

THE STATE OF NEW HAMPSHIRE

**HILLSBOROUGH COUNTY, SS.
NORTHERN DIVISION**

**SUPERIOR COURT
Dkt. No. 2016-2020-CV-00132
 Jury Trial**

Jessica Dannat, Administratrix of the Estate of
Jason Barry
38b Dale Road
Hooksett, NH 03106

v.

Colin Bouchard, defendant
874 Union Street
Manchester, NH 03104

CIVIL COMPLAINT

BRIEF DESCRIPTION OF CASE

This is a wrongful death/negligence action arising from the shooting of an unarmed, non-violent man occurring in Manchester, NH on or about July 19, 2019. The owner and resident of the property, Colin Bouchard is the shooter and property owner where the wrongful death of Jason Barry occurred. Mr. Bouchard stated he was on his way home from work when he stopped at an automobile dealership located approximately one mile from his home to look at Jeeps when his phone received a notification that someone was in or around his detached garage. Mr. Bouchard raced home, pulled into his driveway, got out of his vehicle and went into his home to retrieve a gun. He then went back outside and called for Mr. Barry to come out of the garage. The entrance and exit used by Mr. Barry to get into the garage was by way of a broken garage door that was affixed approximately 3 feet off the ground. At the behest of Mr. Bouchard, Mr. Barry began crawling on his belly under the garage door opening. Mr. Bouchard stated he panicked and shot Mr. Barry in the face. Mr. Barry later died as a result. The Estate of Jason Barry seeks all compensatory damages for his wrongful death negligently caused by Defendant pursuant to RSA 556:12 and Common Law.

PARTIES AND JURISDICTION

1. Plaintiff Jessica Barry Dannat is the sister of Jason Barry, and is the Administratrix of the Estate of Jason Barry. She resides at 38b Dale Road in Hooksett, NH 03106.
2. Defendant Colin Bouchard is an individual and property owner who at the time of the shooting and death of Mr. Barry resided at 874 Union Street in Manchester, NH 03104.

3. Since this is a wrongful death negligence tort action involving two New Hampshire residents with the incident occurring in Manchester, New Hampshire, and since the damages in this case exceed the minimum jurisdictional limits of the New Hampshire Superior Courts, personal and subject matter jurisdiction are proper in the New Hampshire Superior Court system.
4. Since the Defendant and the property where the shooting occurred resides in Hillsborough County, venue is proper in the Hillsborough County Superior Court, Northern Division.
5. Plaintiff seeks compensatory damages pursuant to RSA 556:12 and controlling NH case common law and case law within the minimum and maximum jurisdictional limits of this Court, together with all expenses, costs and interest.

FACTS OF INCIDENT

6. According to a New Hampshire Attorney General's Report concerning this matter, Mr. Bouchard at or around 11:46 pm on or about July 19, 2019 was standing in the parking lot of Bonneville and Sons car lot. He had stopped by the Manchester location on his way home from work to look at Jeeps.
7. Bouchard received notification on his phone that allowed him a free ten second view of anyone in or around his detached garage at the two family building he owned and lived at. The notification made him aware someone was in or around his garage. His home is located approximately one mile away. Mr. Bouchard ran to his vehicle and raced it home. He then pulled into his driveway, went into his first floor apartment and retrieved his Sig Sauer hand gun. Mr. Bouchard then went back outside to the alley driveway where his detached garage is located calling for the alleged intruder to come out.
8. Jason Barry was the person inside the garage. According to Bouchard, Barry crawled out of the garage on his belly under the affixed three foot garage door opening. Bouchard stated he panicked and shot Mr. Barry in the face.
9. After shooting Jason in the face, Bouchard turned him over to see if Jason was still alive. Bouchard stated he heard the sound of rapid breathing. He called 911, spoke to the dispatcher and waited face down on the ground with his arms out for the police to arrive. When questioned by police Bouchard stated he "did not mean to do it" and I "panicked" He has consistently stated that the shooting was not intentional.
10. Ambulance personnel showed up after police had already been on scene. They stated Mr. Barry was still alive when they arrived and started life saving techniques, but he died after being placed into the ambulance.

11. According to the autopsy report, Mr. Barry was shot in the face. The bullet through his face caused his death.
12. Based on statements by the Defendant, including a statement to the Press by his legal representative, Mr. Bouchard “did not mean” to shoot and kill Jason Barry
13. It is Plaintiff’s position Defendant caused an unnecessary shooting to occur and that he was negligent when he admittedly panicked while pointing his hand gun at the non-armed, non-violent Plaintiff and further, that he negligently pulled his trigger killing Mr. Barry.

COUNT I (Negligence)

14. Plaintiff repeats and incorporates by reference all material allegations, *supra*.
15. As the owner of the property and of the gun, Bouchard breached the duty of reasonable care to Mr. Barry by at least one or all of his unreasonable actions by failing to:
 - a) Exercise reasonable care in the management of his two family property by fixing the broken garage door. A fully closed and locked garage door would most likely have avoided the possibility that any child, curious, homeless, or person with or without ill intent could/would enter the open garage door facing an alleyway used by vehicles, neighbors or pedestrians;
 - b) To call the police department (he was over a mile away when he learned of the possible entry) to handle the situation so that the proper authorities could protect him, his roommate, tenants and any person with or without ill or malicious intent from being shot and killed. Mr. Bouchard was the cause of his own panicked shooting and killing of Jason Barry;
 - c) Exercise prudence and precaution in his calling out of his garage a person he knew nothing about while handling and pointing his hand gun at Jason Barry’s face (without the safety lock on) while the man crawled on his belly, under an affixed/broken garage door, located in the back of a dark alley. That his failure to take reasonable alternative measures caused him to panic, while under the pressure of the tense situation Bouchard himself created, resulting in the unintentional killing of Mr. Barry;
 - d) Understand and obey all applicable and reasonable gun safety standards;
 - e) To understand and appreciate situations and reasons or lack thereof for the use of a hand gun for self-defense;

- f) Avoid using unnecessary and deadly force upon Mr. Barry that any reasonable and prudent person would have under the same obvious circumstances leading up to his death.
- 16. The direct and proximate cause of the above described negligence and failures to take prudent and reasonable actions/precautions by Colin Bouchard, caused Jason Barry to be shot and killed.
- 17. The negligent shooting by Mr. Bouchard described *supra*, resulted in the wrongful death of the Plaintiff's decedent, Mr. Jason Barry.

DAMAGES

- 18. Pursuant to RSA 556:12, the Plaintiff Estate claims the following compensatory damages:
 - a) Economic Loss to the Estate;
 - b) Value of Loss of Household Services;
 - c) Conscious pain and suffering;
 - d) Medical Bills;
 - e) Funeral Expenses;
 - f) All financial losses to the Estate, including attorney fees and costs associated with administration of the Estate; and
 - g) Loss of the Enjoyment of Life (hedonic damages) of Jason Barry;
 - h) Counseling costs and services for Jason Barry's child.
- 19. Plaintiff reserves the right to amend this complaint to seek enhanced compensatory damages should facts developed during discovery support such a jury instruction under New Hampshire law.

Count II (Negligent Self Defense)

- 20. Plaintiff repeats and incorporates by reference all material allegations, *supra*.
- 21. Mr. Bouchard admitted that he panicked when he shot and killed Jason Barry as Mr. Barry crawled under an affixed three foot garage door opening as commanded to do so by Mr. Bouchard.
- 22. A reasonably prudent person in the same shoes as Mr. Bouchard (upon learning from more than a mile by way of a notification on his cell phone that a trespasser had entered

his detached garage) would have called the police and not engaged an unknown person in their detached garage.

23. Instead of calling the police Mr. Bouchard, by his own admission, raced home, pulled into his driveway, walked into his home, grabbed his gun, and went back out into the darkened alley to confront the alleged trespasser. At no time was Mr. Bouchard or his roommates, and tenants in any imminent physical danger necessitating the use of deadly force.
24. Upon safely entering into his home, an armed Mr. Bouchard could have locked his door and called the police to handle the situation-something a reasonably prudent person would have done.
25. Instead, Mr. Bouchard went outside and yelled for the alleged intruder to come out of the garage. Mr. Barry complied and attempted to crawl under the affixed garage door. There is no reasonable inference or indication Mr. Barry was attempting or was going to attempt any violence or harm to Mr. Bouchard his roommate or tenants.
26. Mr. Bouchard pointed his loaded gun at Mr. Barry as he crawled on his belly in the darkened alleyway.
27. Mr. Bouchard stated he panicked and shot Mr. Barry.
28. Mr. Bouchard created this avoidable situation on his own. There was never any need to directly confront Mr. Barry. The garage was detached from the main house that Mr. Bouchard safely and without incident gained entry to without interference.
29. At no time was Mr. Bouchard in fear for his immediate safety or threat of any harm except for the fear he held in his own mind, yet created by his own unreasonable actions. Bouchard breached his duty of care to himself and others, including a now dead trespasser, for failing to act prudently.
30. Mr. Bouchard breached a duty of reasonableness as no prudent person under the circumstances of this case would or should have put themselves into this situation.
31. Under the scenario played out on that fateful July 19, 2019 night, it was foreseeable that confronting an alleged trespasser in a darkened alley while pointing a gun at the person's head as he crawled out of a garage in the middle of the night, would/could cause the shooter to panic and in that panic mode fire ones weapon- resulting in the shooting and death of that individual.
32. The direct and proximate result of the above described negligence by Mr. Bouchard's imprudent actions and failures unnecessarily caused the avoidable death of Mr. Barry.

DAMAGES

33. The negligent self-defense and shooting by Mr. Bouchard described *supra*, resulted in the wrongful death of the Plaintiff's decedent, Mr. Jason Barry.
34. Pursuant to RSA 556:12, the Plaintiff Estate claims the following compensatory damages:
- a) Economic Loss to the Estate;
 - b) Value of Loss of Household Services;
 - c) Conscious pain and suffering;
 - d) Medical Bills;
 - e) Funeral Expenses;
 - f) All financial losses to the Estate, including attorney fees and costs associated with administration of the Estate; and
 - g) Loss of the Enjoyment of Life (hedonic damages) of Jason Barry;
 - h) Future counseling costs and services for Mr. Barry's (child).
35. Plaintiff reserves the right to amend this complaint to seek enhanced compensatory damages should facts developed during discovery support such a jury instruction under New Hampshire law.

WHEREFORE, Plaintiff requests the following relief:

- A. That orders of notice be issued for service on the Defendant;
- B. That the Plaintiff be granted a jury trial;
- C. That judgment be entered in Plaintiff's favor in an amount within the minimum and maximum jurisdiction of this Court, together with costs and interest; and
- D. For other such relief as may be just.

Respectfully Submitted,

Plaintiff Jessica Barry Dannat,
Administratrix of the Estate of Jason Barry
By her Attorney
Joseph Kelly Levasseur, PLLC

/s/ Joseph Kelly Levasseur

3-3-2020

Dated

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