, Officer Raul Somarriba (Officer Somarriba), an on-duty patrolman with the Hialeah Police Department, was traveling between 20 and 22 miles an hour over the posted speed limit of 40 miles per hour eastbound on E. 49th Street, Hialeah, FL toward the intersection of E. 9th Court in an unmarked patrol car. Officer Somarriba had activated the car's emergency visor lights, but he had not activated the emergency siren.

After stopping and then proceeding into the intersection of E. 49th Street and E. 9th Court, Hialeah, FL, the Barrios vehicle was struck on the driver's side by the City of Hialeah patrol car being driven by Officer Somarriba as Barrios was crossing the eastbound lanes of E. 49th Street. There was no evidence that Officer Somarriba applied his brakes or took any evasive action prior to the impact with Barrios' vehicle.

The severe impact of the collision caused Barrios' vehicle to flip repeatedly and collide with several vehicles parked at an adjacent car dealership before coming to rest on its side.

The impact of the crash was so great that Marco Barrios was severely injured and Andrea Castillo was internally ejected from her seat and later discovered in the back hatch area of the vehicle with massive blunt trauma injuries to her head and torso. On October 21, 2012, Andrea Castillo died as a result of her injuries.

A witness confirmed that Officer Somarriba's siren was not activated prior to the crash with the Barrios vehicle.

The City of Hialeah's Traffic Homicide Investigation Report and an investigation by the Office of the State Attorney, Eleventh Judicial Circuit, established that Officer Somarriba was traveling at approximately 62 miles per hour over posted speed limit of 40 miles per hour at the time of the crash.

General Order No. 17.06 of the City of Hialeah Police Department Vehicle Pursuit Protocol (City Pursuit Protocol) establishes policy and guidelines for emergency vehicle pursuits.

The definition of the term "emergency equipment" contained in Section I (Definitions) of the City Pursuit Protocol means "siren and flashing or revolving red and/or blue lights" on vehicles.

The definition of the term "emergency response" contained in Section I (Definitions) of the City Pursuit Protocol provides, in part, that "vehicles involved in an emergency response shall have in operation all emergency equipment including emergency lights (light bar), siren, and headlights. Emergency vehicle operations and response codes are governed under General Order 22.04."

The definition of the term “vehicle pursuit” contained in Section I (Definitions) of the City Pursuit Protocol provides, in part, that the “authorized police vehicle [is] utilizing flashing emergency lights, siren, and headlights to apprehend the occupant(s) of another moving vehicle . . .”

Section II (Decision to Pursue) of the City Pursuit Protocol dictates that officers “may engage in pursuits when they have a reasonable belief that the fleeing suspect has committed or attempted to commit a forcible felony.”

Section III (Vehicle Pursuit Procedures) of the City Pursuit Protocol, dictates that the decision to initiate a pursuit must be based on the officer’s or supervisor’s conclusion that “the immediate danger to the public created by the pursuit is less than the immediate or potential danger to the public should the suspect remain at large.”

Section III (Vehicle Pursuit Procedures) of the City Pursuit Protocol, Also requires that the officer “shall be required to activate their vehicle headlights (no constant high beams) and all emergency equipment prior to beginning the pursuit.”

Section III of the City Pursuit Protocol further requires the “officer initiating a pursuit will, in all cases, immediately notify the Communications Dispatcher, via radio, that a pursuit is underway and provide the following, if possible:

- Unit number;
- Location, direction of travel, and estimated speed;
- Description of vehicle being pursued, including tag number, and number of occupants, if known;
- Number and description of occupants, if identifiable; and
- Specific reason(s) for the pursuit.

There was no evidence from witnesses that Officer Somarriba was in pursuit of a fleeing suspect engaged in a felony. Officer Somarriba did not recall being in hot pursuit of any suspect or vehicle at the time of the collision with the Barrios vehicle, and records and dispatch communications do not indicate otherwise. No call was ever placed to dispatch by Officer Somarriba indicating that he was initiating a pursuit, nor did Officer Somarriba run a vehicle tag in the minutes before the crash.

Officer Somarriba violated Section III of the City Pursuit Protocol by:

- Failing to activate all of the vehicle's emergency equipment before the pursuit was initiated. The officer did not activate the siren before or during the pursuit. Only the emergency lights were activated; and
- Failing to immediately contact the Communications Dispatcher that a pursuit was underway and provide his location, direction of travel, estimated speed, description of vehicle being pursued, including tag number, number and description of occupants, and the specific reason for the pursuit. There was no evidence that Officer Somarriba contacted dispatch communications prior to the crash.

Additionally, General Order No. 22.04 of the City of Hialeah Police Department Emergency Vehicle Operation and Response Code Protocol (City Emergency Vehicle Operation Protocol) requires that an officer in pursuit must:

- Notify the Communications Dispatcher, as soon as possible, of having responded in an emergency mode and that a pursuit is underway;
- Activate all emergency equipment, including both siren and flashing or revolving red and blue lights;
- Refrain from exceeding the posted speed limit by more than 10 miles per hour for a code "2" call (situations involving felonies in progress, potential dangers to citizens, and conditions which indicates there probably are individuals injured or will be injured);
- Refrain from exceeding the posted speed limit by more than 20 miles per hour for a code "3" call (situations involving imminent loss of life or physical suffering requiring immediate response); and
- Terminate the pursuit if it is determined to be solely for a traffic infraction (like speeding).

Officer Somarriba violated the City Emergency Vehicle Operations Protocol by:

- Failing to notify the Communications Dispatcher that a pursuit was underway;
- Failing to activate all of the vehicle's emergency equipment before the pursuit was initiated. The officer

did not activate the siren before or during the pursuit. Only the emergency lights were activated;

- Exceeding the posted speed limit of 40 miles per hour by more than 10 miles an hour for a code “2” call. Officer Somarriba was traveling at 62 miles per hour at the time of impact with Barrios’ vehicle, and he exceeded the speed limit by 22 miles per hour; and
- Exceeding the posted speed limit of 40 miles per hour by more than 20 miles an hour for a code “3” call; Officer Somarriba was traveling at 62 miles per hour at the time of impact with Barrios’ vehicle, and he exceeded the speed limit by 22 miles per hour.

Even if there was some evidence that Officer Somarriba was engaged in an emergency pursuit of either a code 2 or code 3 emergency call, he violated the City Pursuit Protocol and the City Emergency Vehicle Operations Protocol as to how to initiate and safely conduct such a pursuit.

At the conclusion of the traffic homicide investigation into the death of Andrea Castillo conducted by the City of Hialeah Police Department and a companion investigation conducted by the Office of the State Attorney, Eleventh Judicial Circuit, the Hialeah Police Department and Office of the State Attorney concluded that Marco Barrios duly observed the stop sign at the intersection of E. 49th Street and E. 49th Court and that Officer Somarriba’s speed was a contributing factor in the fatal crash.

A toxicology test conducted during the course of the investigation determined that Marco Barrios was not impaired by alcohol or any other substance at the time of the crash. There was no evidence of toxicology for Officer Somarriba.

Andrea Castillo is survived by her mother, Susana Castillo, with whom she lived. She is also survived by her younger twenty-year-old brother Kevin Castillo. At the time of her death, Andrea Castillo was enrolled in college to obtain a degree in education to follow in the footsteps of her grandmother who was a teacher and her mother who serves on the Miami-Dade County School Board.

In 2013, the Claimant, Susana Castillo, as the Personal Representative of the Estate of Andrea Castillo, deceased,

filed a wrongful death claim in the 11th Judicial Circuit in and for Miami-Dade County, Florida against the City of Hialeah and Raul Somarriba, individually. In a related case, Marco Barrios, individually, filed suit against the City of Hialeah for injuries sustained in the October 19, 2012 accident.

On June 9, 2015, Susana Castillo, as the Personal Representative of the Estate of Andrea Castillo, and Marco Barrios entered into a settlement agreement that was approved by the Hialeah City Council. The settlement agreement required the parties to dismiss their cases with prejudice and provide a full release of liability to the City of Hialeah and its employees, in exchange for payments by the City of Hialeah, totaling \$750,000.

The City of Hialeah has already paid \$295,000 for this incident (\$150,000 of which was paid to Marco Barrios for his injuries and \$145,000 to the Estate of Andrea Castillo), leaving an unpaid balance of \$455,000. Claimant's attorneys received \$37,500 in attorney fees, and the Estate of Andrea Castillo was charged \$48,879.29 for costs and expenses.

As part of the settlement agreement, the City of Hialeah agreed to support the passage of a claim bill and to pay the remaining balance of \$455,000 in annual installments of \$150,000 in 2016, \$150,000 in 2017, and \$155,000 in 2018. As noted in the Settlement Agreement and General Release, along with the incorporated Terms of Settlement, the Estate of Andrea Castillo and Marco Barrios entered into a separate agreement regarding the allotment of the \$750,000 to be paid by the City of Hialeah. The remaining balance of the \$455,000 settlement from the City of Hialeah will be paid to the Estate of Andrea Castillo as outlined herein upon passage of the instant claim bill.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine whether the City of Hialeah is liable in negligence for damages suffered by the Claimant and, if so, whether the amount of the claim is reasonable. This report is based on the evidence presented to the Special Master prior to and during the hearing.

Officer Somarriba had a duty to operate his vehicle at all times with consideration for the safety of other drivers. See City of

Pinellas Park v. Brown, 604 So. 2d 1222, 1226 (Fla. 1992) (holding officers conducting a high-speed chase of a man who ran a red light had a duty to reasonably safeguard surrounding motorists); Brown v. Miami-Dade Cnty., 837 So. 2d 414, 417 (Fla. 3d DCA 2001) ("Florida courts have found that police officers do owe a duty to exercise reasonable care to protect innocent bystanders . . . when their law enforcement activities create a foreseeable zone of risk").

General Order No. 17.06 of the City of Hialeah Police Department (City Pursuit Protocol) and General Order No. 22.04 (City Emergency Vehicle Operations Protocol) require officers to activate all emergency equipment (siren and flashing or revolving red and/or blue lights) before initiating a pursuit, to contact the Communications Dispatcher that a pursuit was underway and provide specified information, and to refrain from exceeding the posted speed limit by more than 10 or 20 miles per hour in accordance with applicable response codes. These protocols established the standard of care for police officers of the City of Hialeah.

Officer Somarriba had a duty to operate his vehicle with consideration for the safety of other drivers and in compliance with the City Pursuit Protocol and the City Emergency Vehicle Operations Protocol. It was entirely foreseeable that injuries to motorists, such as Andrea Castillo, resulting in death could occur when Officer Somarriba violating these duties by entering an intersection at a high rate of speed over the posted speed limit, without slowing, and without his siren activated. Officer Somarriba breached his duty of care, and the breach was the proximate cause of the death of Andrea Castillo.

Officer Somarriba was acting within the course and scope of his employment with the City of Hialeah at the time of the crash. The City of Hialeah, as Officer Somarriba's employer, is liable for his negligent act. Mercury Motors Express v. Smith, 393 So. 2d 545, 549 (Fla. 1981) (holding that an employer is vicariously liable for compensatory damages resulting from the negligent acts of employees committed within the scope of their employment);

After considering all of the factors in this case, I conclude that the amount of this claims bill is appropriate.

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ATTORNEYS FEES:

The Claimant's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), Florida Statutes. No lobbyist fees will be paid.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 44 (2016) be reported FAVORABLY.

Respectfully submitted,

John Ashley Peacock
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

CS by Community Affairs:

Amends the title with technical updates that reflect the events of the accident.