

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

KIMBERLY DUFF, as personal
representative of the Estate of
RICHARD BEATTY,

CASE NO. 02-23643-CIV-MARTINEZ

Magistrate Judge: DUBE

Plaintiff,

v.

CITY OF MIAMI FLORIDA, POLICE
CHIEF RAUL MARTINEZ, Individually,
OFFICER HECTOR MENDEZ, Individually,

Defendants,

AMENDED COMPLAINT

PLAINTIFF, KIMBERLY DUFF as personal representative for the Estate of RICHARD BEATTY and through undersigned counsel, sues Defendant, CITY OF MIAMI FLORIDA, POLICE CHIEF RAUL MARTINEZ, individually, OFFICER HECTOR MENDEZ, individually, and alleges:

INTRODUCTORY STATEMENT

1. This is an action for damages sustained by a citizen of the United States against The City of Miami, Florida, an employee police officer of the City of Miami and the Chief of the City of Miami Police Department. Officer Hector Mendez unlawfully assaulted and battered PLAINTIFF to the extent that he caused his wrongful death. PLAINTIFF also brings an action for damages against the Chief of Police, as the supervisory officer responsible for the conduct, training and supervision of police officers under his charge, for his failure to properly train police officers in the appropriate methods of detaining and arresting mentally ill citizens, and against the City of Miami, Florida as the ultimate

policymaker for the City of Miami Police Department (hereinafter “DEPARTMENT”).

JURISDICTION

2. This action is brought pursuant to 42 U.S.C. §§ 1983, the Fourth and Fourteenth Amendments to the United States Constitution and the laws of the State of Florida.

3. The jurisdiction of this Court is predicated on 28 U.S. C. §§ 1331 and 1342(a)(3) and the supplemental jurisdiction of this Court under 28 U.S.C. § 1367(a).

4. Venue is placed in the United States District Court for the Southern District of Florida because it is where all parties reside and where the events complained of occurred.

5. All conditions precedent to the maintenance of this action have been preformed or have occurred prior to its institution including those set forth in Florida Statute 768.28.

PARTIES

6. At all times material hereto Kimberly Duff was and is the duly appointed Personal Representative of the Estate of Richard Beatty, deceased, and is the proper party to bring this action.

7. At all times relevant hereto and in all actions described herein, RICHARD BEATTY(hereinafter PLAINTIFF), was a 55 year old white male, a resident of Miami, Florida, a citizen of the United States of America and a honorably discharged veteran of the Vietnam War who is now deceased.

8. Defendant, City of Miami (hereinafter “CITY”), is a political subdivision of the State of Florida, a Florida municipal corporation, and, at all times relevant hereto, it employed Defendants, Police Chief RAUL MARTINEZ AND OFFICER HECTOR MENDEZ in the DEPARTMENT.

9. At all times relevant hereto and in all actions described herein, Defendant, Officer HECTOR MENDEZ (hereinafter “MENDEZ”), was acting under color of law as a police officer, and in such capacity, as the agent, servant and employee of Defendant, CITY.

10. At all times relevant hereto, Defendant, RAUL MARTINEZ (“MARTINEZ”) was the duly appointed Chief of Police of the DEPARTMENT. As such, he was the commanding officer of Defendant, MENDEZ and was responsible for his training, supervision and conduct. He was also responsible for enforcing the regulations of the DEPARTMENT and for ensuring that the police personnel of the DEPARTMENT obey the laws of the State of Florida and the United States of America. At all times relevant hereto, Defendant, MARTINEZ, was acting in such capacity as the official Head of the DEPARTMENT for Defendant CITY.

FACTUAL ALLEGATIONS

11. PLAINTIFF was a member of the United States Army and was honorably discharged on December 28, 1968. PLAINTIFF shortly thereafter began suffering from mental illness and was diagnosed by the Veterans Administrative Hospital as suffering from Chronic Schizophrenia and was declared incapacitated by the Veterans Administration. PLAINTIFF subsequently had a guardian appointed on his behalf to handle his affairs.

12. PLAINTIFF began living on the streets of CITY and came to be known as a one of the many homeless individuals with mental illness who lives on the streets of CITY.

13. On June 6, 2001 at approximately 4:00 am., PLAINTIFF, was in the vicinity of the Quarto Camino Cafeteria located at 1190 W. Flagler Street. PLAINTIFF was suffering a delusional episode and was allegedly causing a disturbance at the restaurant.

14. PLAINTIFF was well known by the management of Quarto Camino Cafeteria as being a homeless man who frequented the area and suffered from mental delusions.

15. The manager of the Quarto Camino Cafeteria called the police asking for their assistance to remove PLAINTIFF from the area.

16. City of Miami Police Officers responded to the area and noticed that PLAINTIFF was carrying a pocket knife in his hand and talking in an unintelligible fashion.

The responding officers referred to PLAINTIFF as a “Baker Act” indicating that PLAINTIFF was in obvious need of medical treatment. City of Miami Police Officers pulled along side PLAINTIFF who was walking north on twelfth avenue approaching N.W. 7th Street in the City of Miami.

17. City of Miami Police Officers began yelling loudly with their speakers for PLAINTIFF to cease his forward progress and to drop the knife. PLAINTIFF did not respond and City of Miami Police Officers continued to aggressively demand that PLAINTIFF discontinue his progress and drop the knife. City of Miami Police Officers then pepper sprayed PLAINTIFF. Supervisory police officers on the scene directed other officers to ram their police vehicles into PLAINTIFF as a means to prevent PLAINTIFF’S forward progress. PLAINTIFF only became increasingly frightened and agitated by the police officers continued use of force and inappropriate arrest techniques.

18. The DEPARTMENT had a Crisis Intervention Team (CIT) in place by which CIT officers are trained to deal with encounters with the mentally ill to prevent injury and potential death to the police officers and arrestees. There were no CIT officers for the CITY of Miami on Duty. The only such officer available had traded his shift time with another officer leaving no CIT officers available when the deadly encounter with PLAINTIFF ensued.

19. None of the City of Miami Police Officers on the scene were adequately trained to deal with the mentally ill. The Officers continued their aggressive tactics which, had they been trained, they would have known that their aggressive tactics only serve to frighten the mentally ill and escalate a situation that could be de-escalated by Officers that are appropriately trained and supervised.

20. PLAINTIFF continued to head north on 12th Avenue and approached the 836 over pass nearing the State Attorney’s Office and the Jackson Memorial Hospital and Medical complex. Up to this point PLAINTIFF had been sprayed with chemical agents, assaulted with police vehicles, and verbally assaulted which further served to heighten

PLAINTIFF'S dementia.

21. Once the procession reached the 836 overpass City of Miami Police Officer John Fernandez got behind PLAINTIFF and struck PLAINTIFF'S hand which held the pocket knife with his ASP. PLAINTIFF responded to the pain by turning in the direction of Officer Fernandez.

22. At this time MENDEZ fired two rounds into the chest area of Mr. Beatty. After a pause in gun fire Officer Mendez continued to fire numerous rounds totaling an additional fifteen rounds at the person of Mr. Beatty causing Mr. Beatty to collapse and die in the street.

ADDITIONAL FACTS AGAINST CITY

23. According to the Department of Children and Families the City of Miami has more mentally disturbed people living on the streets than any city in America.

24. DEPARTMENT has long been on notice of the fact that there is a high probability that City of Miami Police Officers will come into contact with the mentally ill during their patrolling duty.

25. The DEPARTMENT was warned by the Miami-Dade County Courts who are charged with dealing with the mentally ill once they come in contact with the Criminal Justice System, that specific training was needed in order for Police Departments to effectively deal with the mentally ill they came in contact with to prevent injuries and potential death to mentally ill subjects and to officers. Dade County Judge Steven Liefman placed the city on notice of this need for more effective and specialized training of officers to deal with the mentally ill. Judge Liefman approached the City of Miami Police Department and requested that they create a Crisis Intervention Team of police officers. The Crisis Intervention Team is based on a model started by the Memphis Police Department in 1988 which trains officers of the Police Department to specifically deal with encounters with the mentally ill to prevent injury to the police officer and potential death to the

arrestees.

26. Due to the urging of the County Courts the DEPARTMENT had begun training CIT officers. However, there was no sense of urgency by CITY and there were insufficient numbers of trained CIT officers prior to June 6, 2001.

27. Thus, prior to June 6, 2001, though CITY was on notice that additional training was needed DEPARTMENT did not adequately train or staff the department with a sufficient number of qualified CIT Officers to respond to mental health encounters. This was true even though a number of mentally ill shootings had occurred prior to June 6, 2001. For instance:

- a. IN RE: Inquest Into the Death of Antionio Coloma No. 18159 Miami-Dade County, Florida. Mr. Coloma was shot and killed by Officer Cesar Alas of the City of Miami on September 11, 2000. Mr. Coloma was a well known mentally disturbed individual and was ordered to be taken into custody pursuant to a Court order that Mr. Coloma be involuntarily sent to a treatment center for assessment and stabilization. During arrest Officer Alas shot and killed Mr. Coloma.
- b. IN RE: Inquest Into the Death of William Garcia No. 18158 on May 14, 2000. Mr. William Garcia a mentally disturbed individual was said to be armed with a weapon by neighbors. The Responding police officers found many dead animals in the vicinity and a Sargent Pedro Vasquez saw Mr. Garcia in his backyard armed with a weapon and shot and killed Mr. Garcia.

28. These recent shootings of other mentally ill individuals as well as other numerous contacts between City of Miami Police Officers and mentally ill suspects, placed the city on notice that there is a need for specific training of officers to deal with the mentally ill, and to adequately supervise officers who come in contact with the mentally ill. Further the number of Officer encounters with the mentally ill demonstrate a need to develop strategies, policies, procedures and practices that would allow such encounters to end in

arrest and transportation to mental health facilities rather than the death of the mentally ill subject.

29. City of Miami Police Officers were not armed with sufficient non-lethal use of force equipment to deal with the mentally ill. City of Miami Police Officers are faced with the choice of either using pepper spray or deadly force by the use of their firearms. Other technical non deadly weapons such as beanbags, OC foam, tazers and other weapons that would serve to incapacitate mentally ill subjects were rejected by the City of Miami Police Department leaving DEPARTMENT officers with the choice of OC spray (pepper spray) or deadly force with no alternatives in between.

30. In fact on June 6, 2001 there were no CIT officers for the City of Miami on Duty. The only such officer available had traded his shift time with another officer leaving no CIT officers available when the deadly encounter with PLAINTIFF ensued.

31. CITY knew that it was necessary to have trained CIT officers on duty at all times. The DEPARTMENTS own policy required responding officers to summon CIT officers to the scene whenever the mentally ill was encountered. On June 6, 2001 CITY policy was not followed and PLAINTIFF was killed by City of Miami Police Officers who were not adequately trained or adequately supervised to deal with the mentally ill.

32. As a direct and proximate result of the acts of Defendants, CITY, MARTINEZ and MENDEZ, PLAINTIFF suffered the following injuries and damages:

- a. Violation of his constitutional rights under the Fourth Amendment to the United States Constitution to be free from an unreasonable search and seizures of his person;
- b. Violation of the Fourteenth Amendment substantive due process right;
- c. Loss of life;
- d. Severe physical injury causing pain and suffering.

33. The actions of Defendants, CITY, MARTINEZ and MENDEZ, violated the following clearly established and well-settled federal constitutional rights of PLAINTIFF:

- a. Freedom from an unreasonable search and seizure;
- b. Freedom from the use of excessive, unreasonable and unjustified force against his person; and
- c. Equal Protection under the law;
- d. Violation of the Americans with Disability Act;
- e. Substantive Due Process.

COUNT I

(Violation of Civil Rights While Acting Under The Color of Law 42 U.S.C. § 1983 - Against CITY)

34. PLAINTIFF repeat and realleges Paragraph 1 through 33, and incorporates them by reference herein.

35. This cause of action is brought by PLAINTIFF, against Defendant, CITY, for deprivation by its agents, servants, or employees, of constitutional rights within the meaning of 42 U.S.C. § 1983.

36. Defendant, MENDEZ, while acting under the color of law, as an authorized agent of Defendant, CITY, while arresting PLAINTIFF in the furtherance of his duties caused a constitutional deprivation of PLAINTIFF namely the unreasonable seizure of PLAINTIFF resulting in his death.

37. Defendant CITY violated PLAINTIFF'S Fourteenth amendment substantive due process right by failing to train and staff sufficient numbers of CIT officers to respond to mental health encounters.

38. The constitutional deprivation was caused by Defendant, CITY's lack of training and supervision in regards to police officers having the ability to appropriately interact with the mentally ill without causing the deprivation of constitutional rights.

39. The aforementioned actions were not isolated incidents. Defendant, CITY, has a history of City of Miami Police Officers causing death or physical injury upon the mentally ill due to the lack of training and knowledge regarding interacting with mentally ill subjects.

40. Prior to the date of the incident, Defendant, CITY and Defendant, MARTINEZ, permitted and tolerated the continued constitutional violations by use of excessive and deadly force against mentally disturbed individuals by officers who were not prepared, trained, or supervised to appropriately deal with the mentally ill. This continued lack of training supervision and oversight caused the death of PLAINTIFF.

41. The above - described action of Defendant, MENDEZ, the policies of Defendant, CITY, and the practices of Defendant, MARTINEZ, violated PLAINTIFF'S constitutional rights by resulting in unreasonable search and seizures culminating in the death of PLAINTIFF.

42. As a direct and proximate result of the above-mentioned unconstitutional acts of Defendants, MARTINEZ and MENDEZ, while agents, servants or employees of Defendant, CITY, caused PLAINTIFF to sustain severe physical injury resulting in his death.

COUNT II

(Violation of Civil Rights While Acting Under The Color of Law 42 U.S.C. § 1983 - Against Defendant MARTINEZ Individually)

43. PLAINTIFF repeats and realleges Paragraph 1 through 33, and incorporates them by reference herein.

44. This cause of action is brought by PLAINTIFF, KIMBERLY DUFF as personal representative for the Estate of RICHARD BEATTY, against Defendant, MARTINEZ, for deprivation of constitutional rights within the meaning of 42 U.S.C. § 1983.

45. Defendant MARTINEZ violated PLAINTIFF'S Fourteenth amendment substantive due process right by failing to train and staff sufficient numbers of CIT officers to respond to mental health encounters.

46. Defendant MARTINEZ is the Chief of Police for the City of Miami and as such is responsible for the implementation and promulgation of official policies for the

DEPARTMENT. Further, MARTINEZ is responsible for the promulgation of policies and the implementation of training to maintain an effective police force that is capable and prepared to deal with encounters with the mentally ill.

47. MARTINEZ, was deliberately indifferent to his responsibility to adequately prepare his police department to be able to arrest and detain mentally ill individuals without injury to the responding police officer as well as to the mentally ill subjects sought to be arrested or detained.

48. As such MARTINEZ is charged with the responsibility of ensuring the adequate training of officers that will encounter mentally ill individuals. Further, MARTINEZ knew or should have known due to the large numbers of mentally ill individuals in CITY that his officers would encounter mentally ill subjects on a common basis and that these Officers would need supervising officers capable of properly advising responding Officers of the appropriate methods for the detention and arrest of the mentally ill.

49. MARTINEZ is charged to properly equip officers with the needed nondeadly force technologies available that would allow officers to maintain their own safety and be able to subdue mentally ill subjects without causing their deaths.

50. MARTINEZ was informed by the Miami-Dade County Courts that the need for more and better training and effective utilization of his police force in regards to encounters with the mentally ill was necessary in order to ensure that the mentally ill would be arrested safely and that needless deaths would not occur.

51. MARTINEZ was deliberately indifferent to his charge from the Dade County Courts to create an effective Crisis Intervention Team of police officers that could respond to the scene of mentally ill encounters to prevent deaths and serious bodily harm.

52. Due to the lack of seriousness of Chief Martinez to engage a well trained CIT force in sufficient numbers to respond appropriately within the City of Miami, on June 6, 2001, there were no CIT officers available. Thus, the actions taken by the Officers on the scene were inadequate for this specific situation due to inadequately trained unsupervised

officers to deal with a mentally ill subject. All the actions taken at the scene in an attempt to subdue PLAINTIFF were contrary to established police methods for subduing the mentally ill and as such caused the Officers on the scene to believe that they had no other option but to use deadly force on PLAINTIFF. In fact, had properly trained and supervised Officers been on the scene deadly force would not have been used on June 6, 2001.

53. Thus, at the scene of PLAINTIFF's encounter there were no sufficiently trained officers available to deal with the arrest of PLAINTIFF. Every action taken by the insufficiently trained police officers was inappropriate to the situation and caused the encounter to be escalated. Further, the officers did not have the appropriate equipment to subdue PLAINTIFF other than by the use of deadly force.

54. The supervising officers that responded to the scene also were insufficiently trained and could not properly supervise the situation and took actions and gave directives to patrol officers that caused the situation to escalate resulting in the death of PLAINTIFF.

55. All the above reference failures are the responsibility of MARTINEZ who was deliberately indifferent to his responsibility to train, supervise and properly arm City of Miami Police Officers to deal with a recurring situation with the mentally ill all of which caused the death of PLAINTIFF.

56. As a direct and proximate result of the above mentioned unconstitutional actions of Defendant, MARTINEZ, PLAINTIFF sustained severe physical injury causing pain and suffering and his eventual death.

COUNT III

(Violation of Civil Rights While Acting Under the Color of Law 42 U.S.C. § 1983 Against Defendant MENDEZ, Individually)

57. PLAINTIFF repeats and realleges Paragraphs 1 through 33, and incorporates them by reference herein.

58. This cause of action is brought by PLAINTIFF against Defendant MENDEZ for his willful, wanton and malicious use of excessive force under the Color of Law that deprived PLAINTIFF of constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution.

59. Defendant MENDEZ violated 42 U.S.C. § 1983 by discharging his firearm into the person of PLAINTIFF in a manner that was disproportionate to the force necessary to arrest PLAINTIFF to the point where MENDEZ fired approximately 17 shots at PLAINTIFF hitting the person of PLAINTIFF thirteen times until he caused the unnecessary death of PLAINTIFF.

60. As a direct and proximate consequence of the unconstitutional act of Defendant MENDEZ, PLAINTIFF sustained severe physical injury, pain and suffering resulting in PLAINTIFF'S death.

61. Defendant MENDEZ while acting in his capacity as police officer and under Color of Law willfully, intentionally and maliciously used excessive force to arrest PLAINTIFF who had a pocket knife in his possession and posed no real threat of serious injury or bodily harm to officers at the time of the shooting.

62. The intentional, willful and wanton act of Defendant MENDEZ establishes a claim for punitive damages by PLAINTIFF against Defendant MENDEZ.

COUNT IV

(Wrongful Death Against Defendant City)

63. PLAINTIFF repeats and realleges Paragraph 1 through 33, and incorporates them by reference herein.

64. Defendant CITY was negligent or otherwise failed to meet its duties, non-delegable and otherwise, which it owed to PLAINTIFF, in that CITY and/or their real and/or apparent agents, did or failed to do one or more of the following acts of omission or commission any or all of which were departures from the prevailing standard of care;

- a. CITY failed to properly train City of Miami Police Officers to detain and arrest the mentally ill;
- b. CITY failed to properly supervise City of Miami Police Officers who did encounter or attempt to arrest and detain mentally ill subjects;
- c. CITY failed to properly equip City of Miami Police Officers with the essential non deadly force weapons to subdue mentally ill subjects without deadly force;
- d. CITY was indifferent to the fact of a number of encounters by the City of Miami Police Officers with the mentally ill which should give rise to appropriate training and supervision and preparation for said encounters;
- e. CITY failed to properly provide sufficient numbers of adequately trained officers who would be on duty at all times to deal with police encounters with the mentally ill.

65. At all times material hereto the Defendant CITY knew or should have known that its failure to provide adequate training and supervision to City of Miami Police Officers on the arrest and detention of mentally ill subjects would result in serious injury and/or death to mentally ill subjects.

66. As a direct and proximate result of CITY'S breach of the aforementioned duties the PLAINTIFF died on June 6, 2001 and the PLAINTIFF and survivor herein have suffered damages as specifically set forth below:

- a. The estate of RAUL Beatty, deceased, sustained economic losses in the form of funeral bills;
- b. loss of perspective net accumulations.

67. The actions of MENDEZ did arouse fear in the person of PLAINTIFF. The aforementioned wrongful death was accomplished without the consent and against the will of PLAINTIFF.

68. Defendant CITY is vicariously liable for the tortious acts of its employee that

were committed within the scope and furthermore of their employment.

69. As a direct and proximate consequence of the acts of CITY through its' employee, MENDEZ, PLAINTIFF sustained severe physical injury causing pain and suffering and his eventual death.

70. PLAINTIFF has complied with the notice provisions of Florida Statute 768.28 which is a condition precedent to the filing of a state tort against CITY.

COUNT V

(Assault and Battery Against Defendant CITY)

71. PLAINTIFF repeats and realleges Paragraph 1 through 33, and incorporates them by reference herein.

72. Defendant CITY through its employee, MENDEZ, intentionally caused bodily harm to PLAINTIFF by causing numerous bullets to be released into the body of PLAINTIFF.

73. The actions of MENDEZ did arouse fear in the person of PLAINTIFF. The aforementioned assault and battery was accomplished without the consent and against the will of PLAINTIFF.

74. PLAINTIFF has complied with the notice provisions of the Florida Statutes 768.28 which is a condition precedent to the filing of a state tort against the city.

75. Defendant CITY is vicariously liable for the tortious acts of its employee that were committed within the scope and furthurance of his employment.

76. As a direct and proximate consequence of the acts of the CITY through its' employee, MENDEZ, PLAINTIFF sustained severe physical injury causing pain, suffering and death.

COUNT VI

(Title II Of The ADA Against Defendant CITY)

77. PLAINTIFF repeats and realleges Paragraph 1 through 33, and incorporates them by reference herein.

78. Title II of the ADA prohibits any local government or department thereof from denying the benefits of their services, programs or activities to any persons with a disability, or discriminating against any person with a disability. 42 U.S.C. § 12132.

79. Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such a disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” PLAINTIFF had a disability within the meaning and purview of Title II of the ADA. 42 U.S.C. § 12132(1).

80. Defendant CITY is public entity within the meaning and purview of the Title II of the ADA. 42 U.S.C. § 12132(1).

81. CITY under Title II is required to train its police officers to recognize circumstances that would lead them to identify subjects that suffer from mental illness, and to investigate and arrest such persons in a manner reasonably accommodating their disability.

82. Defendant MARTINEZ and MENDEZ are agents of such entities.

83. CITY violated PLAINTIFF’S federally guaranteed right to be free from discrimination on the basis of disability by failing to make reasonable modifications to their policies, practices and procedures to ensure that his needs as an individual with a disability would be met.

84. CITY further violated the rights of PLAINTIFF, *inter alia*, by acting and failing to act as averred in Counts I IV and V, above.

85. PLAINTIFF suffered the harm and damages averred hereinabove as a result of said violations of rights.

WHEREFORE, PLAINTIFF respectfully requests this Court to award:

(a) Compensatory damages;

- (b) Punitive damages sufficient to punish Defendant, MENDEZ in count I;
- (c) Reasonable attorney's fees and costs as provided by 42 U.S.C. § 1988 and 42 U.S.C. 12205;
- (d) Perspective net accumulations to the estate;
- (e) Any other such alternative and additional relief that appears to the Court to be equitable and just;
- (f) Funeral expenses;
- (g) PLAINTIFF demands a trial by jury.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amended Complaint was served by fax to the City Attorney's Office, City of Miami, Charles Mays, Esq., 444 S.W. 2nd Avenue, 9th floor, Miami Florida, 33130 this 7th day of January 2003..