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DATE: 1/20/2022

January 19, 2022

SPECIAL MASTER'S FINAL REPORT

The Honorable Chris Sprowls
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: **HB 6511** - Representative Plakon
Relief/Ricardo Medrano-Arzate and Eva Chavez-Medrano/Okeechobee County Sheriff's Office

THIS IS A CONTESTED CLAIM FOR $4,425,000 BASED ON A JURY VERDICT AGAINST THE OKEECHOBEE COUNTY SHERIFF'S OFFICE TO COMPENSATE RICARDO MEDRANO-ARZATE AND EVA CHAVEZ-MEDRANO, AS PERSONAL REPRESENTATIVES OF HILDA MEDRANO FOR THE WRONGFUL DEATH OF HILDA MEDRANO.

FINDINGS OF FACT:

On December 1, 2013, at approximately 2:05 a.m., a woman in Okeechobee County called 911 seeking assistance in regaining entry into her home, as her "drunk" husband had locked her and three children out. The caller reported that her husband had "gone looney" and was "busting stuff in the house." She advised that he had not put his hands on her; that he just needed to go somewhere else for the night; and, that she did not want him arrested. Deputy Megan Holyrod, was dispatched to the scene; within seconds, Lieutenant K.J. Ammons advised dispatch that he was close to the address and would provide backup. A few second later, Deputy Joseph Anthony Gracie advised he was en route, also responding as backup.[1] Deputy Gracie traveled westbound on State Road 70 at speeds in excess of 90 mph in a 35 mph zone without his lights or siren activated.[2] A vehicle

[1] Audio recording: 911 call and dispatch transmissions, Okeechobee County Sheriff's Office (Dec. 1, 2013).
[2] FHP Traffic Homicide Report at 19-20.

being driven by Elizabeth Arellano Renteria and occupied by Hilda Medrano in the front passenger seat was traveling eastbound on State Road 70 and attempted to make a left hand turn into the McDonald's parking lot. At approximately 2:08 a.m., as Elizabeth Renteria made the turn, the right front portion of her vehicle was struck by Deputy Gracie's patrol car. Neither Elizabeth Renteria nor Hilda Medrano were wearing their seatbelts; Hilda Medrano was ejected from the vehicle as it was traveling to a final rest.[3] Both women died on the scene.[4] Deputy Gracie was also not wearing his seat belt and suffered serious injuries.[5]

Linda Rush O'Neil, M.D., Associate Medical Examiner for District 19 (which covers Okeechobee County) performed the autopsy of Hilda Medrano. She determined the cause of death to be multiple blunt trauma injuries inflicted as a result of the crash. The blunt trauma injuries included hemorrhages of the brain and a horizontal laceration of the aorta.[6] Dr. O'Neil later testified that the horizontal laceration of the aorta is an injury that can be associated with side-impact motor vehicle accidents.[7] She opined that wearing a seat belt in an accident involving side impact and high speed would not prevent the laceration of the aorta, which alone, could cause death.[8]

Florida Highway Patrol Investigation

Corporal Mark E. Zook with the Florida Highway Patrol (FHP) responded to the scene and ultimately prepared a Traffic Homicide Report. His investigation revealed that Deputy Gracie left a nearby RaceTrac gas station to respond to the call.[9] The RaceTrac was .8 miles away from the scene of the crash.[10] Another sheriff's deputy, Deputy William Jolly was traveling westbound on State Road 70 following Deputy Gracie. Corporal Zook described the weather early that morning as clear and dry. Street lights along State Road 70 provided ambient lighting over the roadway.[11] That portion of State Road 70 is a commercial area with buildings on both sides of the roadway. Deputy Jolly reported that he saw Elizabeth Renteria's red Ford Focus traveling eastbound on State Road 70 before pulling into the center turn lane and making a left hand turn into the path of Deputy Gracie's vehicle. He observed Deputy Gracie swerve to the right just as the vehicles collided.[12] Deputy Jolly advised that Deputy Gracie's emergency equipment was not activated and

[3] *Id.* at 5.
[4] *Id*. at 4-5.
[5] *Id.* at 5, 8.
[6] Medical Examiner Report at 6.
[7] Rush Dep. 12:4-12:12, Aug. 13, 2018.
[8] *Id.* at 12:25-13:1, 16:14-16:16, 27:8-27:13.
[9] FHP Traffic Homicide Report at 7.
[10] *Id*. at 19.
[11] *Id*. at 4.
[12] *Id*. at 14.

estimated his speed at approximately 60 mph. An employee of the McDonald's was interviewed and relayed that she "saw the cops coming, flying up the road" traveling westbound. She did not see any emergency lights activated on Deputy Gracie's patrol car.[13] Using a speed calculation and the Okeechobee County Sheriff's Office dispatch information, it was determined that Deputy Gracie traveled at an average speed of 67 mph. Using information from the Event Data Recorder (EDR),[14] Florida Highway Patrol Corporal Brad White determined that Deputy Gracie was traveling 94 mph approximately one second prior to impact and that he had reached a maximum speed of 96 mph before beginning to slow down as he saw the possible turn by Ms. Renteria.[15] Corporal Zook determined that Deputy Gracie was nearly two blocks away when Ms. Renteria began making her left hand turn into McDonald's.[16]

Corporal Zook determined that the cause of the crash was Deputy Gracie's speed even though Ms. Renteria turned in front of Deputy Gracie's vehicle. He determined that Deputy Gracie violated s. 316.126(3), F.S., which requires an emergency vehicle, when en route to meet an existing emergency, to warn all other vehicular traffic along the emergency route by an audible signal, siren, exhaust whistle, or other adequate device or by a visible signal by the use of displayed blue or red lights, and s. 316.126(5), F.S., which requires the driver of an authorized emergency vehicle to drive with due regard for the safety of all others using the highway.[17]

As a result of Corporal Zook's investigation, Deputy Gracie was cited for careless driving and not activating his emergency equipment.[18] Deputy Gracie pled guilty to both citations, received a six-month suspension of his privilege to drive, and had to pay fines and court costs.[19]

Okeechobee County Sheriff's Office Internal Investigation

Special Investigator Dale R. La Flam with the Okeechobee County Sheriff's Office (OCSO) conducted an internal investigation into the crash following the investigation conducted by the Florida Highway Patrol to determine whether Deputy Gracie had committed any violations of OCSO policy.[20] Since he

[13] *Id*. at 17.
[14] The EDR is a device installed in a motor vehicle to record technical vehicle and occupant information for a brief period of time (typically seconds) before, during and after a crash. Research & Data, Event Data Recorder, https://www.nhtsa.gov/research-data/event-data-recorder (last visited Feb. 2, 2021). Thus, the EDR can be likened to a plane's black box. The vehicle being driven by Ms. Renteria was not equipped with an EDR that was compatible with the Florida Highway Patrol's software so no information was obtained.
[15] *Id*. at 19-20.
[16] *Id*. at 19.
[17] *Id*.at 20-21.
[18] OCSO Internal Investigation Report at 1; *see also* Gracie Dep. 55:15-55:24.
[19] Gracie Dep. 55:17-55:18.
[20] La Flam Dep. 10:9-10:10, Aug. 3, 2018.

did not respond to the scene on the date of the crash, he reviewed the Florida Highway Patrol's Traffic Homicide Report and adopted the findings therein, after having interviewed all eyewitnesses.[21] Investigator La Flam attempted to interview Deputy Gracie, but he lacked any recollection of the crash or the 24 hours leading up to it.[22] Investigator La Flam found, by a preponderance of the evidence, that Deputy Gracie violated s. 316.126(3), F.S. by failing to use his emergency equipment, namely his lights or siren and by exceeding the posted speed limit. He also found that Deputy Gracie violated s. 316.614, F.S., by failing to wear his seatbelt.[23]

Investigator La Flam found, by a preponderance of the evidence, that Deputy Gracie violated four Okeechobee County Sheriff's Office Standard Operating Procedures (SOPs): 101.00(L)(1) Conduct, Department; 101.00(L)(8) Conduct Unbecoming an Officer/Employee; 101.00(L)(10) Respond to Calls; and 309 Seatbelt.[24]

SOP 101.00(L)(1) provides that "[m]embers of the Okeechobee County Sheriff's Office shall at all times within the boundaries of the county observe the laws, preserve the public peace, prevent crimes, detect and arrest violators of the law, protect life and property, and enforce all criminal laws of the Federal Government and the State of Florida."[25]

SOP 101.00(L)(8) provides that "[n]o member of the Sheriff's Office shall conduct him/herself in a disorderly manner at any time either on or off duty or so conduct him/herself in a manner unbecoming the conduct of a member of the Sheriff's Office."[26]

SOP 101.00(L)(10) provides that "[m]embers of the Sheriff's Office shall at all times, respond promptly and safely to calls directed to them or calls from citizens for aid. They shall as soon as practicable at completion of call or assignment, notify the radio dispatcher and make themselves available for further service."[27]

Investigator La Flam determined that Deputy Gracie violated these SOPs by exceeding the speed limit and traveling without his lights or siren activated to a call that did not involve any indication of violence and to which Lieutenant Ammons had already advised he was en route to as backup.

SOP 309 requires the use of a seatbelt while operating or riding as a passenger at any time in a departmental vehicle.

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[21] *Id.* at 52:21-53:1.
[22] *Id.* at 25:17-25:21.
[23] *Id*. at 12-14.
[24] OCSO Int. Inv. Report at 15-16.
[25] *Id*. at 15.
[26] *Id*.
[27] *Id*. at 16.

Investigator La Flam found that Deputy Gracie violated this SOP by failing to wear his seat belt while he operated his patrol car leading up to the crash, resulting in serious injuries to himself.

At his deposition, Investigator La Flam described the location of the crash as being a congested area in downtown Okeechobee with numerous fast food restaurants that typically stay open late.[28] He also testified that he could not think of any circumstances, emergencies included, that would warrant traveling at the speeds Deputy Gracie traveled on State Road 70 prior to the crash.[29] He opined that a safe speed for law enforcement to travel on State Road 70 would be no more than 5 miles over the posted speed limit of 35 mph.[30] Ultimately, Investigator La Flam opined that the crash would not have happened absent Deputy Gracie's excessive speed.[31]

Michael Knox

Michael Knox, an accident reconstructionist, was hired by the Claimants to testify at the civil trial in this matter.[32] Mr. Knox, a former law enforcement officer with experience on a traffic homicide unit,[33] visited the scene of the crash, visually inspected the vehicles involved, and reviewed numerous reports, deposition transcripts, and photographs.[34] He determined that the stretch of State Road 70 leading up to the scene of the crash contains numerous businesses and driveways on both sides of the roadway.[35] Consequently, he opined that it would not be reasonable for a deputy to be exceeding the speed limit without activating his/her lights or siren in such a congested area.[36] He also opined that it was not reasonable to expect Ms. Renteria to perceive that Deputy Gracie's patrol car was approaching at 96 mph, as all she would have seen is a pair of headlights approaching in the dark.[37]

Deputy Gracie's Position

At deposition, Deputy Gracie testified that at some time after he began his employment with the Okeechobee County Sheriff's Office, the SOP concerning the procedure for responding to emergency calls changed.[38] The change resulted in a deputy needing to obtain permission before activating his/her lights

[28] La Flam Dep. 66:4-67:3.
[29] *Id*. at 89:13-89:17.
[30] *Id*. at 68:18-68:25.
[31] *Id*. at 79:25-80:1.
[32] Trial Tr. vol. 3, 141:9-141:10, Aug. 21, 2018.
[33] *Id*. at 137:9-138:5.
[34] *Id*. at 141:13-142:10.
[35] *Id*. at 165:7-165:11.
[36] *Id*. 165:11-165:13.
[37] *Id*. 177:7-177:10.
[38] Gracie Dep. 74:14-74:17.

and/or siren when responding to calls.[39] He described this as a written SOP that he was required to sign, acknowledging that he read it.[40]

During his investigation, Investigator La Flam learned of this policy from interviewing deputies. Both Deputy Brad Potter and Deputy Matt Crawford told him that there was procedure in effect that required deputies to obtain permission from their supervisor to run code to any call. He was led to believe that it was an unwritten rule.[41] He saw nothing indicating it was a formal policy. Investigator La Flam investigated whether the Okeechobee County Sheriff's Office had such a written policy. He determined that the Sheriff's Office did not have a specified written SOP addressing how and when deputies would utilize their emergency lights or siren when responding to emergency calls. He also learned that the Sheriff's Office expected deputies to adhere to s. 316.126, F.S.

Years later, Okeechobee County Sheriff Noel Stephen was deposed and asked about Deputy Gracie's statements concerning the policy which required approval before a deputy could activate his/her emergency equipment. Sheriff Stephen testified that "[t]here was a procedure, verbiage that a supervisor had, as well as conveyed to the officers, that prior to running code to such a call, that we wanted the supervisors to give that approval." He could not recall whether it was a written policy or protocol that they "were doing by word of mouth."[42]

Deputy Gracie also testified that the policy requiring supervisor approval to run code conflicted with another policy, which required deputies to stay off the radio while another deputy was responding to an emergency, so as to avoid radio chatter. This, he explained, resulted in hesitation by deputies to get on the radio to obtain permission to run code during an emergency.[43]

LITIGATION HISTORY:

State Court

In 2014, Ricardo Medrano-Arzate and Eva Chavez-Medrano filed suit in Okeechobee County Circuit Court against the Sheriff of Okeechobee County, Paul C. May.[44]

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[39] *Id*. at 73:18-73:23.
[40] *Id*. at 74:18-75:3.
[41] OCSO Int. Inv. Report at 16.
[42] Stephen Dep. 19:19-20:11, Aug. 19, 2015. Investigator La Flam's report indicates that since this fatal crash, the OCSO implemented SOP 306.05, providing guidelines for the safe operation of department vehicles when there is a need for immediate law enforcement service that requires emergency operation. OCSO Int. Inv. Report at 16.
[43] Gracie Dep. 77:13-78:23, Mar. 25, 2015. Deputy Gracie could not recall whether this played into his decision to speed without activating his lights or siren on December 1, 2013. (Gracie Dep. 120:16-120:19.
[44] Hillsborough Co. Case No. 2014-CA-000152 (Complaint) (April 30, 2014). Paul May was the Sheriff for Okeechobee County at the time of this crash. However, on June 3, 2017, Noel Stephen was sworn in as Okeechobee County Sheriff and still holds that office.

The case went to trial in August 2018. The jury had the opportunity to apportion liability to the Sheriff of Okeechobee County and Elizabeth Renteria. The jury found the Sheriff of Okeechobee County 88.5 percent liable and Elizabeth Renteria 11.5 percent liable. The jury awarded Ricardo Medrano-Arzate $2.5 million for his mental pain and suffering and awarded Eva Chavez-Medrano $2.5 million for her mental pain and suffering, for a total award of $5 million.[45] The trial court reduced that award to $4,425,000.00 on October 31, 2018 in keeping with the comparative fault apportioned by the jury.[46]

The Sheriff's Motion for a New Trial was denied. The Sheriff appealed to the Fourth District Court of Appeal, arguing that the trial erred in (1) denying his motion for a new trial based on comments made in closing arguments and (2) in excluding relevant evidence concerning the nonuse of a seat belt. The Fourth District Court of Appeal per curiam affirmed the trial court decision.

Federal Court

Claimants filed an action against the Sheriff in federal district court alleging that the conflicting OCSO policies, pursuant to which Deputy Gracie was unable to activate his lights and siren while responding to an emergency call, caused the crash that killed their daughter. The case was dismissed because Claimants failed to state a cause of action under § 1983.[47] That dismissal was affirmed on appeal to the Eleventh Circuit Court of Appeals.[48]

CLAIMANT'S POSITION: Claimants argue that the Respondent bears blame for the death of their daughter and that the final judgment of $4,425,000 should be given full weight by the Legislature.

RESPONDENT'S POSITION: Respondent has vigorously contested this claim bill, arguing that it cannot pay the amount sought.

CONCLUSIONS OF LAW: Regardless of whether there is a jury verdict or settlement, each claim bill is reviewed *de novo* in light of the elements of negligence.

Duty & Breach

The driver of a vehicle has a duty to take reasonable care and to follow all applicable laws to prevent injury to others within the vehicle's path.

[45] Hillsborough Co. Case No. 2014-CA-000152 (Verdict) (Aug. 22, 2018).
[46] Hillsborough Co. Case No. 2014-CA-000152 (Final Judgment) (October 31, 2018).
[47] 42 U.S.C. 1983 allows individuals to sue the government for civil rights violations.
[48] USCA No. 16-14170 (Per Curiam Opinion) (June 29, 2017).

Section 316.126(3), F.S. (2018), provides that an "authorized emergency vehicle, when en route to meet an existing emergency, shall warn all other vehicular traffic along the emergency route by an audible signal, siren . . . or by a visible signal by the use of displayed blue or red lights." That section also requires that the emergency vehicle proceed "in a manner consistent with the laws regulating vehicular traffic…."[49] Under this statute, Deputy Gracie, as operator of a sheriff's office patrol car, had a duty to use his emergency equipment to warn the motoring public of his approach. There is undisputed evidence that Deputy Gracie failed to activate his emergency equipment. His failure to do so was a breach of his duty. As an employee of the Okeechobee County Sheriff's Office in the course and scope of his employment, his negligence is attributable to the Okeechobee County Sheriff's Office under the doctrine of respondeat superior.[50]

Section 316.183(1), F.S. (2018), requires that a person operating a vehicle not drive the vehicle "at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing." Deputy Gracie owed a duty to the motoring public to travel at a reasonable speed, having regard to actual and potential hazards. He breached that duty by traveling in excess of 90 mph without any apparent regard for others who may be entering the roadway from the businesses that lined that roadway. As an employee of the Okeechobee County Sheriff's Office in the course and scope of his employment, his negligence is attributable to the Okeechobee County Sheriff's Office under the doctrine of respondeat superior.

In addition to breaching the duty owed under Florida law, Deputy Gracie violated four Okeechobee County Sheriff's Office SOPs, which required that he observe the laws, preserve the public peace, protect life and property, refrain from conducting himself in a manner unbecoming the conduct of a member of the OCSO, respond promptly and safely to calls, and use a seatbelt. Deputy Gracie breached his duty by violating these SOPs in speeding without activating his lights or siren.

Causation

Deputy Gracie's failure to abide by the posted speed limit, combined with his failure to activate his emergency equipment, was the sole and proximate cause of Ms. Medrano's death.

[49] S. 316.126(5), F.S. (2018).

[50] The common law doctrine of respondeat superior provides that an employer may be held liable for the actions of its employee if the employee was acting within the scope of his employment when he committed the tortious act. This doctrine extends to negligent acts occurring within the scope of the employment. *Mercury Motors Exp., Inc. v. Smith*, 393 So.2d 545, 549 (Fla. 1981).

Damages

Hilda Medrano is survived by her parents, Ricardo Medrano-Arzate and Eva Chavez-Medrano, two brothers and two sisters.[51] Ms. Medrano's death has had a devastating impact on her parents and siblings. Following her death, Mrs. Medrano became depressed and sought treatment at the hospital on two occasions.[52] Ms. Medrano was twenty-one years old at the time of her death and working part-time to assist her family financially while also attending school to become an ultrasound technician.[53]

Claimants testified at the special master hearing that if the claim bill passes, they intend to use some of the monies to fund scholarships for students entering radiology/ultrasound programs.

The jury found damages totaling $5,000,000. The court reduced those damages and entered a final judgment for $4,425,000. Claimants have received no compensation from OCSO. Claimants' lives have been tragically altered by the death of their daughter, however, in light of the amounts the Legislature has awarded similarly-situated claimants in the recent past, the Legislature may determine that a smaller award is reasonable in this case.

ATTORNEY'S/ LOBBYING FEES: If the claim bill passes, the attorney fee will not exceed $885,000 and the lobbyist fee will not exceed $221,500. Outstanding costs are $4,030.89.

COLLATERAL SOURCES: Claimants received $21,185.64 from a confidential settlement with the insurance provider that provided coverage on Ms. Renteria's vehicle. Additionally, costs of Claimant's counsel were paid in the amount of $44,126.50.

RESPONDENT'S ABILITY TO PAY: Respondent states that it does not have any unencumbered funds to pay the claim bill. Respondent is a member of the Florida Sheriffs Risk Management Fund, which provides insurance coverage to its members. The coverage for this claim has been exhausted with payments to the other two plaintiffs in the amount of $300,000, plus an additional $200,000 contingent claim bill coverage, for a total of $500,000.[54] Respondent does not have other insurance coverage for this claim. Respondent avers that "[passage] of the claims bill would potentially force the Sheriff to terminate employees, forgo the purchase of equipment or to sell equipment or at a minimum, it would

[51] Trial Tr. vol. 3, 293:14-293:15, 293:19-294:5, 298:5-298:8.
[52] *Id*. at 235:18-235:25.
[53] *Id*. at 261:3-261:5.
[54] According to the Sheriff, $100,000 was paid to the rear seat passenger, Isamar Jaimes. The Medrano family chose not to accept any of the remaining $400,000 and proceeded to trial. The remaining $400,000 was accepted by the Estate of Elizabeth Renteria. *See* Respondent Sheriff's Statement Regarding Self-Insurance and Settlement of the Medrano Claim Against the Other at Fault Driver.

drastically impact the ability of the Sheriff to provide law enforcement services to the residents of Okeechobee County Florida."[55]

On January 19, 2021, Sheriff Noel E. Stephen executed an affidavit stating, under oath, that the Okeechobee County Sheriff's Office has no unencumbered funds available in the current fiscal budget (October 1 through September 30) to pay the claim bill, if passed.

At the special master hearing on February 21, 2021, counsel for Respondent stated that it is "essentially impossible" for the Sheriff's Office to pay any amount as it receives its funding on a monthly basis and it is expensed as quickly as it is received on ordinary operational costs.

After a Senate claim bill was filed for the 2022 legislative session, I, along with the Senate Special Master, requested argument on the applicability of section 30.49(1), Florida Statutes, which provides that in the event that the sheriff determines that an emergency should arise leaving the sheriff unable to perform his duties without the expenditure of larger amount of funds than those provided in the budget, he could apply to the board of county commissioners for the appropriation of additional amounts. In response, counsel for Respondent provided an affidavit from Sheriff Noel E. Stephen, dated September 2, 2021, attesting to the Sheriff's Office's proposed budget for the upcoming fiscal year (Oct. 1, 2021 through Sept. 30, 2022) being $13,566.550 and averring that "there will be no unencumbered funds available in the next projected fiscal budget, if adopted by the County, beginning October 1, 2021 and ending September 30, 2022, to pay the claims bill, SB 64, if passed." We were also provided with an affidavit executed by Kelly Conrad, Budget Director for Okeechobee County, attesting to the County's unassigned reserves in the amount of $13,425,130, which approximate three months' worth of the following year's General Fund budgeted expenditure;[56] the use of these reserves to pay a claim bill, she attested, "would run contrary to the County's Unrestricted Reserve Policy and jeopardize the County's necessary efforts to insure the safety, security, and needs of the County and its citizens in the event of a declared emergency."[57]

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[55] *Id*.

[56] Ms. Conrad's affidavit also addresses the County's "required financial challenges" for the upcoming fiscal year, which include a drop in population (per the 2020 Census) and a consequential reduction in revenues received by the County; the need to rebuild the county's jail, for which the County obtained a $15M loan; the County's Medical Examiner's need for a new building, for which the County does not know how it will fund; the rise in minimum wage which is estimated to cost the County over $1.2M; and an increase in Medicaid that the County will have to fund.

[57] The Legislature could consider not awarding attorney and/or lobbying fees; reducing the award; and/or structuring the award to Claimant as payments made over a period of years to lessen the impact on the County.

LEGISLATIVE HISTORY: This is the second session this bill has been presented to the Legislature.

RECOMMENDATIONS: Based on the foregoing, I recommend that Committee Substitute for House Bill 6511 be reported FAVORABLY as I find that all elements of negligence have been proven by a preponderance of the evidence, but Respondent's insolvency remains an issue.

Respectfully submitted,

Carine Mitz

CARINE MITZ

House Special Master

cc: Representative Plakon, House Sponsor
Senator Polsky, Senate Sponsor
Crystal Anderson, Senate Special Master