

Summary

City of Houston Police Officer Jose Coronado fatally shot Plaintiff Omar Ventura and shot and permanently injured his brother, Plaintiff Rolando Ventura, during the early morning hours of February 19, 2011, after spending the evening drinking at Sherlocks bar. Plaintiffs did not provoke the attack. To the contrary, Plaintiffs were coming to the rescue of a young woman an unknown patron was threatening and harassing.

Officer Coronado was attempting to follow conflicting City policies when he shot Plaintiffs--one policy requiring him to carry his firearm and intervene in all conflicts, and another policy prohibiting him from carrying his firearm or intervening after drinking¹. To a sober individual, the policies may not conflict. To one who is drunk but started the night sober, is he to make the proper judgment call about which policy to follow when the policy itself assumes he will have alcohol?

Officer Coronado was not in fear of his or another's safety—he was drunk. He shot Omar and Rolando without provocation while acting under color of state law. For these shootings, Plaintiffs seek damages.

I. Parties

1. Plaintiff Rosa Rodriguez is the wife of the deceased, Omar Wilfredo Ventura. She resides in Harris County, Texas, where the cause of action accrued. Officer Coronado shot and killed her husband and other police officers unreasonably detained her. Rosa is a beneficiary entitled to bring this action pursuant to Tex. Civ. Prac. & Rem Code §71.004.

2. Plaintiffs C.V., A.B.V., and A.V. are the deceased's children. The Children reside in Harris County, Texas where the cause of action accrued with their mother, Plaintiff Rosa Rodriguez. The Children are beneficiaries entitled to bring this action pursuant to Tex. Civ. Prac. & Rem Code §71.004.

¹ Apparently the policy applies even when the officer drinks even a trace amount of alcohol. Not the situation in this case, but interesting to show the City's belief that alcohol affects one judgment, even in trace amounts.

3. Plaintiff Rolando Ventura is the deceased's brother. Rolando was a bystander and watched his brother Omar Ventura shot before his eyes. Rolando resides in Harris County, Texas where the cause of action accrued.

4. Defendant the City of Houston is a home rule municipality and a political subdivision of the state of Texas. Plaintiffs will serve the City with process by providing a copy of the Original Petition and citation to Anna Russell, City Secretary at City Hall, Second Floor, 901 Bagby, Houston, Harris County, Texas 77002, or wherever else she may be found.

5. Defendant Jose Coronado is a Houston Police Officer who resides in Harris County, Texas where the cause of action accrued. Plaintiffs will serve Houston Police Officer Coronado at the Houston Police Department, 1200 Travis Street, Houston, Texas 77002 his home address, or wherever else he may be found.

6. Defendant USA Hospitality Inc. is a Texas corporation doing business in Harris County as Sherlock's Baker Street Pub and Grill. Sherlocks does business in Harris County, Texas where the cause of action accrued. Plaintiffs will serve Sherlocks through its registered agent in Texas and/or President, Larry Martin at 1414-A Upland Drive, Houston, TX 77043, or wherever else he may be found.

III. Jurisdiction and Venue

7. The Court has subject matter jurisdiction over the case because the parties reside in Texas, the acts and omissions giving rise to Plaintiffs' claims occurred in Texas, and state and federal courts have jurisdiction over claims brought pursuant to 42 U.S.C. §1983.

8. The Court has personal jurisdiction over the parties because they reside and/or do business in Texas.

9. Venue is proper in Harris County because the Defendants reside and/or conduct their business (out of which the claim arose) in Harris County, the cause of action accrued in Harris County, and the Plaintiffs reside in Harris County.

IV. Factual Background

10. On or about February 19, 2011, Officer Coronado gunned down 28 year-old Omar Ventura at Sherlocks in the River Oaks area. Omar was unarmed and sober. Officer Coronado shot Omar in the stomach causing Omar to “bleed out” and eventually die after two surgeries at the hospital. While Omar was bleeding to death in the ambulance and undergoing surgeries in an attempt to save his life, other City of Houston Police Officers (“City of Houston Police Officers” hereinafter generally referred to as “police officers”) yanked his wife Rosa—who was not involved—from the back of the ambulance, keeping her from joining her husband for his final few precious minutes of life. The last words she heard from her husband as he lay in the parking lot bleeding and waiting for the ambulance to arrive were “It hurts. Everything is going dark.”

11. Officer Coronado also shot Omar’s brother, Rolando Ventura. Rolando was unarmed and sober. But for Rolando’s quick thinking when he raised his arm to protect his face from the bullets, he would likely be dead. Instead, the arm that protected his life was destroyed when Officer Coronado, attempting to shoot Rolando in the head, shot him in the arm. Not satisfied, Officer Coronado fired again trying to shoot Rolando in the face, but he missed. Rolando has severe and permanent injuries.

12. Officer Coronado shot both Omar and Rolando without provocation, purpose, justification, or reason. Omar died leaving his parents, a loving wife, three devastated children, and an injured and distraught brother.

13. Omar, along with his wife, Rosa, and his brother, Rolando, were at Sherlocks that fated evening. As the night came to an end, Omar, Rosa and Rolando left the bar to head home. Omar and Rolando's cousin, Francisco and Francisco's fiancé, Karla Cantu, were also headed home walking across the parking lot to Ms. Cantu's truck. All were unarmed and sober.

14. At the same time, a bar patron followed Ms. Cantu out of the bar. Obviously intoxicated, yelling profanities, and assaulting anyone crossing his path who was trying to prevent him from reaching Ms. Cantu, the drunk bar patron almost caught Ms. Cantu before she reached her truck. He continued to yell at Ms. Cantu and began beating on her truck with such force that she feared he would seriously damage the vehicle.

15. Ms. Cantu, tiring of the drunk bar patron's antics, exited her truck to confront him. He hit her in the face knocking her down in the parking lot. Seeing the events unfold, an unidentified citizen approached the drunk man abusing Ms. Cantu to attempt to reason and plead with him to stop. The drunk hit the concerned citizen in the face knocking him out cold.

16. As the drunk was beating the citizen unconscious, the Ventura brothers, witnessing the drunk's pursuit of Ms. Cantu, Ms. Cantu being beat, and the other gentleman—a stranger to them—being knocked to the ground unconscious, were sure that the man intended to further harm Ms. Cantu. In a heroic move, rarely seen in these cynical times, the Ventura brothers intervened between the drunk and Ms. Cantu in an attempt to talk to the drunk man and calm him down. The drunk would have none of it. He forcefully pushed Omar and Rolando aside to continue his attack. Omar kept pleading with the man to stop while Rolando tried to attend to the man lying unconscious on the pavement.

17. In the meantime, Officer Coronado was leaving the bar after a night of partying with his friends. He was with a female—possibly a new acquaintance, his date or girlfriend—

when he witnessed the men struggling and fighting for Ms. Cantu's safety. Officer Coronado, without taking time to assess the scene, ask questions, or determine who needed help and who needed restraint, immediately and inexplicably went to the aid of the attacker.

18. The Ventura brothers did not see Officer Coronado approach. Officer Coronado, without warning, ambushed Rolando from behind, hitting him hard in the chin and nose causing his nose to bleed profusely. Rolando quickly turned to see Officer Coronado circling him, Omar, and the others. Rolando, undeterred by the blows and the blood, continued to try to assist Ms. Cantu and the unconscious man while Officer Coronado continued to circle. Officer Coronado asked no questions, took no time to assess the scene or question any of the men or women involved, and appeared to care little about why the brothers were in the parking lot helping a woman obviously in distress. Instead, Officer Coronado chose to draw and use his service weapon.

19. The woman accompanying Officer Coronado from the bar begged him to put away his gun and go home. He, having had numerous drinks, was either oblivious to her pleas or ignored her purposefully. Omar and Rolando began to back away. Officer Coronado, presumably realizing he would miss his opportunity to shoot someone, fired at Omar hitting him in the stomach at almost point blank range. Rolando, seeing his brother shot and fall to the ground, experienced shock and remained standing in place. Officer Coronado then tried to shoot Rolando in the face twice. Rolando, seeing the gun pointed at his head, raised his arm to protect himself. The first shot hit Rolando in the arm permanently scarring and injuring him. The second shot narrowly missed his head. He fired the shots at Rolando from about 10 feet. Officer Coronado, being a trained officer, had obviously had too much to drink or he would have hit his mark and killed Rolando.

20. Officer Coronado produced his badge, declared his status as a police officer, and told everyone to “hit the ground and not move.”

21. As a crowd gathered to observe what had happened, Officer Coronado--possibly realizing the grave errors in judgment he made--stumbled away, obviously intoxicated. Shortly thereafter, Rosa, who was a witness to the altercations, sees Omar, her husband, bleeding and holding his stomach. Rosa ran to Omar as he collapsed to the ground and pleaded for her to call an ambulance because it hurt so bad that he believed he may be dying. Rosa tried to comfort Omar as Rolando helplessly looked on, but Omar could not maintain consciousness, collapsing in Rosa's arms.

22. Emergency personnel and police were called. Rosa got into the back of the ambulance to accompany her husband to the hospital, not knowing whether he would survive. The police officers saw Rosa enter the ambulance and forcibly removed her as she cried out for her husband. Officer Coronado's fellow officers placed her in the back of a police car under the guise of needing her statement, but in essence, merely kept her from attending to and comforting her husband as he passed away. Possibly, the police officers feared the story she would tell at the hospital implicating their fellow officer. Rosa continued to beg the police officers to take her to the hospital so that she could be with her husband. She banged on the police car windows to no avail. The police officers ignored her.

23. Apparently and unfortunately for the Ventura family, Rosa's intuition proved correct. Omar died at the hospital before she could arrive. The police officers detained her until approximately 7:00a.m. the next morning while Omar died alone.

V. Causes of Action

A. Section 1983

24. Plaintiffs incorporate by this reference the facts stated in paragraphs 1 – 23 above.

25. The Civil Rights Act, codified as 42 U.S.C. § 1983, provides as follows:

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any laws, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. §1983.

26. Plaintiffs were entitled to the protections of the Fourth and Fourteenth Amendments to the U.S. Constitution. Specifically, they were entitled to be free from the unlawful seizure of their person, safe and secure from undue, unnecessary and objectively unreasonable excessive force and/or detention and free to live their lives, experience liberty, and maintain the integrity of their person.

1) Officer Coronado (in his personal capacity)

27. At all material times, Officer Coronado was a city employee acting under color of state law who deprived Plaintiffs of their constitutional rights under the Fourth and Fourteenth Amendments.

28. At all relevant times, Officer Coronado acted under color of state law because he:

- a) acted as a public employee carrying out his official responsibilities pursuant to state law; b) abused the power vested in him by department/city policy, custom, practice, or decision of a final policy maker or pursuant to state law; c) was deemed “on-duty,” d) possessed, showed and used his service weapon; e) purported to detain or make an arrest; and f) intervened in what he considered an existing dispute pursuant to police department/city policy, custom, practice, or

decision of a final policymaker. As further evidence that he acted under color of state law, Officer Coronado produced his badge, declared his status as a police officer, and told everyone to “hit the ground and not move.”

29. Officer Coronado violated and deprived Plaintiffs Omar and Rolando Ventura of their constitutional rights in, at least, the following ways:

- a. By using excessive and deadly force that was both objectively and subjectively unreasonable and unnecessary and in violation of the Fourth Amendment and its reasonableness standard;
- b. Failing to make an objectively reasonable assessment of the scene to determine whether Omar or Rolando were a threat to himself or others;
- c. Carrying a firearm when drinking and then intervening into a situation where he did not and could not make a reasonable assessment of the scene to determine whether Omar or Rolando were a threat to himself or others;
- d. Using a firearm when drinking and then intervening into a situation where he did not and could not make a reasonable assessment of the scene to determine whether Omar or Rolando were a threat to himself or others;
- e. Making a choice to use deadly force that was objectively unreasonable given the totality of the circumstances he witnessed when intervening into the altercation;
- f. Using deadly force that was objectively unreasonable given the totality of the circumstances he witnessed when intervening into the altercation; and
- g. Failing to use a lesser and more appropriate amount of force that would have been objectively reasonable given the totality of the circumstances he witnessed when intervening into the altercation.

30. Officer Coronado’s acts and omissions, as described above, taken under color of state law and violating Plaintiffs’ constitutional rights, proximately caused Plaintiffs damages in excess of the minimum jurisdictional levels of this Court.

31. Officer Coronado acted with malice when acting or failing to act, as described above. Accordingly, Plaintiffs seek punitive damages in an amount to be determined by the trier of facts.

2) The City and Officer Coronado (in his official capacity)

32. The City is liable to Plaintiffs under 42 U.S.C. § 1983 because it, Officer Coronado and the other police officers who detained Plaintiff Rosa Ventura (all acting under color of state law and in their official capacities), violated Plaintiffs' constitutional rights under the Fourth and Fourteenth Amendments by enforcing a municipal policy, custom, practice or decision of a final policymaker.

33. At all material times, Officer Coronado and the other police officers who detained Plaintiff Rosa Ventura acted under color of state law. Houston Police Officers are essentially always "on-duty" in the sense they are obligated to carry a firearm and intervene into conflicts where they believe they can provide assistance. Officer Coronado acted under color of state law when he discharged his service weapon killing Omar Ventura and permanently and severely injuring Rolando Ventura (see discussion in paragraph 28 above).

34. The police officers who violated Rosa Rodriguez's constitutional rights by unlawfully and unreasonably detaining her, preventing her from accompanying her husband whom one of their fellow officers had fatally shot moments before, were acting under of color of state law as they were in uniform, wearing badges, driving marked police vehicles, identifying themselves as police officers, and using police equipment/tools to detain her. Both Officer Coronado and the police offers were acting pursuant to municipal policy, custom, practice or decision of a final policymaker.

35. As stated above, Officer Coronado violated and deprived Plaintiffs, Omar and Rolando Ventura, of their constitutional rights in, at least, the following ways:

- a. By using excessive and deadly force that was both objectively and subjectively unreasonable and unnecessary and in violation of the Fourth Amendment and its reasonableness standard²;
- b. Failing to make an objectively reasonable assessment of the scene to determine whether Omar or Rolando were a threat to himself or others;
- c. Carrying a firearm when drinking and then intervening into a situation where he did not and could not make a reasonable assessment of the scene to determine whether Omar or Rolando were a threat to himself or others;
- d. Using a firearm when drinking and then intervening into a situation where he did not and could not make a reasonable assessment of the scene to determine whether Omar or Rolando were a threat to himself or others;
- e. Making a choice to use deadly force that was objectively unreasonable given the totality of the circumstances he witnessed when intervening into the altercation;
- f. Using deadly force that was objectively unreasonable given the totality of the circumstances he witnessed when intervening into the altercation; and
- g. Failing to use a lesser and more appropriate amount of force that would have been objectively reasonable given the totality of the circumstances he witnessed when intervening into the altercation.

36. Adding to or illuminating the unreasonableness of this actions, when shooting Omar and Rolando Ventura, Officer Coronado had no reason to believe that either man was armed or was a threat to him or others: a) neither man made a furtive movement toward Officer Coronado, b) neither man verbally threatened Officer Coronado nor anyone else at the scene, and c) neither man ever touched or even came close to touching Officer Coronado. Officer Coronado's first act was to "sucker punch" or blindside one man, at which point, Omar and Rolando only retreated--amazing restraint given that he killed one man's brother and attempted to kill the other.

² Force is excessive, and therefore violates the Fourth Amendment, if it is not reasonable in light of the circumstances facing the officer. *See Graham v. Connor*, 490 U.S. 386, 398 (1989). The facts and circumstances of this case show that Officer Coronado's shooting and killing Omar and shooting Rolando were unreasonable under any standard one would apply.

37. Consequently, shooting and killing Omar and shooting and trying to kill Rolando was unwarranted under the circumstances, and was objectively and subjectively unreasonable when comparing or balancing the amount of force used against the need for such force. By using subjectively and objectively unreasonable deadly force while acting under color of state law, Officer Coronado violated Omar Ventura's rights under the Fourth and Fourteenth Amendments to the United States Constitution and caused his wrongful death.

38. The police officers violated and deprived Plaintiff Rosa Rodriguez of her constitutional rights when they unlawfully and unreasonably detained her in order to prevent her from accompanying her husband, Omar, to the hospital to be with him in his final minutes of life.

39. The City is liable under 42 U.S.C. § 1983 because it adopted and/or knew about a policy, practice, custom or decision by a final policymaker that served as the moving force behind the violation of Omar and Rolando Ventura's and Rosa Ventura's constitutional rights.

40. The City showed deliberate indifference when it failed to properly supervise and train its police officers, failed to adequately discipline its police officers (which resulted in the City essentially sanctioning the police officers' misconduct and violations of constitutional rights), and failed to adopt reasonable and unambiguous policies necessary to prevent constitutional violations.

41. The City should have had procedures and policies in place to prevent customs and practices that allow constitutional violations. The City should have had in place policies to assist police officers who found themselves in Officer Coronado or the other police officers' position in February, 2011, when Officer Coronado gunned down two innocent men in the parking lot of a bar at which he had been drinking. The City's deliberate indifference and failures in these

regards proximately caused the violation of Plaintiffs Omar and Rolando Ventura, and Rosa Rodriguez's constitutional rights.

42. The City effectively endorsed and approved of Officer Coronado's actions described herein. His actions of using objectively, unreasonable and excessive force as described herein, were taken in accordance with City policies, procedures, practices, customs, or decisions made by final policymakers relating to the use of force. The City policies, procedures, practices, customs and decisions made by final policymakers relating to the use of force amounted to a conscious disregard of, and deliberate indifference to, citizens' rights not to be subjected to unlawful detention and/or use of excessive and deadly force. The City policies, procedures, practices, customs and decisions made by final policymakers relating to the use of force and detention were the moving force behind and cause of Officer Coronado and the other police officers violating Omar and Rolando Ventura and Rosa Rodriguez's constitutional rights as described herein.

43. Specifically and without limitation, the City policies, procedures, practices, customs and decisions made by final policymakers regarding the use of deadly force and unlawful and unreasonable detention that proximately caused the violation of Omar and Rolando Ventura, and Rosa Rodriguez's constitutional rights, include but are not limited to, acting with deliberate indifference toward:

- a. allowing, encouraging, requiring and/or training and supervising officers to use their weapons in situations where the officers should not and where the situation objectively calls for a lesser means of force;
- b. allowing, encouraging, requiring and/or training and supervising officers to use excessive force as a first resort rather than to assess the totality of circumstances in an objectively reasonable manner;
- c. allowing, encouraging, requiring and/or training and supervising officers to use excessive force before a person has a chance to act or present a

danger to the officer, or others, or when faced with a situation where the officer is unsure about whether the person may act or present a danger to the officer or others;

- d. failing to adequately train, supervise or discipline Officer Coronado when he presented a clear danger to the public, thereby, effectively authorizing and ratifying his wrongful conduct, including the objectively unreasonable use of deadly force against Omar and Rolando Ventura;
- e. failing to adequately train, supervise, or discipline police officers regarding when to detain a non-suspect or witness to an alleged crime without considering the totality of the circumstances; and
- f. allowing the above such that the conduct leading to and causing constitutional violations was sanctioned and/or prevalent to become a custom or practice in the force.

44. The City, Officer Coronado and the other police officers who detained Plaintiff Rosa Ventura (all acting under color of state law and in their official capacities) acts and omissions as described herein that violated Plaintiffs' constitutional rights proximately caused Plaintiffs' actual damages in excess of the minimum jurisdictional levels of this Court.

B. Dram Shop

45. Plaintiffs incorporate by this reference the facts stated in paragraphs 1 – 23 above.

46. Defendant Sherlocks is in the business of selling food and beverages and is licensed by the Texas Alcoholic Beverage Commission to serve alcoholic beverages to their patrons. On or about February 19, 2011, Defendant Sherlocks served and/or sold alcoholic beverages to Defendant Officer Coronado. When Sherlocks provided the alcoholic beverage to Officer Coronado, it was apparent to Sherlocks, and/or its employees, that Officer Coronado was obviously intoxicated to the extent, considering Officer Coronado's demeanor, he presented a clear danger to himself and/or others.

47. As a direct and proximate result of Defendant Sherlocks' conduct, Plaintiffs suffered actual damages in excess of the minimum jurisdictional levels of this Court.

C. Negligence/Gross Negligence--Premises Liability

48. Plaintiffs incorporate by this reference the facts stated in paragraphs 1 –23 above.

49. At the time of the incident, Plaintiffs were invitees. Plaintiffs entered Sherlocks by implied invitation as Sherlocks is a bar open to the public. At all material times, Sherlocks possessed the premises into which Plaintiffs entered.

50. Sherlocks had a duty to keep its premises in a reasonably safe condition for its patrons. Sherlocks knew or should have known that Officer Coronado posed an unreasonable risk of harm to their patrons, and if intoxicated, posed a risk that was so great that his later acts resulting in the death of Omar Ventura and the severe and permanent injury to Rolando Ventura were foreseeable.

51. Sherlocks breached the duty it owed its patrons, including Plaintiffs, by failing to resolve and/or prevent a foreseeable risk of harm.

52. Sherlocks breach directly and proximately caused Plaintiffs actual damages in excess of the minimum jurisdictional levels of this Court.

53. Sherlocks' conduct in failing to resolve and/or prevent the foreseeable risk of harm to Plaintiffs constitutes gross negligence. Sherlocks acted with malice. Its conduct, when viewed objectively from the standpoint of the Plaintiffs at the time the incident occurred, involved an extreme degree of risk, considering the probability and magnitude of harm to others, and Sherlocks' actual, subjective awareness of the risk involved.

54. Accordingly, Plaintiffs seek punitive damages in an amount to be determined by the trier of facts.

VI. DAMAGES

55. In addition to the damages mentioned in the preceding paragraphs as a direct and proximate result of the intentional and unlawful conduct of Defendants, Plaintiffs have suffered, and in reasonable probability will continue to suffer damages, as described in the paragraphs below. Tex. Civ. Prac. & Rem. Code § 71.001 et seq.

56. Plaintiff Rosa Rodriguez, as Representative of the Estate of Omar Ventura, Decedent, brings this survival action pursuant to Tex. Civ. Prac. & Rem. Code § 71.021 and as applied through 42 U.S.C. § 1983 and § 1988. As a direct and proximate result of Defendants' tortious acts and omissions, Omar suffered pain and mental anguish from the time of the shooting, until his death. Omar likewise incurred funeral expenses. This claim survives to the Decedent's Estate and such claim is hereby made.

57. Plaintiff Rosa Rodriguez, Individually, brings this wrongful death action pursuant to Tex. Civ. Prac. & Rem. Code §§ 71.001 -71.011 and as applied through 42 U.S.C. § 1983 and § 1988. Plaintiff, as a surviving wife, is a statutory beneficiary and may bring this action for the wrongful death of her husband. Under the Texas Wrongful Death Act, as a surviving spouse of the Decedent, Plaintiff is entitled to recover damages for the following:

- a. Pecuniary Loss resulting from the death of Omar Ventura including, but not limited to, the care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value, excluding loss of inheritance, that the surviving spouse would have received from her husband, had he lived.
- b. Loss of companionship and society resulting in the loss of love, support, companionship, and society that Plaintiff would in reasonable probability, have received from her husband, had he lived.
- c. Mental anguish suffered by the Plaintiff as a result of the death of her husband including, but not limited to the emotional pain, torment, and suffering that Plaintiff would, in reasonable probability, experience from the death of her beloved husband; and

- d. Loss of household services and inheritance, meaning the earnings, of her husband in excess of the amount he would have used for the support of himself and his family, and in which reasonable probability would have been added to his estate and left to his wife at his natural death had he lived.

58. Plaintiff Rosa Rodriguez, as Next Friend of C.V., A.B.V., A.V., brings this wrongful death action pursuant to Tex. Civ. Prac. & Rem. Code §§ 71.001 -71.011 and as applied through 42 U.S.C. § 1983 and § 1988. Minor Children C.V., A.B.V., A.V., are statutory beneficiaries, and may bring this action for the wrongful death of their beloved father. Under the Texas Wrongful Death Act, as surviving minor Children of the Decedent, Plaintiffs are entitled to recover damages for the following:

- a. Pecuniary Loss resulting from the death of Omar Ventura including, but not limited to, the care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value, excluding loss of inheritance, that the surviving Children would have received from their father, had he lived.
- b. Loss of companionship and society resulting in the loss of love, support, companionship, and society that the surviving Children would in reasonable probability, have received from their father, had he lived.
- c. Mental anguish suffered by the surviving Children as a result of the death of their father including, but not limited to the emotional pain, torment, and suffering that surviving Children would, in reasonable probability, experience from the death of their beloved father; and
- d. Loss of household services and inheritance, meaning the earnings, of their father in excess of the amount he would have used for the support of himself, and in which reasonable probability would have been added to his estate and left to his Children at his natural death had he lived.

59. Plaintiff Rolando Ventura, in his capacity as the brother of Omar Ventura, brings this action under the theory of bystander recovery. Rolando Ventura suffered severe mental anguish, trauma, shock, and distress, both physical and emotional, past and future by witnessing his brother shot before his eyes.

60. Plaintiff Rolando Ventura, Individually, seeks damages for his injuries. Plaintiff shows himself justly entitled the following:

- a. Past and future pain and suffering and mental anguish;
- b. Past and future medical expenses;
- c. Past and future impairment;
- d. Past and future disfigurement;
- e. Maintenance and cure until the point of maximum medical improvement;
- f. Past and future lost earning capacity;

61. In addition, Defendants are liable for compensatory and exemplary damages arising from their negligence and gross negligence. The Plaintiffs do not claim exemplary damages against the City of Houston. However, Plaintiff is entitled to an award of exemplary damages because the acts and omissions described herein, when viewed objectively from Defendants' standpoint at the time of the occurrences, involved an extreme degree of risk, considering the possibility and magnitude of the potential harm to Omar and Rolando Ventura and Defendants had actual, subjective awareness of the risk but proceeded anyway with a conscious indifference to the rights, safety or welfare of Plaintiffs.

VII. Attorney's Fees

62. Plaintiffs are entitled to recover attorney's fees and costs as required by the Civil Rights Attorney's Fees Award Act of 1976. 42 U.S.C. § 1988. Plaintiffs thereby request that the Court and jury award their attorney's fees and expenses.

VIII. Conditions Precedent

63. Plaintiffs have performed all conditions precedent required for recovery, or the conditions precedent were waived or excused.

IX. Jury Demand

64. Plaintiffs respectfully demand a jury trial pursuant to Fed. R. Civ. P. 8(b).

X. Request for Disclosure

Plaintiff hereby requests that Defendants provide and disclose the information required by Tex. R. Civ. Proc. Rule 194.1 within 30 days of service of this petition. Defendants are hereby notified as follows: "Pursuant to Rule 194, you are required to disclose, within 30 days of service of this request, the information or material described in Rule 194.2."

REQUEST FOR RELIEF

FOR THESE REASONS, Plaintiffs respectfully request that Defendants be cited to appear and answer herein, and that the Court award judgment in favor of Plaintiffs and against Defendants, jointly and severally, for actual damages that exceed the jurisdictional minimum of the Court; special and consequential damages, survivor damages, exemplary damages; pre-judgment interest; post-judgment interest, costs, attorney's fees and expenses, and for all other relief to which Plaintiffs are justly entitled, at law or in equity.

Respectfully submitted,

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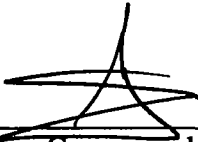
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Jury Demand

Plaintiffs hereby demand trial by jury.



Sean Greenwood