

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

NITA GORDON, Personal Representative  
Of the Estate of ANTONIO GORDON,

Plaintiff,

v

Case No. 18-\_\_\_\_\_ - NH  
Hon. \_\_\_\_\_

KEITH BIERENGA, in his  
Individual capacity, and  
the CITY OF ROYAL OAK

Defendants

\_\_\_\_\_/

PAUL BROSCAY (P-36267)  
**GIROUX AMBURN PC.**  
Attorney for Plaintiff  
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**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff NITA GORDON by and through her attorneys, GIROUX AMBURN, PC, states the following for her Complaint against the above named Defendants:

1. This is a civil action for money damages brought pursuant to 42 U.S.C. §§ 1983 and 1988 and the Fourth Amendment to the United States Constitution against Defendant Keith Bierenga in his individual capacity and the City of Royal Oak, Michigan.
2. The court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

3. Venue lies in the Eastern District of Michigan pursuant to 28 U.S.C. §1391(b).

The events took place within the City of Royal Oak in Oakland County which is located within the Southern Division of the Eastern District of Michigan.

4. Plaintiff Nita Gordon, is the duly appointed Personal Representative of Antonio Gordon.

5. The Defendants were citizens of the State of Michigan at all relevant times.

6. On April 10, 2018 at the time of the events alleged in this Complaint, Defendant Keith Bierenga was at all times acting in his respective individual capacity and within the scope of his employment as a police officer employed by the Defendant Royal Oak Police Department and was acting under color of law.

7. Defendant Royal Oak is a political subdivision of the State of Michigan and it is the body responsible for the control of its departments, agencies and bureaus including its police department and its members including but not limited to Defendant Bierenga.

8. The amount in controversy exceeds \$75,000 exclusive of interest costs and fees.

#### **FACTUAL ALLEGATIONS**

9. On April 10, 2018 Defendant Keith Bierenga was on patrol driving a marked Royal Oak Police Department Explorer.

10. At approximately 6:10 p.m. Defendant Keith Bierenga activated the overhead lights in his vehicle on W. 13 Mile Road at or near Benjamin Avenue to stop a BMW vehicle operated by Antonio Gordon. Gordon eventually stopped the BMW at or near W. 13 Mile Road and Coolidge in the City of Royal Oak.

11. Defendant Keith Bierenga exited his police vehicle which was stopped behind the BMW and as he approached it to investigate it, Antonio Gordon drove away fearing arrest due to a warrant which he believed was issued for his arrest.

12. Defendant Keith Bierenga entered his vehicle and began to search for the BMW but was unable to locate it until he observed the BMW in the drive through lanes of a White Castle Restaurant at 13 Mile Road and Coolidge.

13. At approximately 6:24 p.m. Defendant Keith Bierenga drove the police car into the White Castle Restaurant parking lot and stopped the vehicle in front of the BMW in the drive through lane.

14. Defendant Keith Bierenga exited the police vehicle and with his weapon drawn pointed it at Antonio Gordon who was seated behind the steering wheel as Bierenga approached the BMW.

15. Antonio Gordon attempted to drive the BMW out of the drive through lane and at no time used the vehicle in an attempt to strike or injure the officer.

16. At 6:25 p.m. Keith Bierenga fired four shots from his weapon at point blank range at Antonio Gordon who was seated behind the steering wheel of the BMW, with some of the shots taking affect.

17. Antonio Gordon, now mortally wounded drove the BMW away from the restaurant until he lost consciousness and the vehicle struck another vehicle on W. 13 Mile Road.

18. Antonio Gordon died as a result of the shots fired by Defendant Keith Bierenga striking him.

**COUNT I - 42 U.S.C. § 1983 - EXCESSIVE FORCE - OFFICER KEITH BIERENGA**

19. Plaintiff repeats each of the preceding Paragraphs' allegations as if they were fully set forth herein.

20. At all relevant times, with regard to the above-described incident, Antonio Gordon was entitled to all rights, privileges, and immunities accorded to free citizens of the State of Michigan and of the United States.

21. Pursuant to the Fourth Amendment to the United States Constitution (made applicable to the States via the Fourteenth Amendment), at all times relevant, while Antonio Gordon was seized by the Royal Oak Police Department, he had a right to be free from the excessive use of force against his person especially the use of deadly force.

22. At all times relevant, as a police officer acting under color of law, Defendant Keith Bierenga was required to obey the laws of the United States, including those laws identified under the Fourth Amendment to the United States Constitution.

23. The conduct of Defendant Keith Bierenga, as described above, deprived Antonio Gordon of his clearly establish right, privileges and immunities in violation of the Fourth Amendment to the United States Constitution.

24. Defendant Keith Bierenga used excessive physical and deadly force which was objectively unreasonable and clearly excessive in light of the circumstances existing at the time as Antonio Gordon did not pose any threat to the Defendant.

25. In fact, no reasonable officer in the position of Defendant Keith Bierenga would find that Antonio Gordon;s actions constituted either an immediate threat of serious physical harm to him or the public at large by shooting him and causing his death.

26. Pursuant to 42 U.S.C. § 1983, Defendant Keith Bierenga is liable for all damages allowed under federal law. To the extent that the damages allowable and/or recoverable are deemed insufficient to fully compensate Plaintiff and/or to punish or deter the Defendant, this Court must order additional damages to be allowed so as to satisfy any and all such inadequacies.

27. As a direct and proximate result of the actions and/or omissions of the Defendant Keith Bierenga, Antonio Gordon suffered great physical pain, discomfort, loss of mental capacity, humiliation, degradation, anguish and loss of his life.

28. As a direct proximate result of the willful violation of Antonio Gordon's constitutionally-protected rights by Defendant Keith Bierenga, he died and is entitled to compensation for conscious pain and suffering prior to his death.

29. The conduct of Defendant Keith Bierenga was and remains extreme and outrageous subjecting him to punitive damages.

30. The above described actions and customs demonstrated a deliberate indifference on the part of Defendant Keith Bierenga, in his individual capacity, to the constitutional rights of person within the City of Royal Oak, and were the direct and proximate cause of the violations of Plaintiff's constitutional rights and his death.

WHEREFORE, Plaintiff requests the following relief:

- a. Reasonable medical and hospital expenses;
- b. Reasonable compensation for the pain and suffering;
- c. Reasonable compensation for emotional and mental distress;
- d. Punitive and exemplary damages;

- e. Reasonable attorney fees, costs and interest;
- f. Such other and further relief as appears reasonable and just under the circumstances and otherwise recoverable pursuant to 42 U.S.C. § 1983 and 1988; and
- g. Such other and further relief as this Honorable Court deems reasonable and just under the circumstances.
- h. All damages permitted to the deceased's estate pursuant to the Michigan Wrongful Death Act.

**COUNT II - 42 U.S.C. § 1983 - FAILURE TO SUPERVISE/TRAIN -  
DEFENDANT ROYAL OAK**

31. Plaintiff repeats each of the preceding Paragraphs allegations as if there were fully set forth herein.

32. At all times relevant, Defendant Royal Oak, through its appointed officials, employees, agents and/or representatives, knew or should have known that the training and supervision of its police officers was inadequate for the tasks that the officers were performing, as described in the preceding paragraphs.

33. At all times relevant, there was a complete failure to train and supervise the officers and/or the training and supervision of the officers was so reckless that future violations of citizens' rights were inevitable or substantially certain to result, as described in the preceding paragraphs.

34. At all times relevant, Defendant, Royal Oak, was on notice that the training and/or supervision of its police officers were deficient and likely to cause injury, as described in the preceding paragraphs.

35. At all times relevant, Defendant, Royal Oak's response to this knowledge was so inadequate as to show a complete disregard for whether it's officers would violate citizens' rights.

36. As a direct and proximate result of Defendant Royal Oak's inadequate training and supervision, Defendant Bierenga demonstrated a reckless disregard to Antonio Gordon's Fourth Amendment Rights even a layperson would easily recognize. The use of deadly force which posed an obvious risk of substantial harm to Antonio Gordon and caused constitutional deprivation of his clearly established rights privileges and immunities violated the Fourth Amendment (through the Fourteenth Amendment) of the Constitution of the United States.

37. The above described actions by the City of Royal Oak were the direct and proximate cause of the violations of Plaintiff's constitutional right and his death.

WHEREFORE, Plaintiff requests the following relief:

- a. Reasonable medical and hospital expenses;
- b. Reasonable compensation for the pain and suffering;
- c. Reasonable compensation for emotional and mental distress;
- d. Punitive and exemplary damages;
- e. Reasonable attorney fees, costs and interest;
- f. Such other and further relief as appears reasonable and just under the circumstances and otherwise recoverable pursuant to 42 U.S.C. § 1983 and 1988; and
- g. Such other and further relief as this Honorable Court deems reasonable and just under the circumstances.
- h. All damages permitted to the deceased's estate pursuant to the Michigan Wrongful Death Act.

Respectfully submitted by:

*/s/ Paul W. Broschay*

PAUL W. BROSCHAY (P-36267)

Attorney for Plaintiff

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Dated: December 11, 2018

**JURY DEMAND**

Plaintiff NITA GORDON, by and through her attorneys, GIROUX AMBURN, PC,  
hereby demands Trial by Jury in this matter.

**PROOF OF SERVICE**

THE UNDERSIGNED CERTIFIES THAT A COPY OF THE FOREGOING INSTRUMENT WAS SERVED ON THE ATTORNEYS OF RECORD OF ALL PARTIES TO THE ABOVE CAUSE BY E-SERVE SAME TO THEM AT THEIR RESPECTIVE ADDRESSES AS DISCLOSED BY THE PLEADINGS OF RECORD HEREIN ON *December 11, 2018*.

THE STATEMENT ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

*/s/ Alison Teran*

ALISON TERAN, Legal Asst.

To ATTORNEY PAUL W. BROSCHAY