



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

New Case Electronically Filed: COMPLAINT
December 6, 2021 10:06

By: TERRY H. GILBERT 0021948

Confirmation Nbr. 2419183

ADAM FRIED, ADM. OF THE ESTATE OF DESMOND
FRANKLIN

CV 21 956729

vs.

JOSE GARCIA

Judge: NANCY MARGARET RUSSO

Pages Filed: 8

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

**Adam Fried, Administrator of the Estate of
Desmond Franklin**

c/o Friedman, Gilbert + Gerhardstein
50 Public Square, Suite 1900
Cleveland, OH 44113-2205

Plaintiff,

-vs-

Jose Garcia,

c/o City of Cleveland Law Department
601 Lakeside Ave E #106
Cleveland, OH 44114

Defendant.

Case No.

Judge

COMPLAINT AND JURY DEMAND

Plaintiff Adam Fried, as Administrator of the Estate of Desmond Franklin, for his complaint against Defendant Jose Garcia, states as follows:

Introduction

1. Officer Jose Garcia, Cleveland police officer, unjustifiably shot and killed Desmond Franklin on April 9, 2020. Desmond Franklin was 23 years old.
2. In the wake of this utterly senseless death, Garcia rendered Franklin's four small children fatherless. Franklin's parents, siblings, cousins, and multiple family members, along with his community, were and are devastated and continue to grieve their loss.
3. This is a wrongful death action on behalf of the Estate of Desmond Franklin. This action seeks to address the reckless police conduct that violated Desmond Franklin's constitutional rights and caused his tragic—and preventable—death.

Parties

4. Plaintiff Adam Fried was appointed Administrator of the Estate of Desmond Franklin, deceased, by the Probate Division of the Common Pleas Court of Cuyahoga County, Ohio, Case No. 2021EST260520, on May 27, 2021. Adam Fried is a resident of Cuyahoga County, Ohio.

5. Defendant Jose Garcia was, at all times relevant to the allegations made in this Complaint, a duly-appointed police officer employed by the City of Cleveland acting within the scope of his employment and under the color of law.

Jurisdiction and Venue

6. This action is brought pursuant to Ohio and Federal law. Jurisdiction is appropriate as these claims arose from events occurring in the State of Ohio, Plaintiff is a resident of Ohio, and at all times mentioned herein, Defendant either resided in or conducted business in the State of Ohio. The Jurisdiction of the court is also invoked pursuant to the Civil Rights Act, 42 U.S.C. § 1983 *et seq*; the Judicial Code, §§ 1331 and 1343(a); and the Constitution of the United States.

7. Venue is appropriate as this cause of action arose in the City of Cleveland in Cuyahoga County, Ohio.

Facts

8. Desmond Franklin, just 23 years old at the time of his death, was the father of four young children. Desmond Franklin was a talented singer and rapper, and attended trade school to become a plumber.



Figure 1 – Desmond Franklin

9. Desmond was a son, grandson, brother, cousin, and uncle to many in his large, loving family.

10. On April 9, 2020, in Cleveland, Ohio, on the near Westside, Desmond Franklin was in a car with his close friend who was a juvenile.

11. Defendant Garcia, a Cleveland Police Officer enroute to the police station to begin his shift, stopped his car to confront Desmond and his friend for allegedly taking soda from an open delivery truck. Garcia was dressed in street clothes but armed with his police issued firearm. At no time during the events of this case did Garcia identify himself as a police officer.

12. Defendant Garcia and Desmond then drove away in their own vehicles.

Unjustified, reckless shooting

13. Shortly thereafter, Defendant Garcia and Desmond's cars were side by side heading northbound on a busy street during daylight hours.

14. As the vehicles were lined up parallel with each other and stopped at an intersection, Defendant Garcia raised his gun, pointed the gun at the passenger window, and fired

multiple times into Desmond's vehicle. At no time did Garcia warn or indicate he was a police officer before he fired the shots. The bullets whizzed pass the terrified teenage passenger and one bullet struck Desmond in his right temple.

15. Defendant Garcia, in an effort to justify his unlawful conduct, has stated that Desmond pointed a gun at him; however, the juvenile passenger in the front street disputes this claim.

16. After the shooting by Defendant Garcia, Desmond's car immediately moved forward a short distance and then crashed into a fence on the other side of the street. Desmond was slumped over, bleeding out all over the front seat of the car.

17. Video evidence captures the two cars driving on West 25th Street next to each other for a short stretch and shows the moment Defendant Garcia fired his gunshots into Desmond's car.

18. The video does not show Desmond Franklin flashing a gun at any point, even though Garcia's 911 call indicated Desmond Franklin "shot at him." The investigation of the shooting reveals no evidence that Desmond shot at Defendant Garcia.

19. The video shows Desmond Franklin driving past Defendant Garcia's vehicle, and then the officer fires into the vehicle on a main street where there's heavy traffic going back and forth. Garcia's reckless actions were dangerous to other vehicles and innocent civilians.

20. Defendant Garcia did not use any other means besides unjustified, deadly force.

21. Desmond Franklin was shot in the right temple, meaning he was looking straight ahead when the bullet struck him.

22. Desmond Franklin crashed into the fence at Riverside Cemetery. Desmond Franklin died as a result of the reckless, unjustifiable, and unlawful conduct of Defendant Garcia.

23. Desmond Franklin had plans of starting his own plumbing business. Desmond Franklin was a very happy person, loved by so many family members and friends. Because of Defendant Garcia's actions, family, friends, and the community have, and will continue to, suffer his tragic and unnecessary death caused by a police officer.

24. Desmond Franklin's young children will never know their father.

**First Claim for Relief:
State Law Wrongful Death Claim Pursuant to Ohio R.C. § 2125.02**

25. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

26. Defendant Garcia willfully, wantonly, recklessly, negligently, intentionally, and maliciously caused the wrongful death of Desmond Franklin.

27. As a direct and proximate result of Garcia's actions as alleged in this Complaint, Desmond Franklin died of the gunshot wounds inflicted by Garcia on April 9, 2020, subjecting Garcia to liability pursuant to Ohio R.C. § 2125.02.

28. Decedent is survived by his heirs, who are represented by the Plaintiff in this action. Decedent's heirs have suffered pecuniary loss, loss of decedent's aide, comfort, society, companionship, guidance, and protection, and have otherwise suffered damages to their detriment.

**Second Claim for Relief:
State Law Claim for Survivorship**

29. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

30. As Administrator of the Estate of the Decedent, the Plaintiff brings this action for the injuries and damages to Desmond Franklin prior to his death for the benefit of his Estate.

31. As a result of the above-described willful, wanton, reckless, negligent, intentional, and malicious misconduct of Defendant Jose Garcia, Desmond Franklin suffered the injuries described in the above paragraphs.

32. Desmond Franklin sustained pain and suffering as a result of his injuries that ultimately resulted in his death.

**Third Claim for Relief:
State Law Claim for Negligence—Reckless Conduct**

33. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

34. At all times relevant herein, Defendant Jose Garcia had a duty to the public at large, including decedent Desmond Franklin, to exercise due care and to act in a lawful and reasonable manner and to not act in a willful, wanton, reckless, negligent, intentional, and malicious manner.

35. Defendant Garcia owed Desmond Franklin a duty of care, he breached that duty, and his breach of duty was the direct and proximate cause of Desmond Franklin's suffering and death.

36. Defendant Garcia acted negligently and recklessly when he violated his duty to exercise due care for Desmond Franklin.

37. At all times relevant herein, Defendant Garcia knew or should have known that his conduct would or could cause serious physical injury to Desmond Franklin and he disregarded that knowledge.

38. Defendant Garcia's conduct directly and proximately caused the injuries and damages suffered by Desmond Franklin, his Estate, and his beneficiaries as described above.

**Fourth Claim for Relief:
State Law Claim for Intentional Infliction of Emotional Distress**

39. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

40. Defendant Jose Garcia engaged in extreme and outrageous behavior as alleged in this Complaint.

41. Defendant Garcia intended such conduct to inflict severe emotional distress upon Desmond Franklin and his heirs. Defendant Garcia knew his conduct would cause Desmond Franklin and his family severe and serious emotional distress, which was of a nature that no reasonable person could be expected to endure.

42. Garcia's conduct did, in fact, cause such distress, and as a direct and proximate result of Garcia's outrageous conduct, Desmond Franklin and his Estate were injured and suffered actual damages.

**Fifth Claim for Relief:
42 U.S.C. § 1983 Claim for Unconstitutional Seizure**

43. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs of this Complaint and includes them in this count as if they were fully set out here.

44. The actions of Defendant Jose Garcia, as alleged in the preceding paragraphs, violated Desmond Franklin's rights under the Fourth Amendment to the United States Constitution to be secure in his person against unreasonable seizure, and his right to due process under the Fourteenth Amendment to the United States Constitution, and caused the injuries and death alleged in this Complaint.

45. Defendant Jose Garcia's actions as alleged in this count of the Complaint were the direct and proximate cause of the constitutional violations set forth.

Prayer for Relief:

The Plaintiff demands that judgment be entered in their favor on all counts and prays the Court to award the following relief:

- a. An award of actual and/or compensatory damages to be determined at trial;
- b. An award of punitive damages in an amount to be determined at trial; and
- c. An award of such other and further relief as the Court may deem just and proper.

TRIAL BY JURY ON ALL CLAIMS FOR RELIEF HEREBY DEMANDED.

Dated: December 6, 2021

Respectfully submitted,

FRIEDMAN, GILBERT + GERHARDSTEIN

/s/ Terry H. Gilbert

TERRY H. GILBERT (0021948)
SARAH GELSOMINO (0084340)
Friedman, Gilbert + Gerhardstein
50 Public Square, Suite 1900
Cleveland, OH 44113-2205
T: 216.241.1430
F: 216.621.0427
terry@FGGfirm.com
sarah@FGGfirm.com

Counsel for Plaintiff