

ORIGINAL

IN THE CIRCUIT COURT OF THE
FIFTEENTH CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

SERGIO LOPEZ, as Personal
Representative of the Estate of MARINO
SARBELIO RAMOS, deceased,

CASE NO.:

Plaintiff,

50 2009 CA 04221 4 2009

vs.

RIC BRADSHAW, as Sheriff of Palm
Beach County; and the Estate of SAMUEL
PEIXOTO,

AB

Defendants.

FILED
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CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 4

COMPLAINT

The Plaintiff, SERGIO LOPEZ (LOPEZ), as Personal Representative of the Estate of MARINO SARBELIO RAMOS, deceased (RAMOS), sues the Defendant, RIC BRADSHAW, in his official capacity as Sheriff of Palm Beach County (SHERIFF), and the Estate of SAMUEL PEIXOTO, deceased, and alleges:

ALLEGATIONS COMMON TO ALL COUNTS

1. This is an action for damages which exceed the sum of Fifteen Thousand Dollars (\$15,000.00).
2. At all times material hereto, the decedent, RAMOS, was married to Mirta Martinez Perez de Ramos and they were husband and wife.
3. At all times material hereto, LOPEZ, has been designated the Personal Representative of the Estate of MARINO SARBELIO RAMOS.

4. At all times material hereto, Defendant, RIC BRADSHAW, Sheriff of Palm Beach County was acting in his official capacity as Sheriff of Palm Beach County.

5. The Defendant, SHERIFF, was responsible for the acts of his agents and/or employee Sheriff's Office personnel, including all police officers and any other Sheriff's Office personnel.

6. The SHERIFF owed RAMOS a reasonable duty of care to ensure his safety and to persons encountering Sheriff's Office police officers and personnel.

7. Defendant, SAMUEL PEIXOTO, deceased, at all material times to this action, was employed by Palm Beach County Sheriff's Office as a deputy and acting in the scope of his employment with Defendant, SHERIFF, under color of state law.

8. At all times material hereto, all actions or inactions which forms the basis of this complaint occurred in Palm Beach County, Florida.

9. Venue is proper in Palm Beach County, Florida.

At all times material hereto, Plaintiff has complied with all conditions precedent to filing this litigation; specifically complying with Florida Statute §768.28. Six (6) months have expired since these notices were sent, and there has been no response relative to any notice.

11. Defendant, SHERIFF, is and was the duly elected Sheriff of Palm Beach County, Florida, in as such is responsible for lawfully operating the Palm Beach Sheriff's Office at all times.

12. In the early morning hours of March 15, 2008, SAMUEL PEIXOTO, acting within the course and scope of his duties as a Police Officer, made a routine traffic stop of a van driven by Asuncion Cabrera near the intersection of Forrest Hill Boulevard and 61st Avenue in West Palm Beach, Florida.

13. SAMUEL PEIXOTO arrested Mr. Cabrera, placed him in the back of his patrol car,

and returned to the van to question the front seat passenger, Mr. RAMOS.

14. At the time SAMUEL PEIXOTO approached the van to question Mr. RAMOS, he was sleeping.

15. SAMUEL PEIXOTO shot the sleeping Mr. RAMOS seven (7) times while he was seated in the front seat with the door closed, and SAMUEL PEIXOTO was standing outside of the vehicle.

16. Mr. RAMOS died at the scene from a gun shot wound to the head.

17. SAMUEL PEIXOTO initially claimed that Mr. RAMOS had stabbed him in the left arm five times with a knife, thereby prompting SAMUEL PEIXOTO to draw his firearm in purported "self-defense" and shoot Mr. RAMOS about the arms, torso and head.

18. However, an Internal Affairs investigation conducted by the Palm Beach County Sheriff's Office revealed that the minor puncture wounds to SAMUEL PEIXOTO's left arm were most likely self-inflicted. There were also notable holes and inconsistencies in SAMUEL PEIXOTO's version of the events.

19. Of special concern, was the fact that SAMUEL PEIXOTO had delayed in reporting the shooting. Moreover, the "butterfly" knife that SAMUEL PEIXOTO claims that he was stabbed with, and that was found in the interior of the van, was dusted for fingerprints, revealing only the fingerprints of SAMUEL PEIXOTO himself.

20. The Internal Affairs investigation concluded that SAMUEL PEIXOTO had violated both Palm Beach Sheriff's Office Rule and Regulation IX(51) (unlawful use of deadly force), as well as Rule and Regulation (VIII)(6) (commission of a felony: Fla. Stat. Secs. 782.07 and 918.13).

21. Thereafter, the case was referred to the Palm Beach County State Attorney's Office

to convene a grand jury for purposes of indicting SAMUEL PEIXOTO on charges of manslaughter and tampering with and/or fabricating evidence.

22. On March 20, 2008, SAMUEL PEIXOTO was referred for a psychological evaluation and determined to psychologically unstable.

23. A month later, on April 23, 2008, before a grand jury was convened, SAMUEL PEIXOTO set fire to his own house and car, and committed suicide by shooting himself in the head.

24. There was no basis upon which SAMUEL PEIXOTO shot RAMOS: deputy PEIXOTO acted wantonly, willfully, recklessly, negligently and in gross disregard for his duty to protect and serve the community.

25. Prior to Mr. RAMOS's death, the Defendant, SHERIFF, knew or should have known that SAMUEL PEIXOTO was a risk and posed a serious concern to public safety based on PEIXOTO's lack of psychological fitness to carry out his duties as a police officer.

26. Specifically, Defendant, SHERIFF, knew that just four months prior to this incident, on November 5, 2007, SAMUEL PEIXOTO had been involved in another incident involving the unlawful use of deadly force.

27. On said date, SAMUEL PEIXOTO had responded to the scene of a suspected burglary at a plant nursery during the nighttime hours. After arriving on the scene, SAMUEL PEIXOTO claimed he heard the noise of branches breaking in a dense wooded area adjacent to the plant nursery, and claimed he observed a mussel flash. Without having observed any suspects in the wooded area, SAMUEL PEIXOTO discharged his firearm twelve times.

28. Specifically, SAMUEL PEIXOTO fired his weapon four times into the wooded area, repositioned himself some distance away, and then fired an additional eight times into the wooded

area. According to the Palm Beach County Sheriff's Office internal investigation, SAMUEL PEIXOTO never observed his target/suspects in the wooded area, and admitted that the imminent threat and danger had diminished by the time he discharged his firearm for the second round of shots.

29. In fact, no one ever corroborated SAMUEL PEIXOTO's claim that there was a mussel flash. Moreover, even after the unarmed suspects were apprehended and a thorough search made of the wooded area, no firearms, empty shell casings or ammunition were ever located.

30. In addition, in violation of Palm Beach Sheriff's Office Rule and Regulation VII (21A), SAMUEL PEIXOTO waited over two (2) hours from the time of the shooting to notify any supervisor.

31. As a result of the November 5, 2007 incident, the Internal Affairs investigation concluded that SAMUEL PEIXOTO had violated Palm Beach Sheriff's Office Rule and Regulation IX(53) (Violation of Laws, Policies or Rules & Regulations relating to the Office of the Sheriff, to wit: General Order 500.00--Use of Deadly Force) and Rule & Regulation VII(21A). However, this Internal Investigation inquiry was not completed until May 1, 2008 (approximately six (6) weeks after the RAMOS shooting and six (6) months after the shooting at the plant nursery).

32. Yet, between the time of the November 5, 2007 plant nursery shooting and the March 15, 2008 RAMOS homicide, the SHERIFF simply placed SAMUEL PEIXOTO on Administrative Leave for a few days, followed by a week of Alternative Duty Status.

33. Thereafter, Defendant, SHERIFF, returned SAMUEL PEIXOTO to full duty without any additional direct monitoring and supervision.

34. Defendant, SHERIFF, failed to refer SAMUEL PEIXOTO for additional training and education or psychological screening, evaluation, monitoring or testing.

35. Further, Defendant, SHERIFF, failed to ensure that SAMUEL PEIXOTO qualified for the new service weapon that was involved in the RAMOS shooting (as the service weapon he had originally qualified with was in the evidence room of the Sheriff's Office pending the outcome of the November 7, 2007 investigation).

36. Just eighteen (18) months after SAMUEL PEIXOTO had taken an oath as a Palm Beach County Sheriff's Office deputy to "support, protect and defend the Constitution and Government of the United States and The State of Florida," he had already demonstrated a clear propensity for deadly violence and mental illness, which Defendant, SHERIFF, should have investigated, addressed and muted.

37. As additional evidence of SAMUEL PEIXOTO's unfitness to serve as a police officer, Defendant SHERIFF, knew or should have known about SAMUEL PEIXOTO's family history of mental illness and violence.

38. Specifically, SAMUEL PEIXOTO's brother, Helder "Sonny" Peixoto, a former police officer with the Massachusetts Bay Transportation Authority, Transit Police Department, had disgracefully left the Department in 2003 and had been treated for depression thereafter.

39. Sonny Peixoto relocated to West Palm Beach, Florida and made national headlines when in May 30, 2007 he committed suicide by leaping from the eleventh floor of a West Palm Beach condominium building after apparently bludgeoning his estranged ex-girlfriend to death with a hammer.

40. Certainly, Defendant, SHERIFF, knew or should have known of this incident as this murder/suicide resulted in a Palm Beach Sheriff's Office investigation, and SAMUEL PEIXOTO's personnel file with the Sheriff's Office contained correspondence from Sonny Peixoto.

41. To further compound the SHERIFF's lack of diligence in ensuring the members of his police force were of sound mind, local news coverage of the Sonny Peixoto incident in June 2007 made reference to the father of Sonny and SAMUEL PEIXOTO, reported to have had a history of mental illness, including an institutionalization for schizophrenia.

42. Despite a clear suggestion of having a family history of mental illness after the incident involving Sonny Peixoto, the Defendant, SHERIFF, failed to make a proper investigation into SAMUEL PEIXOTO's mental health status or refer SAMUEL PEIXOTO for additional psychological screening, evaluation, monitoring or testing.

43. The following are survivors, as declared under the Florida Wrongful Death Act, Florida Statute 768.16-768.27 (2000):

- a. Mirta Martinez Perez de Ramos—surviving spouse;
- b. Miriam Arelys Ramos Martinez—surviving minor daughter (16 years old);
- c. Edgar Marino Ramos Martinez—surviving minor son (14 years old);
- d. Antonia Elizabeth Ramos Martinez—surviving minor daughter (9 years old);
- e. Arlet Sarai Ramos Martinez—surviving minor daughter (7 years old); and
- b. Sergio Ramos, as Personal Representative of the Estate of Marino Sarbelio Ramos, deceased.

44. Pursuant to Fla. Stat. 768.21, damages of the survivors and the estate are the following:

- a. Mirta Martinez Perez de Ramos has lost her husband's support, services, companionship, and protection and has incurred mental pain and suffering. All of these damages have been incurred in the past and will continue to be incurred in the future.

- b. Miriam Arelys Ramos Martinez has lost the support, services, parental companionship, instruction and guidance of her father and has incurred mental pain and suffering. All of these damages have been incurred in the past and will continue to be incurred in the future.
- c. Edgar Marino Ramos Martinez has lost the support, services, parental companionship, instruction and guidance of his father and has incurred mental pain and suffering. All of these damages have been incurred in the past and will continue to be incurred in the future.
- d. Antonia Elizabeth Ramos Martinez has lost the support, services, parental companionship, instruction and guidance of her father and has incurred mental pain and suffering. All of these damages have been incurred in the past and will continue to be incurred in the future.
- e. Arlet Sarai Ramos Martinez has lost the support, services, parental companionship, instruction and guidance of her father and has incurred mental pain and suffering. All of these damages have been incurred in the past and will continue to be incurred in the future.
- f. Sergio Lopez, as Personal Representative of the Estate of Marino Sarbelio Ramos, deceased, lost perspective net accumulations of the estate and has incurred medical expenses and/or funeral bills.

COUNT I - WRONGFUL DEATH CLAIM AGAINST DEFENDANT, RIC BRADSHAW, IN HIS OFFICIAL CAPACITY AS SHERIFF OF PALM BEACH COUNTY

45. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1-44, inclusive, as if fully herein.

46. Defendant, SAMUEL PEIXOTO, acted negligently and/or in a reckless manner with deliberate disregard for the health and safety of RAMOS.

47. As a direct and proximate cause of SAMUEL PEIXOTO's conduct, for which the SHERIFF in his official capacity is liable, RAMOS was fatally injured.

WHEREFORE, Plaintiff, SERGIO LOPEZ, as Personal Representative of the Estate of MARINO SARBELIO RAMOS, deceased, demand judgment for damages against the Defendant.

SHERIFF, plus taxable costs, and any other relief provided by law and deemed appropriate and further demands trial by jury.

COUNT II - COMMON LAW NEGLIGENCE CLAIM AGAINST DEFENDANT, RIC BRADSHAW, IN HIS OFFICIAL CAPACITY AS SHERIFF OF PALM BEACH COUNTY

48. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1-44, inclusive, as if fully herein.

49. Defendant, SAMUEL PEIXOTO, had a duty to exercise reasonable care toward members of the public, specifically Plaintiff, RAMOS.

50. Defendant, SAMUEL PEIXOTO, breached his duty by negligently and carelessly firing his gun at RAMOS.

51. As a direct and proximate result of SAMUEL PEIXOTO's negligence, which is imputed to SHERIFF in his official capacity by operation of law, Plaintiff, RAMOS, was fatally injured.

WHEREFORE, Plaintiff, SERGIO LOPEZ, as Personal Representative of the Estate of MARINO SARBELIO RAMOS, deceased, demand judgment for damages against the Defendant, SHERIFF, plus taxable costs, and any other relief provided by law and deemed appropriate and further demands trial by jury.

COUNT III - NEGLIGENT HIRING, TRAINING, RETENTION & SUPERVISION

52. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1-44, inclusive, as if fully herein.

53. Defendant, SHERIFF, in his official capacity, negligently hired, trained, supervised, and/or retrained Defendant, SAMUEL PEIXOTO.

54. Defendant, SHERIFF, was negligent in causing and/or contributing to the death of RAMOS in one or more of the following ways:

- a. Negligently failing to provide adequate training for police officers, including Defendant, SAMUEL PEIXOTO;
- b. Negligently failing to require a policy or enforce a policy requiring psychological screening, evaluation, monitoring and testing of police officers, including with Defendant, SAMUEL PEIXOTO;
- c. Negligently failing to investigate and evaluate SAMUEL PEIXOTO's family history of mental illness;
- d. Negligently failing to remediate, retrain, and/or remove SAMUEL PEIXOTO from the police force after the November 7, 2007 incident;
- e. Negligently failing to investigate and evaluate SAMUEL PEIXOTO's mental fitness to serve as a police officer;
- f. Negligently failing to require SAMUEL PEIXOTO to undergo additional training and receive supervision after the November 7, 2007 incident;
- g. Negligently failing to properly train and instruct deputies in the use of deadly force, including Defendant, SAMUEL PEIXOTO;
- h. Negligently failing to require a policy or enforce a policy requiring family mental history background checks for police officers, including with Defendant, SAMUEL PEIXOTO;
- i. Negligently failing to require SAMUEL PEIXOTO to qualify for the service weapon used in the RAMOS shooting;
- j. Negligently failing to discipline offending police officers;
- k. Negligently failing to adequately hire, screen, train, supervise, reprimand, and/or discipline police officers by retaining personnel when said personnel were not appropriately performing their duties;
- l. Negligently failing to establish and/or implement or enforce procedures to adequately screen police officers for psychological issues and mental illness;
- m. Negligently failing to exercise reasonable care under all of the relevant

surrounding circumstances;

55. As a direct and proximate result of the aforementioned negligence, RAMOS, suffered fatal injuries.

WHEREFORE, Plaintiff, SERGIO LOPEZ, as Personal Representative of the Estate of MARINO SARBELIO RAMOS, deceased, demand judgment for damages against the Defendant, SHERIFF, plus taxable costs, and any other relief provided by law and deemed appropriate and further demands trial by jury.

**COUNT IV - 42 U.S.C. Sec. 1983 CLAIM AGAINST SHERIFF, RIC BRADSHAW,
IN HIS OFFICIAL CAPACITY**

56. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1-44, inclusive, as if fully herein.

57. Defendant, SHERIFF, while acting under the color of state law, operated to violate RAMOS's rights under the Fourth and Fourteenth Amendments to the Constitution of the United States of America, and RAMOS's was deprived of his constitutionally guaranteed rights to life and liberty.

58. Defendant, SHERIFF, in his official capacity as Sheriff of Palm Beach County, caused violations of RAMOS's constitutionally guaranteed rights in one or more of the following ways:

- a. Failing to properly train, supervise and discipline Defendant, SAMUEL PEIXOTO, wherein Defendant, SHERIFF, demonstrated a deliberate indifference for RAMOS's constitutional rights as SHERIFF knew or should have known that SAMUEL PEIXOTO required additional training, supervision and/or discipline, and that SHERIFF's failure in this regard would likely result in constitutional rights violations;

- b. Failing to enact sufficient policies and procedures to prevent the use of excessive force by Defendant, SAMUEL PEIXOTO;
- c. Allowing a custom and practice to exist within the Palm Beach County Sheriff's Office where Defendant, SAMUEL PEIXOTO, utilized excessive force without fear of a proper and timely investigation by Internal Affairs or adequate discipline for his conduct;
- d. Adopting policies and procedures that did not properly address the risk of constitutional violations, such as unlawful use of deadly force, which Defendant, SHERIFF, knew of should have been aware;
- e. Failing to properly investigate and discipline Defendant, SAMUEL PEIXOTO, in connection with prior incidents that made it obvious to Defendant, SHERIFF, that SAMUEL PEIXOTO required more training, education and/or discipline;
- f. Encouraging, approving and/or reassuring the use of excessive force by Defendant, SAMUEL PEIXOTO, by permitting him to continue his employment as a police officer and carry a firearm, when Defendant, SHERIFF, knew or should have known that SAMUEL PEIXOTO had a history of excessive force, was not psychologically fit to serve as a police officer and had a callous indifference to the rights of others;
- g. Adopting policies and procedures that did not properly address the hiring of police officers with mental health issues or at high risk for mental health issues, whose employment posed a risk of constitutional violations, such as unlawful use of deadly force, which Defendant, SHERIFF, knew or should have been aware;
- h. Failing to properly investigate Defendant, SAMUEL PEIXOTO, in connection with prior incidents that made it obvious to Defendant, SHERIFF, that SAMUEL PEIXOTO required additional psychological screening and evaluation;

59. These violations were of a type and character as to which any reasonable person would be aware. All such claims are applicable to Defendant, SHERIFF, under the Fourteenth Amendment.

60. Defendant, SHERIFF, further operated to violate decedent's civil rights as protected by The Civil Rights Act, 42 U.S.C. Sec. 1983.

61. As a direct and proximate result of the unlawful conduct of the Defendant, SHERIFF, as aforesaid, RAMOS was deprived of his civil rights and suffered fatal injuries thereof.

62. The aforesaid acts of Defendant, SHERIFF, were performed knowingly, intentionally, and maliciously, and/or were performed in a reckless manner with deliberate indifference to the health, safety and civil rights of RAMOS, by reason of which Plaintiff is entitled to punitive damages.

WHEREFORE, Plaintiff, SERGIO LOPEZ, as Personal Representative of the Estate of MARINO SARBELIO RAMOS, deceased, demands judgment for compensatory and punitive damages from the Defendant, SHERIFF, in his official capacity, plus attorneys fees and taxable costs, and any other relief provided by law, 42 U.S.C. Sec. 1988, and otherwise deemed appropriate and demands a trial by jury of all issues so triable.

COUNT V – WRONGFUL DEATH – PEIXOTO

63. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1-44, inclusive, as if fully herein.

64. Defendant, SAMUEL PEIXOTO, acted negligently and/or in a reckless manner with deliberate disregard for the health and safety of RAMOS.

65. As a direct and proximate cause of SAMUEL PEIXOTO's conduct, RAMOS was fatally injured.

WHEREFORE, Plaintiff, SERGIO LOPEZ, as Personal Representative of the Estate of MARINO SARBELIO RAMOS, deceased, demands judgment for compensatory damages from Defendant, Estate of SAMUEL PEIXOTO, individually, plus taxable costs, and any other relief

provided by law, and otherwise deemed appropriate and demands a trial by jury of all issues so triable.

COUNT VI - 42 U.S.C. SEC. 1983 CLAIM AGAINST SAMUEL PEIXOTO, IN HIS INDIVIDUAL CAPACITY

66. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1-44, inclusive, as if fully herein.

67. Defendant, SAMUEL PEIXOTO, operated to violate RAMOS's rights under the Fourth and Fourteenth Amendments to the Constitution of the United States of America, to wit, unlawful seizure and use of excessive force, and RAMOS's was deprived of his constitutionally guaranteed rights to life and liberty.

68. These violations were of a type and character as to which any reasonable person would be aware. All such claims are applicable to Defendant, SAMUEL PEIXOTO, under the Fourteenth Amendment.

69. Defendant, SAMUEL PEIXOTO, further operated to violate decedent's civil rights as protected by The Civil Rights Act, 42 U.S.C. Sec. 1983.

70. As a direct and proximate result of the unlawful conduct of the Defendant, SAMUEL PEIXOTO, as aforesaid, RAMOS was deprived of his civil rights and died as a result thereof.


71. The aforesaid acts of Defendant, SAMUEL PEIXOTO, were performed knowingly, intentionally, and maliciously, and/or were performed in a reckless manner with deliberate indifference to the health, safety and civil rights of RAMOS, by reason of which Plaintiff is entitled to punitive damages.

WHEREFORE, Plaintiff, SERGIO LOPEZ, as Personal Representative of the Estate of MARINO SARBELIO RAMOS, deceased, demands judgment for compensatory and punitive damages from the Defendant, Estate of SAMUEL PEIXOTO, individually, plus attorneys fees and taxable costs, and any other relief provided by law, 42 U.S.C. Sec. 1988, and otherwise deemed appropriate and demands a trial by jury of all issues so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to BRUCE W. JOLLY, ESQUIRE, Purdy, Jolly & Giuffreda, P.A., 1322 S.E. Third Avenue, Ft. Lauderdale, FL 33316 (Attorney for Defendant, RIC BRADSHAW); and MANUEL EPELBAUM, ESQUIRE, Dickman, Epelbaum & Dickman, Dickman Building, 4500 Je Jeune Road, Coral Gables, FL 33146 (Attorney for Plaintiffs) on this 18th day of December, 2009.

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