

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ESTATE OF FANTA BILITY,
BY AND THROUGH SIDIKIE KAMARA,
AS ADMINISTRATOR OF THE ESTATE
OF FANTA BILITY

:
: **CIVIL ACTION**

:
: **No.**

And

TENNEH KROMAH

:
: **JURY TRIAL DEMANDED**

And

MAWATTA BILITY

And

ABU BILITY

And

BANGALEE BILITY

And

MAMASU BILITY,

Plaintiffs

v.

BOROUGH OF SHARON HILL
1110 Spring Street
Sharon Hill, PA 19079

And

JOSEPH J. KELLY JR
Sharon Hill Chief of Police
(In His Official Capacity)
1110 Spring Street
Sharon Hill, PA 19079

And

2. Jurisdiction lies over state law claims based on the principals of supplemental jurisdiction, as codified at 28 U.S.C. § 1367.

3. The amount in controversy exclusive of interest and costs dramatically exceeds the sum of One Hundred Thousand Dollars (\$100,000.00).

VENUE

4. All the claims herein arose within the jurisdiction of the United States District Court for the Eastern District of Pennsylvania and involve Defendants who reside within the jurisdictional limits. Venue is accordingly invoked pursuant to the dictates of 28 U.S.C. § 1391(b) and (c).

PARTIES

5. Plaintiffs in this matter are the Estate of Fanta Bility through Sidikie Kamara as Administrator of the Estate of Fanta Bility, Mawatta Bility, Tenneh Kromah, Abu Bility, Bangalee Bility, and Mamasu Bility.

6. Tenneh Kromah is the mother of Fanta Bility.

7. Mawatta Bility is the sister of Fanta Bility.

8. Abu Bility, Bangalee Bility and Mamasu Bility are siblings of Fanta Bility.

9. Defendant Borough of Sharon Hill is a municipality, organized by and through the Commonwealth of Pennsylvania.

10. Defendant Joseph J. Kelly Jr., at all times relevant hereto, was the Borough of Sharon Hill's Chief of Police employed by and the agent of the municipality. At all times relevant hereto Joseph J. Kelly Jr., was charged with maintaining and enforcing the Sharon Hill Police Department's practices, policies, and procedures.

11. Defendant John Scanlan, III is a Sharon Hill Police Officer.

12. Defendant Devon Smith is a Sharon Hill Police Officer.

13. Defendant(s) John Doe(s) are Defendant Police Officer(s) whose identity or identities is/are currently unknown to Plaintiffs.

FACTS

14. On August 27, 2021 at approximately 9:00 PM, at least three Sharon Hill Police Officers unreasonably, and with a specific intent to kill, fired multiple gunshots from their semi-automatic Borough-issued pistols at persons in a moving car, the bullets traveling beyond the moving car into a crowd of innocent bystanders who were exiting a high school football game in Sharon Hill, Delaware County, Pennsylvania.

15. The occupants of car were unarmed, engaging in no criminal activity, and did not pose any threat at all to the police officers or the community at large. The driver of the car was in fact an innocent 19-year-old woman with innocent another woman of similar age in the front passenger seat. No other persons were in that car when the police unreasonably used deadly force against its driver and passenger.

16. Fanta Bility and Mawatta Bility were injured by bullets fired by the police.

17. Tenneh Kromah, Abu Bility, Bangalee Bility, and Mamasu Bility were witnesses to the injuries sustained by Fanta and Mawatta Bility and within the zone of danger of the shootings.

18. Fanta Bility later succumbed to her injuries after lying conscious in her mother's arms while her mother attempted to comfort the terror-stricken little girl before she died.

COUNT ONE
VIOLATION OF 42 U.S.C. § 1983
EXCESSIVE FORCE

(Estate of Fanta Bility and Mawatta Bility v. All Defendant Police Officers)

19. Plaintiffs incorporate the preceding paragraphs of this Complaint as if same were set forth herein at length.

20. Defendants used excessive force thereby violating Fanta and Mawatta Bility's rights under the laws of the Constitution of the United States, in particular the 4th and 14th Amendments and their rights under the Constitution and laws of Pennsylvania.

21. Without any justification or provocation, Defendants willfully and maliciously caused the death of Fanta Bility and seriously injured Mawatta Bility.

22. The actions committed by Defendants constitute intentional misconduct, unreasonable and excessive use of force, and deliberate indifference to Plaintiffs' constitutional rights leading directly to Fanta Bility's injury and resulting death, and Mawatta Bility's injuries, in violation of Plaintiffs' constitutional rights as set forth in the above paragraphs.

WHEREFORE, Plaintiffs demand judgment against Defendant Officers in an amount in excess of \$100,000.00, plus interest, costs, attorney's fees, and punitive damages.

COUNT TWO
VIOLATIONS OF 42 U.S.C. § 1983 FAILURE TO TRAIN
(Plaintiffs v. Borough of Sharon Hill and Defendant Police Chief Kelly)

23. Plaintiffs incorporate the preceding paragraphs of this Complaint as if same were set forth herein at length.

24. The Borough of Sharon Hill and its chief of police have a duty to maintain policies and practices related to use of deadly force, consistent with Pennsylvania Law and the U.S. Constitution.

25. The Borough of Sharon Hill and its chief of police have a policy, custom or practice of ignoring the appropriate standards for use of deadly force, and/or has failed to train its officers appropriately.

26. As such, The Borough of Sharon Hill and its agents were deliberately indifferent and reckless with respect to potential violations of constitutional rights.

27. The Borough of Sharon Hill and its police chief were the moving force behind the actions of the officer(s) that led to the death of Fanta Bility.

28. The Borough of Sharon Hill's policies, practices and/or customs led its officers and/or agents to believe that they could violate the constitutional rights of Plaintiffs with impunity and with the tacit approval of the Borough of Sharon Hill and its chief of police. The Borough of Sharon Hill's policies, customs and/or practices were a direct proximate cause of the injuries suffered by Plaintiffs.

WHEREFORE, Plaintiffs demand judgment against The Borough of Sharon Hill in an amount in excess of \$100,000.00 plus interest, costs, attorney's fees, and punitive damages.

COUNT THREE
VIOLATIONS OF 42 U.S.C. § 1983 STATE CREATED DANGER
(All Plaintiffs v. All Defendants)

29. Plaintiffs incorporate the preceding paragraphs of this Complaint as if same were set forth herein at length.

30. Defendant Officers acted under the color of law to create a danger that would not have been present absent such conduct.

31. The Fourteenth Amendment to the United States Constitution guarantees Plaintiffs the substantive due process right to be free from state-created dangers.

32. Defendants violated this right by taking affirmative steps which placed Plaintiffs at imminent and foreseeable risk of danger and harm.

33. The physical, emotional, developmental, financial, psychological, and/or psychiatric harm that Plaintiffs suffered after being so placed was foreseeable, and directly and proximately caused by Defendants' unconstitutional acts.

34. Defendants arbitrarily and capriciously deprived Plaintiffs of their due process rights in the absence of any countervailing state interest.

35. Plaintiffs substantive due process rights to be free of state-created dangers were clearly established constitutional rights at the time of Defendants' acts and omissions, and a reasonable individual would have known that their acts and omissions would violate these clearly established constitutional rights.

WHEREFORE, Plaintiffs demand judgment against Defendants in an amount in excess of \$100,000.00 plus interest, costs, attorney's fees, and punitive damages.

COUNT FOUR
VIOLATIONS OF 42 U.S.C. § 1983 (Monell) UNCONSTITUTIONAL POLICY,
PRACTICE OR CUSTOM
(Estate of Fanta Bility v. Borough of Sharon Hill)

36. Plaintiff incorporates the preceding paragraphs of this Complaint as if same were set forth herein at length.

37. As a result of the Borough of Sharon Hill's Constitutionally infirm policies, customs, supervision and practices described above, Fanta Bility was deprived of her life without due process of law, and in violation of her constitutional rights in under of the Fourth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiff demands judgment against the Borough of Sharon Hill in an amount in excess of \$100,000.00, plus interest, costs, attorney's fees, and punitive damages.

COUNT FIVE
ASSAULT AND BATTERY
(Estate of Fanta Bility and Mawatta Bility v. All Defendants)

38. Plaintiffs incorporate the preceding paragraphs of this Complaint as if same were set forth herein at length.

39. By the conduct set forth above, by physically assaulting, battering, shooting, and killing Fanta Bility, Defendants, each individually and jointly and/or severally, used unreasonable force, caused and intended to cause, harmful and offensive contact leading directly to contact with the body of Fanta Bility constituting assault and battery on her person ultimately resulting in her death.

40. By the conduct set forth above, by physically assaulting, battering, and shooting with specific intent to harm another leading directly to injuring the body of Mawatta Bility, Defendants, each individually and jointly and/or severally, used unreasonable force and caused and intended to cause harmful and offensive contact with another resulting in injury to the body of Mawatta Bility constituting assault and battery.

41. As a direct and proximate result of the aforementioned conduct, Fanta Bility suffered physical injury and pain, emotional distress, humiliation, mental and physical pain and anguish as well as economic and such other losses as will be established at trial.

42. As a direct and proximate result of the aforementioned conduct, Mawatta Bility suffered physical injury and pain, emotional distress, humiliation, mental and physical pain and anguish as well as economic and such other losses as will be established at trial.

WHEREFORE, Plaintiffs demand judgment against Defendants as aforesaid, jointly and severally, in their personal and/or official capacity, plus interest, costs, attorney's fees and punitive damages.

COUNT SIX
PENNSYLVANIA WRONGFUL DEATH AND SURVIVOR ACT
(Estate of Fanta Bility v. All Defendants)

43. Plaintiff incorporates the preceding paragraphs of this Complaint as if same were set forth herein at length.

44. The estate of Fanta Bility seeks damages under 42 Pa. C.S. sec. 8301 et. sec. for wrongful death and 42 Pa. C.S. sec. 8301 et. sec. for survivor damages.

WHEREFORE, Plaintiffs demand judgment against Defendants as aforesaid, jointly and severally, in their personal and/or official capacity, plus interest, costs, attorney's fees and punitive damages.

COUNT SEVEN
PENNSYLVANIA NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
(All Plaintiffs v. All Defendant Police Officers)

45. Plaintiffs incorporate the preceding paragraphs of this Complaint as if same were set forth herein at length.

46. Defendant Police Officers acted with extreme negligence when they fired into a crowd of innocent bystanders.

47. Up to the moment of her death, Fanta Bility suffered severe emotional distress due to Defendant Police Officers negligence.

48. Due to Defendant Police Officer's negligence, Mawatta Bility suffered a physical impact which caused severe emotional distress.

49. Plaintiffs Tenneh Kromah, Abu Bility, Bangalee Bility and Mamasu Bility were all present at the zone of danger cause by Defendant Police Officers' negligence, and thus suffered severe emotional distress.

50. Plaintiffs Tenneh Kromah, Abu Bility, Bangalee Bility and Mamasu Bility all suffered severe emotional distress from contemporaneously witnessing the tortious injuries caused by Defendant Officers to Fanta Bility and Mawatta Bility.

WHEREFORE, Plaintiffs demand judgment against Defendant Police Officers as aforesaid, jointly and severally, in their personal and/or official capacity, plus interest, costs, attorney's fees and punitive damages.

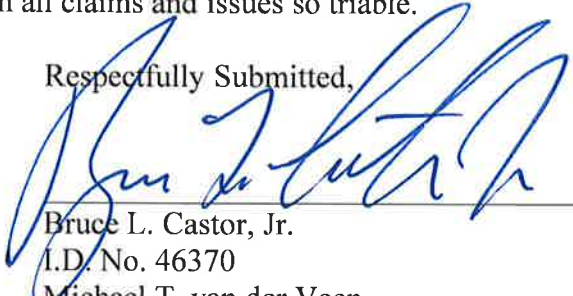
JURY DEMAND

Plaintiffs demand a trial by jury on all claims and issues so triable.

Respectfully Submitted,

Date: 10/26/21

By:



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