

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

MCKINLEY BEATY, SR, as Administrator of the
Estate of INDIA MERCEDES BEATY, deceased,

Plaintiff,

v.

Case No.: *CL18-226de*

THE CITY OF NORFOLK,
a municipal corporation,

Serve : Bernard A. Pishko, City Attorney
City of Norfolk
810 Union Street
Suite 900
Norfolk, Virginia 23510-2717

AND

BRANDON GOINS, as an employee
of the City of Norfolk, and individually,

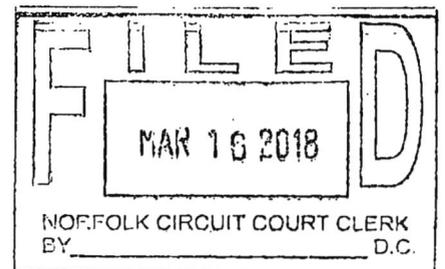
Serve: Brandon Goins
100 Brooke Avenue
Norfolk, Virginia 23510

AND

PAYTON WOSK, as employee
of the City of Norfolk, and individually,

Serve: Payton Wosk
100 Brooke Avenue
Norfolk, Virginia 23510

Defendants.



COMPLAINT

Plaintiff, MCKINLEY BEATY, SR., as Administrator of the Estate of India Mercedes Beaty, deceased, moves for judgment against defendants, City of Norfolk ("NORFOLK"), Brandon Goins ("GOINS"), and Payton Wosk ("WOSK"), pursuant to Section 8.01-50 of the Code of Virginia, 1950 as amended, both jointly and severally, on the grounds and in the amount set forth as follows:

1. Plaintiff qualified and was duly appointed Administrator of the Estate of India Mercedes Beaty, deceased, by the Circuit Court of the City of Norfolk, Virginia on the 15th day of March 2018.
2. Plaintiff duly filed and served Notice of Claim pursuant to Virginia Code Section 15.2-209, 1950, as amended upon NORFOLK on September 16, 2016 as required by statute.
3. NORFOLK is a municipal corporation, who is responsible for the operation and management of the Norfolk Police Department, to include the hiring, supervision, and training of its personnel. NORFOLK is vicariously liable for the conduct of its personnel while acting in the scope of their employment.
4. GOINS was a Norfolk Police Officer, employed by and acting in the scope of his employment at all times during the events described in this Complaint.
5. WOSK was a Norfolk Police Officer, employed by and acting in the scope of his employment at all times during the events described in this Complaint.
6. Venue is proper pursuant to Section 8.01-262(4), 1950, as amended, where the cause of action, or any part thereof, arose.

7. Defendants NORFOLK, GOINS and WOSK had a duty, at the time of this incident complained of, to use reasonable care to enforce the laws of the City of Norfolk, Virginia and the Commonwealth of Virginia within the policies and procedures established by the City of Norfolk.
8. Norfolk, Virginia Police Department Operational General Order -120: Use of Force ("G.O. OPR-120") establishes the guidelines concerning the use of force and its limitations, means of force sanctioned, prohibited activities, and reporting requirements.
9. The guidelines in G.O. OPR-120 state that "Only that force that is objectively reasonably necessary to successfully accomplish legitimate police functions is authorized. The use of any force by department personnel that exceeds that which is "objectively reasonable" will be considered excessive and will not be tolerated."
10. Section 1(D)(1) of G.O. OPR-120 defines the lowest level of resistance as "Passive Resistance" which is "a subject [who] physically refuses to comply or respond without attempting to physically defeat the officer's actions but forcing the officer to employ physical maneuvers to establish control."
11. Section 1(E)(1) of G.O. OPR-120 which defines the level of control that officers are allowed to use, indicates that "Low Level Force" is "[t]he level of control necessary to interact with a subject that is compliant, or displaying Passive or Active Resistance. This level of force is not intended to, and has a low probability of causing injury. Examples of Low Level Force range from voice commands to control holds and take downs."

12. Section 1(E)(3) of G.O. OPR-120, which defines and authorized the use of deadly force in certain circumstances, indicates that "Deadly force is that degree of force which is likely to produce death or serious bodily injury. Officers may use deadly force upon another person *only* when it is objectively reasonable under the following circumstances: (a) Imminent Danger: to defend and protect oneself or another when the officer reasonably believes that he or she or another person is in imminent danger of death or serious physical injury."
13. Section 2 of G.O. OPR-120, which defines de-escalation, states that "[s]afe de-escalation of the situation should be the ultimate goal of each officer responding to a potentially violent situation. When reasonable, considering the totality of the circumstances, officers should use all the information available to them at the time to evaluate the incident. The responding officers should assess the risks and coordinate the appropriate resources necessary to facilitate an outcome that involves the minimal objectively reasonable use of force while being mindful of the sanctity of life of all involved...."
14. Notwithstanding said duties, on March 19, 2016 at approximately 1:00 a.m., the decedent plaintiff, India Mercedes Beaty, and her passenger, Shaun Brown, entered the parking lot in the 9500 block of Shore Drive in Norfolk, when Mr. Brown saw an individual that he had previously known, Darnell Cunningham. Upon parking her vehicle, Ms. Beaty stayed in the car and Mr. Brown exited her vehicle and walked up to Mr. Cunningham to briefly speak to him. After a few minutes, Ms. Beaty exited her vehicle and approached Mr.

Brown and Mr. Cunningham. All three individuals spoke with each other briefly and Mr. Brown and Ms. Beaty walked back to Ms. Beaty's vehicle. Mr. Brown then exited the vehicle and walked back over to where Mr. Cunningham was standing and continued to converse with Mr. Cunningham. Ms. Beaty then exited her vehicle and walked back toward Mr. Brown and Mr. Cunningham. As Ms. Beaty came within several feet of Mr. Brown and Mr. Cunningham, GOINS and WOSK suddenly jumped out of a white unmarked van, with guns drawn, yelling "Police", "Get down of the ground." At this moment, Mr. Brown and Mr. Cunningham were facing GOINS and WOSK, and Ms. Beaty had her back to GOINS and WOSK. Mr. Brown and Mr. Cunningham, facing GOINS and WOSK, knelt down on the ground with their arms stretched out on front of them. Ms. Beaty, in shock by the surprise of individuals claiming to be the police, but not being able to see them or recognize them, attempted to turn around to her right to face them with her arms to her side, when she was then immediately shot five (5) times, all on her right side (right shoulder, right arm, right chest, right hip, and right thigh) by GOINS and WOSK. GOINS fired three (3) shots and WOSK fired two (2) shots. Ms. Beaty died instantly from the fatal gunshots fired by GOINS and WOSK.

15. At all times above, Ms. Beaty did not resist arrest or possess a weapon on her person, or make any gestures indicating that she possessed a weapon or would resist any attempt by GOINS or WOSK to peaceably arrest her.

16. All of the defendant's, by their conduct aforementioned, acted with that degree of negligence which shows such indifference to others as constitutes an utter disregard of prudence amounting to a complete neglect of the safety of Ms. Beaty, and were grossly negligent in that they:
- a. failed to give notice or adequate notice to Ms. Beaty of her opportunity to surrender, as is against their own policy, thus creating a dangerous situation;
 - b. failed to give Ms. Beaty a reasonable opportunity to peaceably surrender;
 - c. failed to de-escalate the situation to give Ms. Beaty a reasonable opportunity to surrender, thus creating a dangerous situation;
 - d. used excessive force when they fired their weapons upon Ms. Beaty when the most extreme life threatening circumstances did not exist, as is against their own policy.
17. As a direct and proximate cause of the defendants' gross negligence as aforesaid, Ms. Beaty received severe, violent, and fatal injuries which caused her death on March 19, 2016.
18. Plaintiff's decedent, India Mercedes Beaty, at the time of her death was 25 years old, and was in good health.
19. Plaintiff's decedent, India Mercedes Beaty, died intestate, survived by the following statutory beneficiaries:
1. McKinley Beaty, Sr., Father, 56 years old
 2. Sharon Overton, Mother, 56 years old

3. Albert Goodman, Brother, 36 years old
4. Amanda Davis, Sister, 30 years old
5. Juanita Davis, Sister, 28 years old
6. Kendra Beaty, Sister, 23 years old
7. Shia Beaty, Sister, 8 years old

20. Under Section 8.01-53 of the Code of Virginia, 1950, as amended, the above listed beneficiaries, as India Mercedes Beaty's surviving family members, are the sole beneficiaries entitled to receive any damages awarded in this suit as compensation for their losses set forth below. India Mercedes Beaty was unmarried on the date of her death and had no children.

21. The above listed beneficiaries have lost their natural daughter and sister and therefore have suffered substantial damage and losses, both pecuniary and otherwise, including but not limited to the following:

- a. Sorrow, mental anguish, and solace, including loss of society, companionship, comfort, guidance, kindly offices and advice of their natural daughter/sister;
- b. Loss of expected income of their daughter/sister; and
- c. Loss of the services, protection, care and assistance provided by their daughter/sister.

22. In accord with the foregoing, plaintiff on behalf of the Estate of India Mercedes Beaty and on behalf of her statutory beneficiaries claim damages against defendants as follows:

(a) Compensatory Damages

- | | | |
|---------------------------|----|---------------|
| i. funeral expenses | \$ | 15,000.00 |
| ii. for sorrow, | \$ | 15,000,000.00 |
| mental anguish, | | |
| and solace, | | |
| including loss | | |
| of society, | | |
| companionship, | | |
| comfort, | | |
| guidance, kindly | | |
| offices and | | |
| advice of their | | |
| daughter/sister, suffered | | |
| by the | | |
| beneficiaries | | |
| iii. expected loss | \$ | 1,000,000.00 |
| of earnings of | | |
| their daughter/sister | | |
| and loss of her | | |
| services, | | |
| protection, care | | |
| and assistance | | |

Total damages

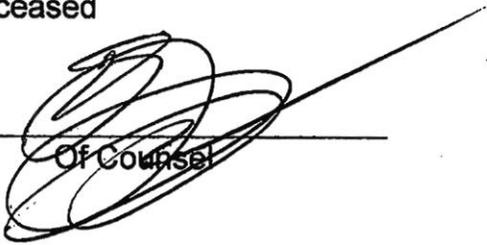
\$ 16,015,000.00

WHEREFORE, plaintiff demands judgment against defendants jointly and severally, in the amount of Sixteen Million Fifteen Thousand Dollars (\$ 16,015,000.00) and the plaintiffs' costs expended in this action with interest from the date this cause of action arose.

TRIAL BY JURY IS DEMANDED.

MCKINLEY, SR., as
Administrator of the Estate
of India Mercedes Beaty,
deceased

By


Of Counsel

Carl C. La Mondue, Esquire (VSB# 36921)
LA MONDUE LAW FIRM, PLC
500 East Plume Street, Suite 400
Norfolk, Virginia 23510
Office: 757.623.3300
Facsimile: 757.623.1277
Email: carl@lamonduelaw.com