

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

CASE NO: 5:12-CV-707

W. GLENN JOHNSON, Administrator of
the Estate of BRANDON JOLVON
BETHEA, Deceased,

Plaintiff,

v.

JOHN VINCENT CLARK, in his
individual capacity, ROBERT LEWIS
KIMBROUGH, JR., in his individual
capacity, MELVIN EUGENE SPRIGGS,
JR., in his individual capacity, JOHN B.
FORDHAM, in his individual capacity,
EDWARD BYRD, in his individual
capacity, and LARRY ROBBINS, in his
official capacity as SHERIFF OF
HARNETT COUNTY, NORTH
CAROLINA,

Defendants.

COMPLAINT

PRELIMINARY STATEMENT

This is an action brought pursuant to 42 United States Code § 1983 by the Administrator of the Estate of Brandon Jolvon Bethea, deceased, for damages sustained as a result of the intentional unjustified, unnecessary, willful and wanton infliction of excessive force upon the person of Brandon Jolvon Bethea, directly and proximately causing serious mental and physical pain and suffering and ultimately his

death from multiple applications of electrical shocks through the repeated use of a conducted energy device (Taser) into the body of the Plaintiff's intestate. Plaintiff brings this action against John Vincent Clark (Clark), Robert Lewis Kimbrough, Jr. (Kimbrough), Melvin Eugene Spriggs, Jr. (Spriggs), John B. Fordham (Fordham), and Edward Byrd (Byrd), Detention Officers employed by the Sheriff of Harnett County, North Carolina. In all causes of action, these Defendants are sued in their individual capacities.

The First Cause of Action arises from the intentional, unnecessary, unjustified, willful and wanton application of deadly force against the Plaintiff's intestate by Clark, who, while acting under color of state law, discharged a dangerous weapon; to wit, a conducted energy device (Taser) into the upper left chest area of Plaintiff's intestate, which rendered the Plaintiff's intestate helpless, laying on the floor of a padded cell in the Harnett County Detention Center, and by Clark's subsequent repeated discharge of the Taser into the prone body of Plaintiff's intestate on two additional occasions, while he lay helpless on the floor of the Detention Center, all of which proximately causing his death.

The Second Cause of Action seeks to impose liability on Harnett County Detention Officers Kimbrough, Spriggs, Fordham, and Byrd, who, while acting under color of state law, willfully, wantonly and through their deliberate indifference to the Plaintiff's intestate's Constitutional rights, failed to intervene and take steps necessary to keep Clark from killing the Plaintiff's intestate through the intentional, unnecessary, unjustified, willful and wanton application of deadly force by Clark, but

instead, through their willful and deliberate indifference to the rights and safety of Plaintiff's intestate, simply stood by passively and allowed him to be fatally wounded and killed by their fellow Detention Officer, Clark.

The Third Cause of Action arises from the willful, wanton and deliberately indifferent actions of Clark, Kimbrough, Spriggs, Fordham and Byrd, done while acting under color of state law through their authority as Detention Officers, who rolled the Plaintiff's intestate on his back in the padded cell and left his prone and helpless body in that position for a period of more than 20 minutes without rendering assistance, checking on his wellbeing or obtaining reasonable and necessary medical care or assistance for Plaintiff's intestate, and who through their willful and deliberate indifference to the obvious life-threatening condition of the Plaintiff's intestate, proximately caused his death.

This action further seeks an award of attorneys' fees under 42 United States Code § 1988.

Plaintiff further invokes this court's supplemental jurisdiction pursuant to 28 United States Code § 1367 to entertain and adjudicate state law claims against the previously named defendants in their individual capacities, and against their employer, Larry Rollins, the Sheriff of Harnett County, North Carolina, in his official capacity, for the wrongful death of Plaintiff's intestate.

JURISDICTION

1. This action is brought pursuant to 42 U.S.C. § 1983. Jurisdiction is based upon 28 U.S.C. §§ 1331 and 1343 (1) (2) (3) and (4). The Court has supplemental jurisdiction to entertain state law claims pursuant to 28 U.S.C. § 1367.

2. Venue is appropriate in the United States District Court of the Eastern District of North Carolina as this incident occurred in Harnett County, North Carolina, specifically in the Harnett County Detention Center, located at 175 Bain Street, Lillington, NC.

PARTIES

3. W. Glenn Johnson is a citizen and resident of the United States residing within the State of North Carolina and who is the Administrator of the Estate of Brandon Jolvon Bethea, deceased, having been so appointed by the Clerk of Superior Court of Harnett County, NC on January 10, 2012. Brandon Jolvon Bethea was born on March 1, 1987 and was pronounced dead upon arrival at Betsy Johnson Regional Hospital, Dunn, NC on March 15, 2011 at 2:05 p.m. At the time of his death Brandon Jolvon Bethea was 24 years old.

4. Defendant John Vincent Clark (Clark) is a citizen of the United States residing in the State of North Carolina who was at all times relevant hereto employed as a Detention Officer by the Sheriff of Harnett County.

5. Defendant Robert Lewis Kimbrough, Jr. (Kimbrough) is a citizen and resident of the United States residing in the State of North Carolina who was at all

times relevant hereto employed as a Detention Officer by the Sheriff of Harnett County.

6. Defendant Melvin Eugene Spriggs, Jr. (Spriggs) was at all times relevant hereto a citizen and resident of the United States residing in the State of North Carolina and who was employed as a Detention Officer by the Sheriff of Harnett County.

7. Defendant John B. Fordham (Fordham) was at all times relevant a citizen of the United States residing in the State of North Carolina who was employed as a Detention Officer by the Sheriff of Harnett County.

8. Defendant Edward Byrd (Byrd) was at all times relevant hereto a citizen of the United States residing in the State of North Carolina who was employed as a Detention Officer by the Sheriff of Harnett County. On information and belief, at the time of this incident, Byrd held the rank of Lieutenant in the office of the Sheriff of Harnett County, NC and, at all times relevant hereto, was the senior Detention Officer present and was acting as supervisor of the Sheriff's employees in charge of the Harnett County Detention Facility.

9. Defendant Larry Rollins (the Sheriff) was at all times relevant hereto a citizen of the United States residing in the State of North Carolina, and at all times relevant hereto was the duly elected and acting Sheriff of Harnett County, North Carolina, and, as such, was the employer of the individually named Defendants. The Sheriff is sued herein under causes of action arising under the law of the State of

North Carolina under the supplemental jurisdiction of this Court. The Sheriff is named herein in his official capacity as Sheriff of Harnett County, North Carolina.

10. Defendant Western Surety Company is a surety corporation which is licensed, admitted and authorized to do business in the State of North Carolina pursuant to North Carolina law. On information and belief, Western Surety Company serves as the surety for the defendant Sheriff pursuant to N. C. Gen. Stat. §§ 162-8 and 58-76-5 and by virtue of said surety bond has undertaken that in all things, the Sheriff would faithfully execute the office of Sheriff and perform all duties incumbent upon him by reason of his election to said office. Under North Carolina's law, the Sheriff has waived governmental immunity by the purchase of his official bond.

11. Upon information and belief, the Defendants, their officers, directors, employees and agents have waived governmental immunity under state tort law, if any there be, by the purchase of insurance by Harnett County, North Carolina, and/or the Sheriff of Harnett County, NC, insuring the Office of Sheriff of Harnett County, N.C., and any of their officers, agents and employees, including the Defendants named herein, against liability for wrongful death, for negligent or intentional damage to person or property or against absolute liability to person or property caused by an act or omission of the defendants or of any of their officers, agents or employees when acting within the scope of their authority and in the course of their employment, or said defendants have otherwise waived immunity.

**FIRST CLAIM FOR RELIEF
VIOLATION OF CIVIL RIGHTS
(Use of Excessive Force against Pretrial Detainee - 42 U.S.C. § 1983)**

12. The allegations of paragraphs 1 - 11 are repeated herein and incorporated by reference as if fully set out.

13. On March 15, 2011, Plaintiff's intestate was a pre-trial detainee, duly committed to the custody of the Sheriff and was housed in the Harnett County Detention Center in Lillington, North Carolina.

14. In the morning hours of March 15, 2011, Plaintiff's intestate was transported by employees of the Sheriff to the Harnett County jail annex for a hearing before a judge.

15. At the conclusion of the hearing, the Plaintiff's intestate was placed temporarily in a holding cell in the Harnett County jail annex, along with other inmates and/or pre-trial detainees, to await transfer back to the Harnett County Detention Center.

16. At approximately 12:00 noon, Willis Howard Pope, Jr., a Detention Officer at the jail annex noticed water coming from under the cell door in the holding cell which contained the Plaintiff's intestate and at least two other inmates or pretrial detainees.

17. Detention Officer Pope removed the two other occupants from the holding cell and moved them to another cell, leaving the Plaintiff's intestate alone in the holding cell.

18. Detention Officer Pope and one Deputy Ferguson handcuffed the Plaintiff's intestate with hands behind his back, without incident, and left him in the holding cell.

19. Upon closing the door to the holding cell, Detention Officer Pope heard the toilet flush and upon looking inside the holding cell saw the Plaintiff's intestate flush the toilet with his feet, whereupon he and Deputy Ferguson reentered the cell and placed leg shackles on the Plaintiff's intestate and further attached another set of leg shackles connecting the handcuffs and the leg shackles on Plaintiff's intestate's ankles.

20. Thereafter, the Plaintiff's intestate and other inmates/pre-trial detainees were transported back to the Harnett County Detention Center.

21. Upon his return to the Detention Center, the Plaintiff's intestate was taken by the Defendant Clark to the entrance to a padded holding cell which had padding on its four walls and the floor where he was turned over to the defendant Kimbrough.

22. At all times relevant hereto, the Harnett County Detention Center had a video surveillance system installed, which, among other things, produced a digital recording of various areas of the Harnett County Detention Center, including, but not limited to, the padded cell into which the Plaintiff's intestate was placed and the "intake" or "central control" area of the Detention Center, including the entrance door to the padded cell in which the Plaintiff's intestate was placed. All relevant acts and inactions of the Plaintiff's intestate and the individually named defendants leading

from the time of the arrival of Plaintiff's intestate at the jail to the time when his lifeless body was removed from the padded cell floor are recorded, and the recordings have been preserved.

23. On May 15, 2011, the video surveillance system's date and time stamp recorded time display was 23-25 minutes behind the actual time events were occurring.

24. After being turned over to Kimbrough, the Plaintiff's intestate was taken into the padded cell.

25. Sometime during this process, the shackles that connected the leg shackles around Plaintiff's intestate's ankles to the handcuffs were removed, leaving the Plaintiff's intestate handcuffed behind his back with leg shackles on his ankles.

26. The cell door was opened and Kimbrough and the Plaintiff's intestate entered into the padded cell without incident.

27. Within seconds of the entry of Kimbrough and Plaintiff's intestate into the padded cell, they were joined by several other officers who either entered the cell, or crowded at the entrance to the cell. Among these officers were the Defendants Spriggs, Fordham and Byrd.

28. Upon turning Plaintiff's intestate's custody over to Kimbrough, Defendant Clark waited outside the cell while un-holstering his Model X-26 Taser and holding same behind his back in an attempt to conceal its presence.

29. Upon his handcuffs being removed by Kimbrough, the Plaintiff's intestate turned and faced Kimbrough and conversation was had between the two of them.

30. At this time, after working his way through the officers who were standing at the entrance of the cell door, Clark had entered into the padded cell containing the Plaintiff's intestate and the Defendant Kimbrough, while still holding the Taser behind his back in a manner and under circumstances evincing a desire to keep the presence of the Taser concealed, and which, indeed, concealed the presence of the Taser from the Plaintiff's intestate as he approached Plaintiff's intestate.

31. At no time during the encounter with Kimbrough did the Plaintiff's intestate "lunge," "jump" or "buck" toward Kimbrough, or "square up like he was going to take a punch" at Kimbrough, or raise his unrestrained hands or do any physical act that manifested an intention to assault or attack Kimbrough.

32. To the contrary, as is clearly demonstrated in the video surveillance of the incident, the Plaintiff's intestate remained in the presence of Kimbrough with his hands by his sides, never clinched, and never raised above his waist.

33. At this time, the Plaintiff's intestate was wearing leg shackles and there were at least 5 Harnett County Detention Officers within no more than ten feet of the Plaintiff's intestate.

34. Suddenly, and without warning, Clark produced the Taser he had hidden behind his back and pointed it directly at the upper left chest area, toward the heart of

the Plaintiff's intestate and told the Plaintiff's intestate, "you can't threaten an officer," or words to that effect.

35. At the mere sight of the Taser the Plaintiff's intestate immediately began backing away toward the back of the padded cell in an attempt to keep from being shot by Clark with the Taser.

36. As the Plaintiff's intestate backed away from Kimbrough toward the back of the padded cell, at a location approximately 10 to 12 feet from Kimbrough and Clark and at a point almost to the back wall of the padded cell, the red dot of the Taser's laser sight appeared clearly on the upper left chest area of the Plaintiff's intestate.

37. Suddenly, without just cause or excuse, and in retaliation against Plaintiff's intestate for what Clark perceived as Plaintiff's intestate's insubordination towards Kimbrough and other officers, Clark intentionally and maliciously deployed the Taser into the left upper chest area of the Plaintiff's intestate, causing a severe and debilitating jolt of electric current to be delivered into the body of the Plaintiff's intestate for a period of five seconds, which, in turn, caused the Plaintiff's intestate to lose control of his body and to fall backward and to his right into the back left corner of the padded cell, onto the floor of the cell, on his face, without the ability to control bodily movements, thus leaving him completely helpless on the floor of the cell.

38. Within 5 seconds of the initial discharge of the Taser, no less than two additional Harnett County Detention Officers, Fordham and Byrd, stepped forward

and joined Kimbrough and Clark standing over and surrounding the prone body of the Plaintiff's intestate.

39. At this point, according to the time clock on Clark's Taser, ten seconds after the first deployment of the Taser, and while Plaintiff's intestate still lay helpless on the cell floor, surrounded by the four detention officers hovering above him, at 12:28:55 p.m., the Defendant Clark, intentionally and maliciously discharged the Taser into the helpless body of Plaintiff's intestate again, this time for a period of four seconds, delivering another severe jolt of electric current into the prone helpless body of the Plaintiff's intestate.

40. As Plaintiff's intestate continued to lay helplessly on the cell floor, a fifth officer, on information and belief Spriggs, joined the other four detention officers standing above and surrounding the Plaintiff's intestate's prone body, when, according to the time clock of Clark's Taser, at approximately 12:29:25 p.m., the Defendant Clark, for the third time, intentionally and maliciously discharged the Taser into the helpless body of the Plaintiff's intestate for four seconds, delivering, for the third time in less than one minute, another severe jolt of electric current into the prone helpless body of Plaintiff's intestate.

41. Upon each instance when the Taser was activated, it made an audible "clicking" sound which could be heard by anyone inside the holding cell or in close proximity to its open door.

42. As a direct and proximate result of the repeated Taser discharges the Plaintiff's intestate suffered death approximately 25 minutes after the first Taser discharge.

43. On or about October 13, 2009, Taser International, manufacturer of the Taser X26, revised and circulated through public media and through private notifications issued to law enforcement agencies located throughout the world, a safety warning stating that to increase "the safety margin," the stun gun should not be aimed at the chest to avoid the "remote risk" of a heart attack. The bulletin further advised, "Users should aim for the back, or (when practical) toward the mid-lower abdomen and avoid intentionally targeting the chest area with probe applications to increase effectiveness and avoid the remote potential risk of cardiac effect." Continuing, the bulletin stated that if someone shot with a Taser had a heart attack, the police officer and the manufacturer would be placed in the "difficult situation" of trying to ascertain whether the stun gun was to blame. The bulletin further warned users to minimize "repeated, continuous or simultaneous exposures" saying that "(r)easonable efforts should be made to minimize the number of ECD (electronic control device) exposures," and continued by saying, "ECD users should use the lowest number of ECD exposures that are objectively reasonable to accomplish lawful objectives and should reassess the subject's resistance level before initiating or continuing the exposure."

44. All of the aforementioned actions of the Defendant Clark were done in the scope and course of his employment as a Detention Officer employed by the Sheriff of Harnett County.

45. All of the aforementioned actions of the Defendant Clark were carried out under color of state law and by virtue of his authority as a Detention Officer employed by the Sheriff of Harnett County.

46. The acts of Clark described herein were done intentionally, needlessly, willfully, wantonly and recklessly, with conscious and deliberate indifference to rights guaranteed to the Plaintiff's intestate under the Fourteenth Amendment to the Constitution of the United States.

47. The acts of Clark described herein were done maliciously, sadistically and for the very purpose of doing harm to Plaintiff's intestate.

48. The actions of Clark herein described proximately deprived, or caused the Plaintiff's intestate to be deprived, of rights guaranteed to him under the Fourteenth Amendment to the Constitution of the United States; to wit, the right of a pre-trial detainee to freedom from the infliction of unnecessary, willful and wanton force against his person and the right to due process of law before deprivation of his life.

49. As a direct and proximate result of the actions of the Defendant Clark, the Plaintiff's intestate suffered great physical pain and suffering and died.

SECOND CLAIM FOR RELIEF
(Failure to Prevent Violation of Civil Rights - 42 United States Code § 1983)

50. The allegations of paragraphs 1 – 11 and 13-43 are herein repeated and incorporated by reference as if fully set out.

51. Throughout the encounter Defendants Kimbrough, Byrd, Spriggs and Fordham were duly authorized Detention Officers who had a duty to safeguard the Plaintiff's intestate from the willful and wanton acts of Clark in repeatedly deploying electrical shocks into the body of the Plaintiff's intestate, but instead, with knowledge that Clark was repeatedly discharging the Taser into the prone body of Plaintiff's intestate and that said acts were clearly excessive, unjustified and were being done in a willful and wanton manner, said Defendants instead, with willful and deliberate indifference, did nothing to prevent or halt the repeated attacks on Plaintiff's intestate.

52. All of the actions of the Defendants Kimbrough, Byrd, Spriggs and Fordham were done in the scope and course of their employment as Detention Officers employed by the Sheriff of Harnett County.

53. All of the aforementioned actions of the Defendants Kimbrough, Byrd, Spriggs and Fordham were carried out under color of state law and by virtue and of their authority as Detention Officers employed by the Sheriff of Harnett County.

54. The acts and inactions of Defendants Kimbrough, Byrd, Spriggs and Fordham described herein were done intentionally, needlessly, willfully, wantonly and recklessly, with conscious disregard and deliberate indifference to rights

guaranteed to the Plaintiff's intestate under the Fourteen Amendment to the Constitution of the United States.

55. The actions of Defendants Kimbrough, Byrd, Spriggs and Fordham herein described proximately deprived, or caused the Plaintiff intestate to be deprived, of rights guaranteed to him under the Fourteenth Amendment to the Constitution of the United States; to wit, the right of a pre-trial detainee to freedom from the infliction of unnecessary and wanton force against his person, the right of a pre-trial detainee to be protected by his jailors, from a known risk of the infliction of unnecessary, willful and wanton force, and the right to due process of law before deprivation of his life.

56. As a direct and proximate result of the actions of the Defendants Kimbrough, Byrd, Spriggs and Fordham, the Plaintiff's intestate suffered great physical pain and suffering and died.

**THIRD CLAIM FOR RELIEF
VIOLATION OF CIVIL RIGHTS
(Failure to Render Necessary Medical Assistance - 42 U.S.C. § 1983)**

57. The allegations of paragraphs 1 – 11 and 13 - 43 are herein repeated and incorporated by reference as if fully set out.

58. Subsequent to the third discharge of the Taser into the helpless body of the Plaintiff's intestate, Defendants Fordham and Kimbrough rolled the Plaintiff's intestate onto his back and physically removed the two Taser "darts" from the upper chest area of the Plaintiff's intestate.

59. Thereupon, Defendants Clark, Kimbrough, Spriggs, Fordham and Byrd, withdrew from the cell, leaving the Plaintiff's intestate lying on his back, with his

right arm extended above his head and away from his body despite their knowledge that Plaintiff's intestate had been subjected to multiple applications of electric current in the upper left chest, directly above his heart, in spite of the fact that the plaintiff's intestate remained prone on the floor with little or no discernable signs of life, and in spite of the fact the he appeared to be in need of immediate medical assistance.

60. Thereafter, the Plaintiff's intestate remained, virtually motionless, for a period of in excess of twenty minutes, in which time he languished and died.

61. During this entire period of time, the Defendants Clark, Kimbrough, Spriggs, Fordham and Byrd knew that a Taser device had been repeatedly discharged into the body of the Plaintiff's intestate and correspondingly knew, or should have known, that he was in severe distress and was in need of immediate medical attention and treatment.

62. During this period of time, the image of Plaintiff's prone helpless body was displayed on the screens of the surveillance camera system in the Harnett County Detention Center, visible to the entire cadre of Detention Officers and other employees of the Sheriff who were on duty in the Detention Center, including Clark, Kimbrough, Spriggs, Fordham and Byrd, and various members of the Detention Center's Sheriff's personnel, including but not limited to Byrd, walked over to the window of the padded cell and personally observed the Plaintiff's intestate's helpless body lying on the floor of the padded cell, and still failed to call for medical assistance for the Plaintiff's intestate.

63. That despite their knowledge, the Defendants Clark, Kimbrough, Spriggs, Fordham and Byrd made no effort to check the condition of the Plaintiff's intestate or call for any medical assistance or render any treatment to the Plaintiff's intestate.

64. Instead, Clark, Kimbrough, Spriggs, Fordham and Byrd allowed the Plaintiff's intestate to languish on the floor of the padded cell in the Detention Center until he was dead.

65. As a direct and proximate result of the actions and inactions of the individually named Defendants, the Plaintiff's intestate experienced great bodily pain and suffering and death.

66. The actions of the Defendants Clark, Kimbrough, Spriggs, Fordham and Byrd were done in the scope and course of their employment as Detention Officers employed by the Sheriff of Harnett County.

67. The actions of the Defendants Clark, Kimbrough, Spriggs, Fordham and Byrd were carried out under color of state law and by virtue of their authority as Detention Officers employed by the Sheriff of Harnett County.

68. The acts described in this Cause of Action of Defendants Clark, Kimbrough, Spriggs, Fordham and Byrd were done intentionally, needlessly, willfully, wantonly, recklessly and with conscious disregard and deliberate indifference to rights guaranteed to the Plaintiff's intestate under the Fourteenth Amendment to the Constitution of the United States.

69. The actions of Defendants Clark, Kimbrough, Byrd, Spriggs and Fordham herein described deprived, or caused the Plaintiff's intestate to be deprived, of rights guaranteed to him under the Fourteenth Amendment to the Constitution of the United States; to wit, the right of pre-trial detainees to receive reasonable and adequate medical care for their known serious medical needs.

70. As a direct and proximate result of the actions of the named Defendants, Plaintiff's intestate suffered great physical pain and suffering and died.

FOURTH CLAIM FOR RELIEF
(Wrongful Death – Assault & Battery - N.C. Gen. Stat. § 28A-18.1 et. seq.)
Supplemental Claim against Clark and the Sheriff
Compensatory and Punitive damages

71. The allegations of paragraphs 1-11 and 13-45 are herein repeated and incorporated by reference as if fully set out.

72. At all times relevant hereto, Defendant Clark, as a Detention Officer employed by the Sheriff, owed a duty to Plaintiff's intestate under the law of the State of North Carolina to not subject the Plaintiff's intestate, a pre-trial detainee, to unnecessary, unreasonable and excessive force.

73. The actions of Clark described herein constitute repeated assault and battery on the Plaintiff's intestate.

74. The actions of Clark were done maliciously, intentionally, needlessly, manifesting a conscious and intentional disregard to the rights and safeties of the Plaintiff's intestate and were done in conscious and deliberate disregard of his duties

to Plaintiff's intestate, as a Detention Officer, and constitute intentional and willful and wanton conduct.

75. The willful and wanton conduct of Clark is known by and has been condoned by the Sheriff.

76. Under the law of North Carolina, the acts of the Defendant Clark, are imputed to the Sheriff through the doctrine of *respondeat superior*, and thus subject the Sheriff, to an action for compensatory damages under N. C. Gen. Stat. § 28A-18.1 et. seq.)

77. Under the law of North Carolina, the acts of the Defendant Clark and of the Sheriff in condoning same, subject Clark and the Sheriff, to an action for punitive damages pursuant to N. C. Gen. Stat. § 28A-18.1 et. seq. and Chapter 1D of the General Statutes of North Carolina.

78. As a direct and proximate result of the actions of the Defendant Clark, the Plaintiff's intestate experienced great bodily pain and suffering and died.

FIFTH CLAIM FOR RELIEF
(Wrongful Death – N.C. Gen. Stat. § 28A-18.1 et. seq.)
Supplemental Claim against Kimbrough, Spriggs, Fordham, Byrd and the
Sheriff – Failure to intervene
Negligence and Gross Negligence - Compensatory and Punitive damages

79. The allegations of paragraphs 1-11, 13-45 and 51 -53 are herein repeated and incorporated by reference as if fully set out.

80. At all times relevant hereto, under the law of the State of North Carolina, the Defendants Kimbrough, Spriggs, Fordham and Byrd, as Detention Officers at the Harnett County Detention center had a duty to use reasonable care to

protect the Plaintiff's intestate from the application of unnecessary, unreasonable and excessive force at the hands of Clark, their fellow Detention Officer.

81. Throughout the encounter, Defendants Kimbrough, Spriggs, Fordham and Byrd failed in their duty to safeguard the Plaintiff's intestate from the acts of Clark in repeatedly deploying electrical shocks into the body of Plaintiff's intestate and instead did nothing to stop the unwarranted and repeated assaults on the Plaintiff's intestate.

82. The actions of the Defendants Kimbrough, Spriggs, Fordham and Byrd in failing to use reasonable care to protect the Plaintiff's intestate from attack by their fellow Detention Officer constitute negligence.

83. The actions of the Defendants Kimbrough, Spriggs, Fordham and Byrd, were done intentionally and needlessly, with gross negligence, manifesting a conscious and intentional disregard to the rights and safeties of the Plaintiff's intestate and were done in conscious and deliberate disregard of his duties to Plaintiff's intestate, as a Detention Officer, and constitute intentional and willful and wanton conduct.

84. The willful and wanton conduct of the Defendants Kimbrough, Spriggs, Fordham and Byrd, described herein is known by and has been condoned by the Sheriff.

85. Under the law of North Carolina, the acts of the Defendants Kimbrough, Spriggs, Fordham and Byrd, are imputed to the Sheriff through the doctrine of

respondeat superior, and thus subject the Sheriff, to an action for compensatory damages under N. C. Gen. Stat. § 28A-18.1 *et. seq.*

86. Under the law of North Carolina, the acts of the Defendants Kimbrough, Spriggs, Fordham and Byrd and of the Sheriff in condoning same, subjects both them and the Sheriff, to an action for punitive damages pursuant to N. C. Gen. Stat. § 28A-18.1 *et. seq.* and Chapter 1D of the General Statutes of North Carolina.

87. As a direct and proximate result of the actions of the Defendants Kimbrough, Byrd, Spriggs and Fordham described above, the Plaintiff's intestate experienced great bodily pain and suffering and died.

SIXTH CLAIM FOR RELIEF
(Wrongful Death – N.C. Gen. Stat. § 28A-18.1 *et. seq.*)
Supplemental Claim Against Clark, Kimbrough, Spriggs, Fordham, Byrd and
the Sheriff
Failure to Obtain or Render Medical Care
Negligence and Gross Negligence- Compensatory and Punitive Damages

88. The allegations of paragraphs 1-11, 13-42 and 58-67 are herein repeated and incorporated by reference as if fully set out.

89. At all times relevant hereto, under the law of the State of North Carolina, Defendants, Clark, Kimbrough, Spriggs, Fordham and Byrd, as Detention Officers employed by the Sheriff owed Plaintiff's intestate, a pre-trial detainee a duty to use reasonable care to provide reasonable and necessary medical assistance to the Plaintiff's intestate for medical needs of Plaintiff's intestate known to or which through the use of reasonable care should have been known to said Defendants.

90. The actions of the Defendants Clark, Kimbrough, Spriggs, Fordham and Byrd in failing to provide reasonable and necessary medical assistance to the Plaintiff's intestate for medical needs of Plaintiff's intestate known to or which through the use of reasonable care should have been known to said Defendants constitute negligence.

91. The actions of Defendants Clark, Kimbrough, Spriggs, Fordham and Byrd were done maliciously, intentionally and needlessly, with gross negligence, manifesting a conscious and intentional disregard to the rights and safeties of the Plaintiff's intestate and were done in conscious and deliberate disregard of his duties to Plaintiff's intestate, as a Detention Officer, and constitute intentional and willful and wanton conduct.

92. The willful and wanton conduct of the Defendants Clark, Kimbrough, Spriggs, Fordham and Byrd is known by and has been condoned by the sheriff.

93. Under the law of North Carolina, the acts of the Defendants Clark, Kimbrough, Spriggs, Fordham and Byrd, are imputed to the Sheriff through the doctrine of *respondeat superior*, and thus subject the Sheriff, to an action for compensatory damages under N. C. Gen. Stat. § 28A-18.1 et. seq.)

94. Under the law of North Carolina, the acts of the Defendants Clark, Kimbrough, Spriggs, Fordham and Byrd, and the Sheriff in condoning same, subjects both them and the Sheriff, to an action for punitive damages pursuant to N. C. Gen. Stat. § 28A-18.1 et. seq. and Chapter 1D of the General Statutes of North Carolina.

95. As a direct and proximate result of the actions of the Defendants Clark, Kimbrough, Byrd, Spriggs and Fordham described above, the Plaintiff's intestate experienced great bodily pain and suffering and died.

**SEVENTH CLAIM FOR RELIEF
SUIT ON SHERIFF'S BOND
N. C. Gen. Stat. §§ 162-8 & 58-76-5**

96. The allegations of paragraph 9 are hereby repeated and incorporated herein as if fully set out.

97. In all the actions and conduct set forth herein in all causes of action, the individually named Defendants were acting within the scope and course of their authority as Detention Officers and under the color of their office as Detention Officers/employees of the Sheriff of Harnett County, NC.

98. The action of each individual Defendant, in each claim for relief described above was done in violation of the terms of the official bond of the Sheriff of Harnett County, entered into with said surety.

99. The Plaintiff's intestate is entitled to recover the full amount of the Sheriff's bond as to the claims against each Defendant according to the provisions of N.C. Gen. Stat. § 58-76-5.

DAMAGES

100. As a direct and proximate result of the actions described herein of all of the Defendants, the Plaintiff's intestate suffered great mental and physical pain and suffering and ultimately died as a result of multiple applications from a conducted energy devise.

101. As hereinbefore set out with particularity, as a direct and proximate result of the actions described herein of all of the Defendants, the Plaintiff's intestate suffered a deprivation of Constitutional rights guaranteed to him under the Fourteenth Amendment to the United States Constitution and ultimately his life was taken from him in violation of his substantive rights guaranteed to him by the Fourteenth Amendment.

102. The Plaintiff Administrator is entitled to recover on behalf of the Estate of Brandon Jolvon Bethea against all Defendants, all provable compensatory and punitive damages in the First, Second and Third Claims for Relief pursuant to 42 United States Code § 1983, and in the Fourth, Sixth and Seventh Claims for Relief under the pendent supplemental jurisdiction of this Court to recover all provable compensatory and punitive damages pursuant to the Chapter 1D and the Wrongful Death Statutes of North Carolina as set forth in Chapter 28A, Article 18 of the General Statutes of North Carolina.

103. The Plaintiff's Intestate is entitled to recover the full amount of the Sheriff's bond as to the claims against each Defendant according to the provisions of N.C. Gen. Stat. 58-76-5.

104. The Plaintiff Administrator is entitled to recover on behalf of the Estate of Brandon Jolvon Bethea reasonable attorney's fees pursuant to 42 United States Code § 1988.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays:

1. For the First Claim for Relief, that Judgment be entered against the Defendant John Vincent Clark, for compensatory damages in an amount to be determined at trial but in excess of Ten Thousand Dollars (\$10,000.00);
2. Additionally, for the First Claim for Relief, the judgment be entered against the Defendant John Vincent Clark for punitive damages in an amount to be determined at trial, but in excess of Ten Thousand Dollars (\$10,000.00);
3. For the Second Claim for Relief, that Judgment be entered, jointly and severally, against the Defendants Robert Lewis Kimbrough, Jr, Melvin Eugene Spriggs, Jr., John Bertram Fordham, and Edward Byrd for compensatory damages in an amount to be determined at trial but in excess of Ten Thousand Dollars (\$10,000.00);
4. Additionally, for the Third Claim for relief, that Judgment be entered, separately against each of the Defendants Robert Lewis Kimbrough, Jr., Melvin Eugene Spriggs, Jr., John Bertram Fordham, and Edward Byrd for punitive damages as to each defendant in an amount to be determined at trial but in excess of Ten Thousand Dollars (\$10,000.00);
5. For the Third Claim for Relief, that Judgment be entered, jointly and severally, against the Defendants John Vincent Clark, Robert Lewis Kimbrough, Jr., Melvin Eugene Spriggs, Jr., John Bertram Fordham, and Edward Byrd for

compensatory damages in an amount to be determined at trial but in excess of Ten Thousand Dollars (\$10,000.00);

6. Additionally, for the Third Claim for relief, that Judgment be entered separately against the Defendants John Vincent Clark, Robert Lewis Kimbrough, Jr., Melvin Eugene Spriggs, Jr., John Bertram Fordham, and Edward Byrd, for punitive damages as to each defendant in an amount to be determined at trial but in excess of Ten Thousand Dollars (\$10,000.00);

7. For the Fourth Claim for Relief, that Judgment be entered against the Defendants John Vincent Clark and the Sheriff for compensatory damages in an amount to be determined at trial but in excess of Ten Thousand Dollars (\$10,000.00);

8. Additionally, for the Fourth Claim for Relief, that judgment be entered against the Defendants John Vincent Clark and the Sheriff separately for punitive damages, as to each defendant, in an amount to be determined at trial, but in excess of Ten Thousand Dollars (\$10,000.00);

9. For the Fifth Claim for Relief, that Judgment be entered, jointly and severally, against the Defendants Robert Lewis Kimbrough, Jr., Melvin Eugene Spriggs, Jr., John Bertram Fordham, Edward Byrd and the Sheriff for compensatory damages in an amount to be determined at trial but in excess of Ten Thousand Dollars (\$10,000.00);

10. Additionally, for the Fifth Claim for Relief, that Judgment be entered, separately against the Defendants Robert Lewis Kimbrough, Jr., Melvin Eugene Spriggs, Jr., John Bertram Fordham and Edward Byrd, and the Sheriff, as to each

defendant, for punitive and exemplary damages in an amount to be determined at trial but in excess of Ten Thousand Dollars (\$10,000.00);

11. For the Sixth Claim for Relief, that Judgment be entered, jointly and severally, against the Defendants John Vincent Clark, Robert Lewis Kimbrough, Jr. Melvin Eugene Spriggs, Jr. John Bertram Fordham and Edward Byrd and the Sheriff for compensatory damages in an amount to be determined at trial but in excess of Ten Thousand Dollars (\$10,000.00);

12. Additionally, for the Sixth Claim for Relief, that Judgment be entered separately against the Defendants John Vincent Clark, Robert Lewis Kimbrough, Jr., Melvin Eugene Spriggs, Jr., John Bertram Fordham and Edward Byrd and the Sheriff, as to each defendant, for punitive and exemplary damages in an amount to be determined at trial but in excess of Ten Thousand Dollars (\$10,000.00);

13. For the Seventh claim for Relief, that Plaintiff's intestate be awarded against the Sheriff's Surety, the full amount of the Sheriff's bond as to the supplemental claims against each Defendant according to the provisions of N.C. Gen. Stat. § 58-76-5.

14. That any judgments entered against the Defendants for compensatory, punitive and exemplary damages bear interest at the maximum legal rate from the date of institution of this action forward;

15 That the Plaintiff Administrator, on behalf of the estate of Brandon Jolvon Bethea, be awarded reasonable attorneys' fees pursuant to 42 United States Code § 1988;

16 That the costs of this action as allowed by law be taxed jointly and severally against the Defendants;

17. That Plaintiff have such other and further relief as the court may deem just and proper.

TRIAL BE JURY DEMANDED

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands trial by jury as to all issues so triable.

RESPECTFULLY SUBMITTED, this 29th day of October, 2012.

BY: /s/ H. Gerald Beaver
Attorney for Plaintiff
BEAVER, HOLT, STERNLICHT & COURIE, P.A.
230 Green Street
P.O. Drawer 2275
Fayetteville, NC 28302
Telephone: (910) 323-4600
Facsimile: (910) 323-3403
E-mail: hgbeaver@beaverholt.com
North Carolina State Bar No.: 5503

And

BY: /S/ Douglas E. Turner, Jr.
HAYES, WILLIAMS, TURNER & DAUGHTRY, PA
804 West Broad St.
Dunn, NC 28334
Telephone: 910-892-2178
Facsimile: 910-891-1198
Email: dturner@harnettlaw.com
North Carolina State Bar No.: 24579