

UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF NORTH CAROLINA  
 WESTERN DIVISION  
 CASE NO. 5:12-CV-743-F

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

Plaintiff, )

v. )

JOHN VINCENT CLARK, et al., )

Defendants. )

\_\_\_\_\_ )

**ANSWER TO FIRST AMENDED  
 COMPLAINT; DEMAND FOR JURY  
 TRIAL**

COME NOW Defendants John Vincent Clark, Robert Lewis Kimbrough, Jr., Melvin Eugene Spriggs, Jr., John B. Fordham, Edward Byrd, Larry Rollins, and The Cincinnati Insurance Company, and answering Plaintiff’s First Amended Complaint on file herein, admit, deny, and allege as follows:

1. Defendants admit the allegations of paragraphs 1-2, 4-6, 8-9, 13-15, 17-20, 27, 29, 41, 44-45, 52-53, and 66-67.
2. Answering the allegations contained in paragraph 7, Defendants admit Fordham was a deputy sheriff, not a detention officer.
3. Answering the allegations contained in paragraph 10, Defendants admit the Sheriff’s bond was issued by the Cincinnati Insurance Company and that the Sheriff’s governmental or sovereign immunity has been thereby waived up to the amount of the bond.

4. Answering the allegations contained in paragraph 11, Defendants admit that governmental or sovereign immunity has been waived to the extent the Sheriff's insurance covers *respondent superior* liability for the acts and omissions of his employees.
5. Answering the allegations contained in paragraph 16, Defendants admit same but clarify the time was somewhat past noon.
6. Answering the allegations contained in paragraph 21, Defendants admit Bethea was placed in a padded cell by Kimbrough. Except as so admitted, Defendants deny each and every allegation contained in said paragraph and the whole thereof.
7. Answering the allegations contained in paragraph 22, Defendants admit the images recorded by surveillance cameras have been preserved. Except as so admitted, Defendants deny each and every allegation contained in said paragraph and the whole thereof.
8. Answering the allegations contained in paragraph 24, Defendants admit Bethea was placed in a padded cell by Kimbrough. Except as so admitted, Defendants deny each and every allegation contained in said paragraph and the whole thereof.
9. Answering the allegations contained in paragraph 25, Defendants admit Bethea entered the cell wearing handcuffs and leg shackles, but deny the handcuffs were ever attached to the shackles.
10. Answering the allegations contained in paragraph 26, Defendants admit Bethea entered the cell with Kimbrough. Except as so admitted, Defendants deny each and every allegation contained in said paragraph and the whole thereof.
11. Answering the allegations contained in paragraph 28, Defendants admit Clark initially remained outside the cell holding the TASER behind his back in an effort to conceal it. Except

as so admitted, Defendants deny each and every allegation contained in said paragraph and the whole thereof.

12. Answering the allegations contained in paragraph 30, Defendants admit Clark entered the cell holding the TASER behind his back in an effort to conceal it. Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in said paragraph.

13. Answering the allegations contained in paragraph 33, Defendants admit same but clarify the officers' distances varied and some may have been more than 10 feet away.

14. Answering the allegations contained in paragraph 34, Defendants admit Clark pointed the TASER at Bethea's upper chest, but clarify he had repeatedly told Bethea he shouldn't threaten an officer like he was doing.

15. Answering the allegations contained in paragraph 35, Defendants admit Bethea backed away at one point. Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in said paragraph.

16. Answering the allegations contained in paragraph 36, Defendants admit same but clarify the actual distance would have been less than 10 to 12 feet.

17. Answering the allegations contained in paragraph 37, Defendants admit the TASER was deployed and that Bethea fell to the ground on his side. Except as so admitted, Defendants deny each and every allegation contained in said paragraph and the whole thereof.

18. Answering the allegations contained in paragraph 38, Defendants admit only that Fordham and Byrd stepped forward after 5 seconds.

19. Answering the allegations contained in paragraph 39, Defendants admit the TASER's data download reflects a second discharge lasting approximately 4 seconds some 10 seconds

after the first discharge. Except as so admitted, Defendants deny each and every allegation contained in said paragraph and the whole thereof.

20. Answering the allegations contained in paragraph 40, Defendants admit that Clark discharged his TASER a third time for 4 seconds. Except as so admitted, Defendants deny each and every allegation contained in said paragraph and the whole thereof.

21. Answering the allegations contained in paragraph 42, Defendants admit Bethea died at least 25 minutes after the first TASER discharge but deny the death was caused by TASER discharge.

22. Answering the allegations contained in paragraph 43, Defendants admit only that on October 12, 2009, TASER published Training Bulletin 15.0, the content of which speaks for itself.

23. Answering the allegations contained in paragraph 58, Defendants admit same but deny Bethea was “helpless.”

24. Answering the allegations contained in paragraph 59, Defendants admit the named personnel withdrew from the cell except for Spriggs, who was not in the cell to begin with. Except as so admitted, Defendants deny each and every allegation contained in said paragraph and the whole thereof.

25. Answering the allegations contained in paragraph 61, Defendants admit Clark, Kimbrough, Fordham and Byrd knew the TASER had repeatedly discharged. Except as so admitted, Defendants deny each and every allegation contained in said paragraph and the whole thereof.

26. Answering the allegations contained in paragraph 62, Defendants admit the video monitor at the control desk would have shown images from inside the cell, that the images would

be visible to anyone looking at the monitor, and that jail personnel, including Byrd, periodically looked into the cell to check on Bethea. Except as so admitted, Defendants deny each and every allegation contained in said paragraph and the whole thereof.

27. Answering the allegations contained in paragraph 72, Defendants admit only that Clark owed a duty to refrain from the use of excessive force.

28. Answering the allegations contained in paragraph 76, Defendants admit only that the Sheriff is liable under *respondeat superior* to the extent of his insurance coverage for the acts and omissions of his employees.

29. Answering the allegations contained in paragraph 80, Defendants admit only that a jailer has a duty to prevent the use of excessive force if afforded a realistic opportunity to timely intervene.

30. Answering the allegations contained in paragraph 85, Defendants admit only that the Sheriff is liable under *respondeat superior* to the extent of his insurance coverage for the acts and omissions of his employees.

31. Answering the allegations contained in paragraph 89, Defendants admit only that a jailer has a duty to secure reasonable medical care for an inmate within his custody or control for whom the medical need is reasonably apparent. Except as so admitted, Defendants deny each and every allegation contained in said paragraph and the whole thereof.

32. Answering the allegations contained in paragraph 97, Defendants admit same but clarify Fordham was a deputy sheriff, not a detention officer.

33. Answering the allegations contained in paragraphs 3 and 23, Defendants lack sufficient knowledge or information to form a belief as to the truth of said allegations.

34. Answering the allegations contained in paragraphs 31-32, 46-49, 52, 54-56, 60, 63-65, 68-70, 73-75, 77-78, 81-84, 86-87, 90-95, and 98-104, Defendants deny each and every allegation contained in said paragraphs and the whole thereof.

FIRST AFFIRMATIVE DEFENSE

35. The individual defendants are entitled to qualified immunity on the federal claims.

SECOND AFFIRMATIVE DEFENSE

36. The individual defendants are entitled to public official immunity on the state law claims.

THIRD AFFIRMATIVE DEFENSE

37. Plaintiff is barred from recovery herein on the official capacity claims under state law and the state law claims against the Sheriff by the doctrine of governmental or sovereign immunity.

FOURTH AFFIRMATIVE DEFENSE

38. Plaintiff's action is barred due to Bethea's negligence and gross negligence at the time of the incident which constituted a proximate cause of his injuries and death.

FIFTH AFFIRMATIVE DEFENSE

39. The First Amended Complaint fails to state a claim upon which relief can be granted.

WHEREFORE, Defendants pray that Plaintiff take nothing by way of his First Amended Complaint, that Defendants recover their costs of suit, that Defendants receive trial by jury, and for such other relief that the Court may deem just and proper.

Dated: January 4, 2013

/s/Scott D. MacLatchie  
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## CERTIFICATE OF SERVICE

I hereby certify that the foregoing ANSWER was served this date upon the following counsel of record via use of the CM/ECF system, which will send a notification of such filing and a copy thereof:

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Dated: January 4, 2013

/s/ Scott D. MacLatchie