

1.

In this wrongful death action, Plaintiffs assert various claims under Georgia law arising from the death of Ariston Waiters at the hands of Union City Police Officer Luther Lewis on December 14, 2011. Plaintiffs contend that Lewis shot and killed Ariston Waiters, with malice as Waiters was unarmed and did not present a threat of imminent bodily harm to Lewis or anyone else. Plaintiffs further allege that Union City, Georgia is vicariously liable for Lewis' wrongful acts as Union City has waived its sovereign immunity through the purchase of liability insurance. In this First Amended Complaint, Plaintiffs further alleged that Luther Lewis' violated the Fourth Amendment to the United States Constitution when he used unlawful deadly force against Ariston Waiters; and Union City ratified Lewis' unlawful acts and maintained customs or policies that were the moving force behind Lewis' unlawful use of deadly force against Ariston Waiters.

JURISDICTION AND VENUE

2.

This court has subject matter jurisdiction over this action for money damages arising from injuries proximately caused by the tortious acts of the Defendants acting in concert with one another. Ga. Const. Art. VI, Sec. 3 P. I.

3.

Venue is proper in this Court as one or more of the Defendants reside in Fulton County, Georgia and this suit is brought against the Defendants as joint tort-feasors. GA. Const. Art. VI, Sec 2 PP. III, IV & VI.

PARTIES

4.

Ajaleh Waiters is Ariston Waiters' minor child and sole surviving heir. Ajaleh Waiters brings this action through her mother, Shantaya Holmes, who has been duly appointed as her conservator pursuant to O.C.G.A §29-3-2, 29-3-22(b) and 29-3-36.

5.

Freda Waiters is Ariston Waiters' mother and she has been appointed as Administrator of the Estate of Ariston Waiters (the "Estate").

6.

Union City, Georgia is a municipality formed and existing under the laws of the State of Georgia. Union City, Georgia may be served with process by service upon Mayor Ralph Moore at 5047 Union Street, Union City, Georgia 30291.

7.

Luther Lewis is a police officer employed by the Union City Police Department. Lewis may be served with summons at 42 Seven Pines Drive, Newnan, Georgia 30265-1397.

FACTUAL ALLEGATIONS

8.

On December 14, 2011, Luther Lewis was acting within the course and scope of his employment as a police officer in the Union City Police Department ("UCPD").

9.

On December 14th, Lewis and Officer Ledford were dispatched to a call in the Hickory Lane subdivision.

10.

The 911 caller told the dispatch officer that there were kids fighting and that gunshots had been fired.

11.

Ledford and Lewis arrived at the intersection of Hickory Lane Drive and Hickory Lane Circle – the incident location – at approximately 6:45:28 p.m.

12.

When Ledford and Lewis arrived, there were numerous teenage boys and girls at the incident location.

13.

The teenagers were gathered in the subdivision when a fight broke out on the front lawn between two or more teenage girls. An unidentified person apparently fired a gun into the air at some point during the altercation between the teenage girls.

14.

Ariston Waiters was also in the area. Ariston Waiters was not involved in the fight between the teenage girls. Ariston Waiters was unarmed and did not fire the shots heard by the person who called 911.

15.

When Lewis and Ledford arrived, Ariston Waiters was leaving the area on foot. Waiters was walking in the direction of a wooded area behind the buildings. Waiters had his back to Lewis and Ledford.

16.

Lewis saw Waiters leaving the area and wrongfully assumed that Waiters had been

involved in the incident he was dispatched to investigate.

17.

Without alerting Ledford, dispatch or other officers on the scene, Lewis followed Waiters to the rear of the houses.

18.

Lewis concealed himself from Waiters' view and approached him quietly.

19.

Lewis approached Waiters with his gun drawn.

20.

As Lewis drew closer to Waiters, he suddenly emerged from the shadows and demanded that Waiters stop and lie down facing the ground and with his hands above his head.

21.

Waiters did not run away; he complied with Lewis' commands.

22.

As Lewis approached Waiters, who was lying face down with his hands above his head, Lewis could see Waiters' hands. Lewis knew Waiters did not have a weapon of any kind in his hands.

23.

When Lewis approached Waiters, who was lying face down with his hands above his head and unarmed, Lewis knew or should have known that Waiters did not present a threat of immediate bodily harm to Lewis or anyone else.

24.

When Lewis approached Waiters, Lewis lacked reasonable articulable suspicion to believe that Waiters had been, or was about to be, involved in any sort of criminal activity.

25.

Lewis approached Waiters with his gun drawn and knelt down beside Waiters. Lewis placed his knee in Waiters' back and ordered him to put his hands behind his back.

26.

Waiters gave Lewis his left hand and Lewis placed a handcuff on his left wrist.

27.

When Lewis seized Waiters, he did not have probable cause to believe that Waiters had been involved in criminal activity; he only knew that Waiters had been walking away from an incident involving several teenage girls.

28.

Waiters reached his right hand back in an effort to comply with Lewis's command.

29.

Waiters' right hand was and had been in plain view; Lewis knew Waiters did not have a weapon and presented no threat to him. Waiters was lying face down on the ground with Lewis' knee in his back. Waiters was attempting to comply with Lewis' commands.

30.

Intentionally and without provocation, Lewis fired his service weapon at Waiters. Lewis fired from point blank range. Lewis fired two shots. When he fired one of the shots, Lewis' service weapon was in contact with Waiters' back.

31.

Lewis shot Waiters less than two and a half minutes after arriving on the scene.

32.

A local resident who is a registered nurse heard Lewis' gunshots and immediately arrived on the scene to render aid to Waiters, who was lying on the ground bleeding to death.

33.

The local resident told Lewis and several other unidentified officers who had arrived at the scene that she was a registered nurse and could provide immediate emergency medical treatment to Waiters.

34.

Lewis and his fellow officers would not allow the registered nurse to help Waiters.

35.

Lewis and his fellow officers unreasonably denied critical emergency medical treatment to Waiters.

36.

Lewis acted with actual intent to cause injury to Waiters when he fired his service weapon at Waiters without provocation.

37.

Lewis did not act in self-defense as Waiters was unarmed and did not present an imminent threat of bodily harm to Lewis or anyone else.

38.

As a direct and proximate cause of Lewis' wrongful acts, Waiters suffered fatal bodily

injuries. Waiters died at Grady Memorial Hospital on December 14, 2011.

39.

Waiters was not involved in the incident that Lewis was dispatched to investigate.

40.

On June 6, 2012, Plaintiffs gave ante litem notice to Union City regarding the incident described in this Complaint. (A true and correct copy of the ante litem notice was attached as Exhibit "A" to the Complaint.)

41.

On July 10, 2012, the City of Union City denied Plaintiffs' claims. (A true and correct copy of Union City's denial of the claim is attached hereto as Exhibit "B" to the Complaint.)

42.

Defendants have waived any defense of sovereign immunity by the purchase of liability insurance.

43.

Plaintiffs have complied with all conditions precedent to bringing this action against Union City. See Exhibits "A" and "B."

COUNT I

WRONGFUL DEATH

(Union City & Lewis)

44.

Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1 through 43 above as if fully restated herein.

45.

While acting in the course and scope of his employment as a police officer in the Union City Police Department, Lewis intentionally and without provocation fired two shots from his service weapon at Ariston Waiters. Lewis acted with malice and a deliberate intent to cause grievous bodily injury, pain and death to Ariston Waiters.

46.

As a direct and proximate cause of Lewis' wrongful acts, Ariston Waiters suffered grievous bodily injury, pain and death.

47.

Union City is vicariously liable for the grievous bodily injury, pain and death suffered by Ariston Waiters as a direct and proximate cause of Lewis' wrongful acts performed in the course and scope of his employment.

48.

As a result of the wrongful death of Ariston Waiters, Ajaleh Waiters, by and through her conservator, Shantaya Holmes, is entitled to recover the full value of Ariston Waiters' life in an amount to be determined by the enlightened conscience of a jury.

49.

As a result of the wrongful death of Ariston Waiters, the Estate of Ariston Waiters is entitled to recover compensatory damages for the grievous injuries, pain and suffering experienced by Ariston Waiters prior to his death in an amount to be determined by the enlightened conscience of a jury.

50.

Defendant Lewis displayed an entire want of care and indifference to the consequences of his actions thereby entitling the Estate of Ariston Waiters to an award of aggravated, exemplary and punitive damages in an amount to be determined by the enlightened conscience of a jury.

COUNT II

(ASSAULT & BATTERY)

51.

Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1 through 50 above as if fully restated herein.

52.

At all times relevant to this action, Lewis was acting in the course and scope of his employment as a police officer in the Union City Police Department.

53.

When Lewis approached Ariston Waiters with his service weapon drawn, ordered him to lie face down on the ground, and knelt on him with his knee in Ariston Waiters' back, Ariston Waiters was in reasonable fear of imminent bodily injury.

54.

Lewis fired his service weapon into Ariston Waiters' back at point blank range with malice and actual intent to cause grievous bodily injury, pain and death.

55.

As a direct and proximate cause of Lewis' wrongful acts, Ariston Waiters suffered grievous bodily injury, pain and death.

56.

Union City is vicariously liable for the grievous bodily injury, pain and death suffered by Ariston Waiters as a direct and proximate cause of Lewis' wrongful acts performed in the course and scope of his employment.

57.

As a result of the wrongful death of Ariston Waiters, Ajaleh Waiters, by and through her conservator, Shantaya Holmes, is entitled to recover the full value of Ariston Waiters' life in an amount to be determined by the enlightened conscience of a jury.

58.

As a result of the wrongful death of Ariston Waiters, the Estate of Ariston Waiters is entitled to recover compensatory damages for the grievous injuries, pain and suffering experienced by Ariston Waiters prior to his death in an amount to be determined by the enlightened conscience of a jury.

59.

Defendant Lewis displayed an entire want of care and indifference to the consequences of his actions thereby entitling the Estate of Ariston Waiters to an award of aggravated, exemplary and punitive damages in an amount to be determined by the enlightened conscience of a jury.

COUNT III

BREACH OF DUTY

60.

Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1 through 59 as if fully restated herein.

61.

Union City police officers have a duty to protect persons in Union City from application of excessive force in attempts to apprehend them.

62.

Through his conduct with respect to Ariston Waiters as detailed herein, Lewis breached his duty.

63.

In breaching his duty, Officer Lewis acted, with actual malicious intent to cause injury.

64.

Union City is vicariously liable for the grievous bodily injury, pain and death suffered by Ariston Waiters as a direct and proximate cause of Lewis' wrongful acts performed in the course and scope of his employment.

65.

As a result of the wrongful death of Ariston Waiters, Ajaleh Waiters, by and through her conservator, Shantaya Holmes, is entitled to recover the full value of Ariston Waiters' life in an amount to be determined by the enlightened conscience of a jury.

66.

As a result of the wrongful death of Ariston Waiters, the Estate of Ariston Waiters is entitled to recover compensatory damages for the grievous injuries, pain and suffering experienced by Ariston Waiters prior to his death in an amount to be determined by the enlightened conscience of a jury.

67.

Defendant Lewis displayed an entire want of care and indifference to the consequences of his actions thereby entitling the Estate of Ariston Waiters to an award of aggravated, exemplary and punitive damages in an amount to be determined by the enlightened conscience of a jury.

COUNT IV

FOURTH AMENDMENT – 42 U.S.C. § 1983

(Excessive Force)

68.

The foregoing paragraphs 1 through 67 are incorporated here by this reference.

69.

At all times relevant to this action, Defendant Lewis was acting under color of state law and within the scope of his discretionary functions as an employee of Union City, Georgia.

70.

Lewis knew that Waiters did not present an imminent threat of bodily harm lying unarmed and face down on the ground.

71.

An objectively reasonable law enforcement officer in Lewis' position would have known that Waiters did not present an imminent threat of bodily harm lying unarmed and face down on the ground.

72.

Lewis discharged his firearm into Waiters' back two times at point blank range causing fatal injuries.

73.

Lewis use of unlawful deadly force against Waiters violated the Fourth Amendment to the United States Constitution, made applicable to state and local officials through the Fourteenth Amendment's Due Process clause and actionable pursuant to 42 U.S.C. § 1983.

74.

At all times relevant to this action, the law was established with obvious clarity that Lewis' use of deadly force against Waiters – a person who had committed no crime and was laying face down on the ground – violated the Fourth Amendment.

75.

As a direct and proximate cause of Lewis' unlawful actions, Waiters was deprived of his rights under the Fourth Amendment to the Constitution.

76.

The Estate of Ariston Waiters is entitled to recover compensatory damages for the constitutional deprivations suffered by Waiters prior to his death in an amount to be determined by the enlightened conscience of a jury.

77.

Lewis' actions described herein were willful, deliberate, and malicious thereby entitling the Estate of Ariston Waiters to an award of punitive damages in an amount to be determined by the enlightened conscience of a jury.

78.

Ajaleh Waiters, natural daughter and sole survivor of decedent, Ariston Waiters, by and through SHANTAYA HOLMES, her mother and next friend, are entitled to assert the survivors

claims arising out of Ariston Waiters' wrongful death for all damages constituting the full value of Waiters' life.

COUNT V

FOURTH AMENDMENT – 42 U.S.C. § 1983

(Monell Liability)

79.

The city council is the governing authority for Union City, Georgia.

80.

Acting pursuant to its governing authority, the city council enacted legislation creating the Union City Police Department.

81.

The city council delegated final policy making authority to the Chief of Police over implementation of law enforcement training, policies, procedures, internal investigations and disciplinary action within the Union City Police Department ("UCPD").

82.

The city council has manifested its delegation of final policy making authority to the Chief of Police in the following ways: (a) by giving the Chief of Police authority to develop and implement policies and procedures related to the use of force, vehicle pursuits and internal investigations; (b) by giving the Chief of Police authority to implement training within the UCPD related to *Terry* stops, use of force and internal investigations;

and (c) by giving the Chief of Police authority to implement policies and procedures for recruiting, hiring, promoting and disciplining employees of the UCPD.

83.

At all times relevant herein, the Defendant officers acted pursuant to the customs, policies, and practices of Union City, and, accordingly, Union City is liable for any and all constitutional violations committed against the Plaintiffs' decedent.

84.

Said customs, policies, and systemic deficiencies include but are not limited to the following:

- (a) Maintaining a vague and ambiguous use of force policy which fails to provide clear guidance as to the definition of deadly force; and
- (b) By engaging in a custom or practice of failing to conduct thorough, objective, and uniform investigations and evaluations of officer misconduct and incidents involving the use of deadly force, with the result being that officers were led to believe that they could violate the Fourth Amendment with impunity.

85.

At all times relevant hereto, Union City had a policy, practice, or custom of ratifying police misconduct and/or exercising deliberate blindness to allegations of police misconduct. This policy, practice, or custom has created an environment that fosters police misconduct because officers believe that they will not be disciplined for such conduct.

86.

Said customs, policies, and practices of Union City, which include systemic deficiencies in its police department arising from the deliberate indifference of Union City and its policymakers in failing to develop and implement appropriate customs, policies, and practices, were the moving force behind the constitutional violations complained of by Plaintiffs.

87.

As a direct and proximate cause of Union City's customs, policies and practices, Waiters was deprived of his rights under the Fourth Amendment to the Constitution.

88.

The Estate of Ariston Waiters is entitled to recover compensatory damages and pain and suffering for the constitutional deprivations suffered by Waiters prior to his death in an amount to be determined by the enlightened conscience of a jury.

89.

Ajaleh Waiters, natural daughter and sole survivor of decedent, Ariston Waiters, by and through SHANTAYA HOLMES, her mother and as next friend, are entitled to assert the survivors claims arising out of Ariston Waiters' wrongful death for all damages constituting the full value of Waiters' life.

WHEREFORE, Plaintiffs pray that they have a trial by jury on all issues and judgment against Defendants as follows:

- (a) Judgment be entered against the Defendants, jointly and severally, in favor of Plaintiffs for all damages flowing from the death of Mr. Waiters, including but not limited to lost earnings, the full value of Mr. Waiters' life, funeral and related expenses, compensation for loss of enjoyment of life, and all damages for Mr. Waiters' physical, mental, and emotional pain and suffering and apprehension of fear in an amount to be determined by the enlightened conscience of an impartial jury;
- (b) Judgment be entered against the Defendants, jointly and severally, in favor of Plaintiffs for Plaintiffs' attorneys' fees, costs, and expenses of litigation pursuant to O.C.G.A. §13-6-11, and any other applicable law;
- (c) Judgment be entered against Defendants in favor of Plaintiffs for punitive damages pursuant to O.C.G.A. §51-12-5.1 in an amount to be determined by the enlightened conscience of an impartial jury;
- (d) Plaintiffs be awarded such other and further relief as this Court deems just and proper; and
- (e) This Court grant Plaintiffs a trial by jury

This 29th day of August, 2013.

Respectfully Submitted,

/s/ William J. Atkins

William J. Atkins
Georgia State Bar No.: 027060
Atkins & Attwood, LLC
6400 Powers Ferry Road
Suite 112
Atlanta, GA 30339

/s/ Mawuli M. Davis

MAWULI M. DAVIS
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State Court of Fulton County

FILED

File & ServeXpress

Transaction ID: 53954421

Date: Aug 29 2013 01:39PM

Cicely Barber, Clerk

Civil Division

THE DAVIS BOZEMAN LAW FIRM, PC

ATTORNEYS AT LAW

1000 Peachtree Street, N.W.

Atlanta, Georgia 30309

PHONE: 404-774-7661

FAX: 404-774-2050

June 6, 2012



BY HAND DELIVERY; FAX 770-306-6861;
CERTIFIED MAIL/RRR #7011 0470 0002 6205 8788

City of Union City
Attn: Jacqueline Cossey, City Clerk
5017 Union Street
Union City, Georgia 30291

ANTE LITEM NOTICE OF CLAIMS

RE: Claimant: Estate of Ariston Waiters (Ajaleh Waiters)
Date of Accident: December 14, 2011, approximately 6:30PM
Location: 6344 Hickory Lane Circle,
Union City, Georgia
Claims: Wrongful Death
Subject: Ante Litem Notice of Claims

To Whom It May Concern:

Please be advised that the undersigned serves as counsel to the Estate of Ariston Waiters and Shanaya Holmes as next friend of Ajaleh Waiters, minor survivor of Ariston Waiters, in their claim for wrongful death as a result of the above-referenced incident which occurred at 6344 Hickory Lane Circle, Union City Georgia, 30291 or about December 14, 2011 at approximately 6:30PM. We are also representing Ariston Waiters' daughter, Ajaleh Waiters, in her survivor claims arising out of this incident. The Estate and Ajaleh intend to file a claim and/or civil action for damages against the City of Union City and Luther Lewis in connection with the shooting death of Ariston Waiters on or about December 14, 2011.

Please allow this correspondence to serve as our formal ante litem notice, in accordance with the provisions of O.C.G.A. § 36-33-5, of our clients' claims for damages against the City of Union City, and any and all other officers, employees, agencies or entities who may have been involved in causing the death of Ariston Waiters. Although the investigation of this loss is not yet complete, the claims arise, *inter alia*, from the negligence and use of excessive force by Officer Luther Lewis. Upon information and belief, an entity at least partially responsible for the hiring, retention, training, and supervision of Officer Lewis at the time the incident occurred was the City of Union City Police Department.

"Your Attorney, Advocate, and Friend"

The Davis Bozeman Law Firm, PC
ATTORNEYS, COUNSELORS AT LAW

June 6, 2012
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On December 14, 2011 at approximately 6:30PM, Union City Police Officers were called to 6344 Hickory Lane Circle, Union City, Georgia 30291 in response to a report of shots fired in the midst of an altercation involving teenagers. Ariston Waiters was not involved in the altercation or the firing of gunshots. When the police arrived to the location, several individuals left the area. One of those individuals, Ariston Waiters, attempted to leave the area by travelling through the backyard of the residence located at 6344 Hickory Lane Circle, Union City Georgia, 30291. Officer Luther Lewis, assuming Ariston Waiters involvement in the altercation, intercepted Ariston Waiters in the rear of the home with his weapon drawn. Despite the fact that Ariston Waiters did nothing wrong, had not committed any crime, and was unarmed, Officer Lewis unlawfully detained, arrested, and fired two shots to the back of Ariston Waiters. Ariston Waiters was transported to Grady Memorial Hospital where he was pronounced dead.

The damages incurred include, but are not limited to, medical and funeral expenses connected to the death; pain and suffering of the victim; loss of the victim's expected earnings between the time of the death and the expected retirement or death; damages for mental anguish or pain and suffering of the survivors; loss of care, protection, nurturing, and companionship of the survivors; punitive damages, and any and all other damages as permitted under Georgia law as determined by the enlightened conscience of a jury, but in an amount likely to exceed \$1,000,000.00.

If you contend this letter does not provide you with sufficient notice pursuant to O.C.G.A. § 36-33-5, or comply with said statute, please advise me immediately. Please accept this as a request for all insurance information that may cover any aspect of these claims.

I am notifying the Mayor, all City Council Members, City Clerk, and City Manager of this notice by copy of this letter.

Should you have any questions, please do not hesitate to contact me directly. Thank you in advance for your anticipated cooperation.

Sincerely,

Davis Bozeman Law Firm, PC

By:


Mawuli Mel Davis, Esq.

MB/lnm

[CONTINUED ON NEXT PAGE]

The Davis Bozeman Law Firm, PC
ATTORNEYS & COUNSELORS AT LAW

June 6, 2012

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cc:

Mayor Ralph Moore
Shirley Jackson, Councilwoman
Brian K. Jones, Councilman
Angelette Mealing, Councilwoman
Vince R. Williams, Councilman
Steven Rapson, City Manager



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July 10, 2012

MAILING ADDRESS:
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FAYETTEVILLE, GA 30014-0949

Mawuli Mel Davis, Esq.
The Davis Bozeman Law Firm, P.C.
4153-B Flat Shoals Parkway, Suite 204
Decatur, Georgia 30034

Re: Ante Litem Notice of Claims and Request for Insurance Information dated June 6,
2012 – Estate of Ariston Waiters and Shantaya Holmes as next friend of Ajaleh
Waiters

Dear Mr. Davis:

I am in receipt of the above-referenced notice. You allege that the City of Union City, by and through its agents, was negligent and used excessive force thereby giving rise to a wrongful death claim to your clients. You allege that damages were incurred in an amount likely to exceed \$1,000,000.00. I briefed the Mayor and Council of Union City on this issue and received direction to inform you that the Mayor and Council of Union City deny that Union City, by and through its agents, acted in the manner as alleged in your June 6, 2012 letter. The Mayor and Council further deny any claims as asserted in same.

With respect to your insurance request contained within your notice, the City has an insurance policy with the Georgia Interlocal Risk Management Agency (GIRMA) of the Georgia Municipal Association. The third party administrator for this policy is Gallagher Bassett Services. Contact information is provided below:

Gallagher Bassett Services
100 Crescent Centre Parkway Suite 600
Tucker, Georgia 30084

I trust this information satisfactorily responds to your request.

Yours very truly,

Dennis A. Davenport,
City Attorney
City of Union City, Georgia

DAD

Cc: Mr. Steve Rapson, City Manager