

JUL 07 2022

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

TAMMY H. DOWNS, CLERK
By: Kittayon DEP CLERK

LASHAUN MCFADDEN, Personal Representative
of the Estate of TYRONE WASHINGTON,
deceased, Individually, and as Next Friend of
MINOR WASHINGTON #1, a Minor, and
MINOR WASHINGTON #2, a Minor,

Plaintiff,

v.

KRYSTAL WATSON, individually,
DEVON SMITH, individually,
HOWARD REDD, individually,
GARAN BLAGG, individually,
SEAN BARBER, individually, and
CAM PATTERSON, M.D., and
ST. VINCENT INFIRMARY MEDICAL
CENTER, INC., a Non-Profit,

Defendants.

Case No. 4:22-cv-624-BRW

***JURY TRIAL DEMANDED

This case assigned to District Judge Wilson
and to Magistrate Judge Harris

COMPLAINT

NOW COMES, Plaintiff, LASHAUN MCFADDEN, Personal Representative of the Estate of TYRONE WASHINGTON, deceased, Individually, and as Next Friend of MINOR WASHINGTON, a Minor, ("PLAINTIFF") by and through her attorneys, LAUX LAW GROUP, and for her cause of action against the above-captioned defendants, states as follows:

JURISDICTION AND VENUE

1. This action arises under the United States Constitution, particularly under the Fourth and Fourteenth Amendments, and under law, including the Civil Rights Act of 1871, pursuant to 42 U.S.C. § 1983. Federal claims are also brought under the Emergency Medical

Treatment & Labor Act (EMTALA), 42 U.S.C. § 1395dd, *et seq.* and the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.*

2. This Honorable Court has jurisdiction by virtue of 28 U.S.C. §§ 1331 and 1367. Venue is founded in this Court upon 28 U.S.C. § 1391 as the acts of which PLAINTIFF complains arose in this District.

PARTIES

3. At all relevant times, TYRONE WASHINGTON (“TYRONE”) was a U.S. citizen and was, therefore, entitled to all legal and constitutional rights afforded U.S. citizens. At all relevant times, TYRONE was classified as a person with a disability under the Social Security Act, said disability being mental illness which, prior to his death, had lasted for a continuous period of more than twelve (12) months.

4. The heirs-at-law of TYRONE, namely, PLAINTIFF (TYRONE’s sister) and TYRONE’s natural children, Tyrin Washington, Taelor Washington, MINOR WASHINGTON #1, a minor, and MINOR WASHINGTON #2, a minor, are all U.S. citizens. Therefore, TYRONE’s heirs-at-law are entitled to all legal and constitutional rights afforded U.S. citizens.

5. PLAINTIFF is the court-appointed Administratrix of the Estate of Tyrone Washington, deceased. See June 16, 2021 Order attached hereto as **Exhibit A**. PLAINTIFF brings this action on behalf of the estate and on behalf of TYRONE’s heirs-at-law above, including herself.

6. On December 3, 2020, and at all relevant times, Defendant, KRYSTAL WATSON (“WATSON”), was employed by the State of Arkansas as a law enforcement officer with a state-run hospital, the University of Arkansas for Medical Sciences (UAMS), and was acting under the color of state law, within the scope of her employment. Prior to December 3, 2020, WATSON

was trained in police work, including, but not limited to, the Fourth Amendment of the U.S. Constitution, and was fully apprised of UAMS Police Department's (UAMS PD) policies, including those pertaining to the use of deadly force and the handling of mentally ill persons.

7. Furthermore, for some period prior to December 3, 2020, WATSON was employed as a law enforcement officer with the Little Rock Police Department (LRPD) and, therefore, prior to that date, she was trained on LRPD policies pertaining to the use of deadly force and the handling of mentally ill persons.

8. On December 3, 2020, and at all relevant times, Defendants, DEVON SMITH ("SMITH"), HOWARD REDD ("REDD"), GARAN BLAGG ("BLAGG") and SEAN BARBER ("BARBER"), and each of them, were employed by the State of Arkansas as law enforcement officers with UAMS PD and were each acting under the color of state law.

9. Prior to December 3, 2020, SMITH, REDD, BLAGG and BARBER, and each of them, were trained in police work, including, but not limited to, the Fourth Amendment of the U.S. Constitution, and were fully apprised of UAMS PD's policies, including those pertaining to the use of deadly force and the handling of mentally ill persons.

10. On December 3, 2020, and at all relevant times, CAM PATTERSON, M.D. ("PATTERSON") was the Chancellor of UAMS and, as such, was the final policymaker for UAMS.

11. At all relevant times, the State of Arkansas is and was empowered, self-funded and directed to pay any tort or § 1983 civil rights judgment for compensatory damages, actual damages, costs and attorney fees for which any State of Arkansas employee, acting within the scope of his or her employment, is found liable. Accordingly, the State of Arkansas is an indemnification party

regarding the acts and/or omissions committed by WATSON, SMITH, REDD, BLAGG, BARBER and PATTERSON, and each of them, of which PLAINTIFF herein complains.

12. On December 2, 2020, and at all relevant times, Defendant, ST. VINCENT INFIRMARY MEDICAL CENTER, INC., a Non-Profit (“ST. VINCENT”), was a hospital with more than 600 licensed beds, serving the health care needs of Arkansans, including those who present to its Emergency Department (ED) exhibiting signs of mental illness and/or in the midst of a mental health crisis.

13. In December 2020, and at all relevant times, ST. VINCENT provided emergency care for adult patients—including mentally ill persons—24 hours a day, 7 days a week. In December 2020, and at all relevant times, ST. VINCENT employed health care professionals trained to triage individuals presenting to its ED and trained to identify individuals who are having a mental health crisis in order to treat those individuals or to transfer them to an appropriate mental health treatment facility.

14. Furthermore, in December 2020, and at all relevant times, ST. VINCENT had an inpatient behavioral health facility—located at 2 St. Vincent Circle, Little Rock, Arkansas—for the treatment of mentally ill persons, staffed with trained personnel ready to assist such individuals 24 hours a day, 7 days a week.

15. The Social Security Act, 42 U.S.C. § 1395x, *et seq.*, contains a definition of “hospital,” describing the term in pertinent part as:

An “institution which (1) is primarily engaged in providing, by or under the supervision of physicians, to inpatients (A) diagnostic, services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

[and,] in the case of an institution in any State in which State or applicable local law provides for the licensing of hospitals, (A) is licensed pursuant to such law or (B) is approved, by the agency of such State or locality responsible for licensing hospitals, as meeting the standards established for such licensing...

16. In December 2020, all relevant times, ST. VINCENT was a “hospital” as defined by the Social Security Act.

17. In December 2020, all relevant times, UAMS was a “hospital” as defined by the Social Security Act.

18. The UAMS PD is officially recognized as the law enforcement agency of jurisdiction for UAMS’ Little Rock Campus, per Arkansas Code Annotated (ACA) § 25-17-304. UAMS PD operates 24 hours a day, 7 days a week to provide comprehensive services for patients, visitors and staff.

19. At all relevant times, UAMS PD officers were vested with full police powers—including the power to lawfully arrest, search and seize—while on UAMS owned or leased property.

20. On December 3, 2020, and at all relevant times, all UAMS PD officers were required to familiarize themselves with the U.S. Constitution—particularly the Fourth Amendment constraints on the use of deadly force—and were required to follow all UAMS PD policies, including those pertaining to the use of force and the handling of mentally ill persons.

21. At all relevant times, including December 2020, UAMS publicly states that UAMS PD accomplishes its primary goal of providing a crime-free environment through the efforts of a team of professional law enforcement officers, among others. Uniformed UAMS PD officers patrol the UAMS campus 24 hours a day. Normal UAMS PD assignments include one officer in the ED.

22. At all relevant times, UAMS publicly states it has a division that services and maintains more than 2000 surveillance cameras. UAMS utilizes a comprehensive access system to monitor and regulate entry to UAMS. UAMS PD staff monitors an extensive closed circuit TV system which is directly linked to its dispatch where any suspicious or criminal activity is monitored and recorded. According to UAMS, the closed circuit TV system provides for the immediate recovery and review of recorded data.

23. Based on official records that UAMS publishes for public consumption, for the years 2017-20, the crime of vehicle theft had the fourth highest rate of occurrence on UAMS' Little Rock campus from among over twenty categories of crimes measured.

FACTUAL ALLEGATIONS

24. Schizophrenia is a serious mental illness in which people interpret reality abnormally. According to the DSM-5 (Diagnostic Statistical Manual of Mental Disorders, Fifth Edition), a diagnosis of schizophrenia requires the presence of two of five main symptoms: 1) delusions; 2) hallucinations; 3) disorganized or incoherent speaking; 4) disorganized or unusual movements; and 5) negative symptoms.

DECEMBER 1, 2020—TYRONE WASHINGTON PRESENTS TO UAMS EMERGENCY DEPARTMENT

25. On the morning of December 1, 2020, TYRONE—a 39-year-old African-American male and clinically diagnosed schizophrenic since at least 2017—presented to UAMS ED complaining of back pain.

26. At the time of his December 1, 2020 presentation to UAMS ED, TYRONE's mental health history was memorialized in his ED chart by a UAMS nurse, who noted: "Past Medical History: Diagnosis · Schizophrenia (HCC)." The nurse also included in her note that TYRONE was on "[n]o current facility-administered medications."

27. During TYRONE's December 1, 2020 presentation to UAMS, the nurse added that TYRONE, a schizophrenic, had not seen his primary care physician "in a while" and "[h]as not had any medications in a couple of weeks..." *See Image No. 1 below.*

Other Doctors' Notes (continued)
Management options: moderate
General comments: Mr. Washington is a 39 y/o male with PMH DDD, herniated discs, schizophrenia who presents with c/o low back pain worsening over the past 3 days. States he has not seen his PCP in a while. Has not had any medications in a couple of weeks and at that time was taking family member's hydrocodone and flexeril.

Image No. 1: Excerpt from TYRONE's December 1, 2020 UAMS chart which contains a prior diagnosis of schizophrenia in his past medical history.

28. On December 1, 2020, during his admission and prior to his discharge, UAMS possessed institutional knowledge of TYRONE's diagnosis of schizophrenia.

29. At no time on December 1, 2020 was TYRONE provided with a mental health assessment or a mental health consult by UAMS staff. At no time on December 1, 2020 was TYRONE transferred to a mental health treatment facility by UAMS staff.

30. On December 1, 2020, at 5:05 pm, TYRONE was discharged from UAMS "to home/self care" along with prescriptions for back pain and muscle spasms. Upon his December 1, 2020 discharge from UAMS, TYRONE was instructed to return to UAMS if his symptoms worsen or if he had any further concerns.

31. On information and belief, during December 1-2, 2020—including during his December 1, 2020 presentation to UAMS—TYRONE was having a mental health crisis which included schizophrenic episodes with observable schizophrenia signs and symptoms.

DECEMBER 2, 2020—TYRONE WASHINGTON PRESENTS TO
ST. VINCENT

32. On December 2, 2020, the day after his UAMS discharge, at approximately 11:45 pm, TYRONE was taken to ST. VINCENT via ambulance, entering the ED on a stretcher. During

this admission, TYRONE “had to be awakened to be triaged,” according to his ST. VINCENT chart.

33. According to the findings of a cursory psychiatric evaluation contained in his ST. VINCENT chart, TYRONE presented to the hospital on December 2, 2020 with a flat affect and was “[n]ot appropriate” in terms of his mood and affect. *See Image No. 2 below.*

Psychiatric: Cooperative, flat affect, Not appropriate mood & affect,

Image No. 2: Excerpt from TYRONE’s December 2, 2020 ST. VINCENT chart which contains contemporaneous clinical psychiatric findings.

34. Affective flattening—which is reflected in diminished emotional expression—is a fairly common symptom among some schizophrenia sufferers. Affective flattening is associated with increased severity of negative symptoms.

35. On information and belief, when TYRONE presented to ST. VINCENT on December 2, 2020, he was having a schizophrenic episode and/or mental health crisis which required professional mental health treatment on an emergent basis and/or an immediate transfer to a mental health treatment facility.

36. At the time of TYRONE’s December 2, 2020 discharge from ST. VINCENT, employees, agents and/or servants of ST. VINCENT knew that TYRONE was an untreated schizophrenic exhibiting observable schizophrenia signs and symptoms.

37. At no time on December 2, 2020 was TYRONE provided with a mental health assessment or mental health consult by ST. VINCENT staff.

38. At no time on December 2, 2020 was TYRONE transferred to ST. VINCENT’s behavioral health facility or to any another mental health treatment facility.

39. When ST. VINCENT staff discharged TYRONE on December 3, 2020 at 01:24 pm, he was ambulatory and left the hospital unaccompanied.

DECEMBER 3, 2020—TYRONE WASHINGTON’S SECOND PRESENTATION TO UAMS EMERGENCY DEPARTMENT AND SUBSEQUENT THEFT OF AN UNLOCKED, UNOCCUPIED AND IDLING PRO WASH TRUCK

40. On information and belief, on December 3, 2020, following his 1:24 am discharge from ST. VINCENT, TYRONE walked to UAMS and presented to UAMS where he had been seen by UAMS staff two (2) days prior.

41. On information and belief, at the time of his December 3, 2020 presentation to UAMS, TYRONE was in the midst of a mental health crisis and seeking from UAMS emergency mental health treatment.

42. On information and belief, TYRONE’s attempts at obtaining emergency mental health treatment at UAMS ED in the early morning hours of December 3, 2020 were unsuccessful and he therefore left the hospital building.

43. In the early morning hours on December 3, 2020, Todd Kirkland (“Kirkland”), an employee of Pro Wash, an Arkansas-based power washing company contracted by UAMS, was power washing on the physical premises of UAMS, having driven to UAMS in a Pro Wash truck.

44. On December 3 2020, the phrases “ARKANSAS PRO WASH.com” and “POWER WASH” were written in black lettering along the side of Kirkland’s Pro Wash truck. *See Image No. 3 below.*

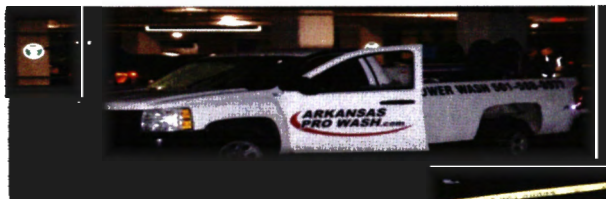


Image No. 3: Photo of Kirkland's white Pro Wash truck on December 3, 2020.

45. During a portion of the early morning hours of December 3, 2020, while he was working in areas of the physical premises of UAMS, Kirkland left his Pro Wash truck parked near the UAMS Cancer Institute, located at 449 Jack Stephens Dr., unlocked and with keys in the ignition.

46. During a portion of the early morning hours of December 3, 2020, while he was busy working in areas of the physical premises of UAMS, Kirkland left his Pro Wash truck at the UAMS Cancer Institute unlocked and running idle.

47. In the early morning hours of December 3, 2020, at approximately 1:55 am, TYRONE entered Kirkland's unlocked truck and drove away from the area of the UAMS Cancer Institute. About five minutes later, at approximately 2:00 am, Kirkland called LRPD to report that his truck had been stolen.

48. While reporting his stolen truck, Kirkland told LRPD that TYRONE looked strange and seemed strange. Kirkland told LRPD that TYRONE looked out of place and was not acting normal. Kirkland told LRPD that TYRONE entered his truck, put it in drive and drove off.

49. WATSON was working as a UAMS PD officer in the early morning hours of December 3, 2020 and was stationed at UAMS PD office. Minutes after Kirkland's call to LRPD, WATSON received a phone call from LRPD regarding Kirkland's stolen truck wherein WATSON was apprised of the information Kirkland provided to LRPD.

50. After receiving information regarding Kirkland's stolen truck from LRPD, WATSON drove to the UAMS Cancer Institute in her police vehicle, arriving at approximately 2:03 am on December 3, 2020.

51. Upon her arrival to the scene of the vehicle theft, WATSON encountered Kirkland and he provided her with further information on his observations of TYRONE around the time of

the theft of the truck. Kirkland described the stolen Pro Wash truck to WATSON, including the fact that there was an “04” painted on the truck.

52. On December 3, 2020, at approximately 2:21 am, WATSON worked on the UAMS PD theft report associated with the theft of Kirkland’s truck on the scene and then drove back to the UAMS ED office to finish the report.

53. On information and belief, based on surveillance cameras on UAMS’ Little Rock campus, on December 3, 2020, from approximately 1:55 am to 2:45 am, TYRONE drove Kirkland’s truck throughout the UAMS Little Rock Campus, including in the immediate physical vicinity of UAMS. *See Image Nos. 4-9 below.*



Image No. 4: TYRONE driving the Pro Wash truck at 1:55 am.



Image No. 5: TYRONE driving the truck at 2:37 am.



Image No. 6: TYRONE driving truck at 2:38 am.



Image No. 7: TYRONE driving Pro Wash truck at 2:39 am.



Image No. 8: TYRONE driving truck at 2:41 am.



Image No. 9: TYRONE driving truck at 2:43 am.

54. On December 3, 2020, at approximately 2:45 am, three (3) UAMS nurses—who, on information and belief, were UAMS employees—were on a work break and standing near a parking garage near Shuffield Dr. when they had an opportunity to converse with TYRONE.

55. According to one of the UAMS nurses, Renata Franco (“Franco”), TYRONE repeatedly told them on December 3, 2020 that a guy with a machete was after him. Franco observed TYRONE repeatedly open and close the truck door. She stated that TYRONE was “acting weird” and not in his right mind. She described his behavior as “erratic.”

56. A second UAMS nurse, Hayley Liston (“Liston”), stated that in addition to saying that a someone with a machete was after him, TYRONE also told the nurses that he took the truck because he was “scared.” Liston stated that she could tell something was not right with TYRONE at the time. She said he was “acting crazy.”

57. The third UAMS nurse, Mary Phillips (“Phillips”), stated that during the nurses’ interaction with TYRONE, he was difficult to understand and he kept mumbling. Phillips said that TYRONE said someone attacked him with a machete in the UAMS ED parking lot.

58. After their exchange with TYRONE, the nurses left the parking garage area and returned to work inside the physical premises of UAMS.

59. After their December 3, 2020 interaction with TYRONE, neither Franco, Liston nor Phillips reported their observations of TYRONE to any physician or mental health professional.

60. After their December 3, 2020 interaction with TYRONE, neither Franco, Liston nor Phillips reported their observations of TYRONE to UAMS PD.

61. After their December 3, 2020 interaction with TYRONE, neither Franco, Liston nor Phillips reported any possible concerns regarding TYRONE’s mental health or possible concerns that he was in the midst of a mental health crisis to any physician or UAMS staff.

62. On December 3, 2020, at approximately 2:46 am, a UAMS groundskeeper, Kenneth Bailey (“Bailey”), called UAMS dispatch and advised that he was with a black male operating a

Pro Wash truck near the UAMS ED entrance on Shuffield Dr. Bailey told UAMS dispatch that the black male was acting suspicious and told Bailey that someone with a machete was after him.

63. On December 3, 2020, at approximately 2:48 am, REDD and WATSON were dispatched to Bailey's location. On December 3, 2020, at approximately 2:49 am, WATSON and REDD made contact with TYRONE and the Pro Wash truck on Shuffield Dr. TYRONE had been travelling westbound on Shuffield Dr. before he saw WATSON and REDD and stopped in the roadway.

64. WATSON spoke to TYRONE, who was seated in the stationery Pro Wash truck, but she did not fully understand him because he was "babbling." Shortly thereafter, SMITH and BARBER arrived on the scene in their UAMS PD vehicles with their lights and siren activated. According to WATSON, SMITH's arrival "spooked" TYRONE, causing him to drive away.

65. On December 3, 2020, at approximately 2:55 am, as TYRONE prepared to drive around REDD's parked UAMS PD vehicle, WATSON ran to cut him off. *See Image No. 10 below.* TYRONE then drove behind REDD's vehicle while WATSON advanced toward TYRONE's path of travel, still trying to cut him off. *See Image No. 11 below.*

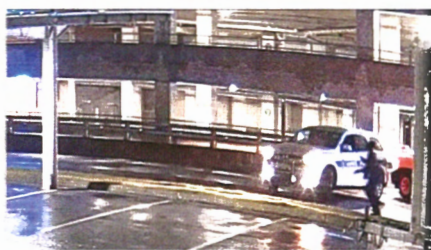


Image No. 10.



Image No. 11.

66. TYRONE continued driving around REDD's vehicle while REDD voluntarily grabbed the steering wheel of the truck. *See Image No. 12 below.* TYRONE edged around REDD's vehicle with REDD still gripping the steering wheel and WATSON unholstering her firearm. *See Image No. 13 below.*



Image No. 12.

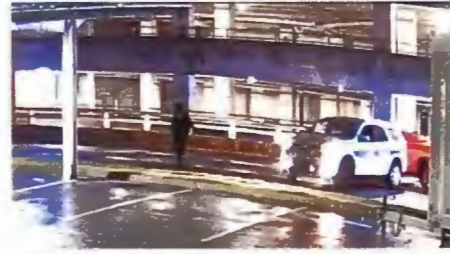


Image No. 13.

67. TYRONE cleared REDD's vehicle with REDD still grabbing at the steering wheel of the truck and WATSON then raised her unholstered firearm toward TYRONE. *See Image No. 14 below.* TYRONE cleared REDD's vehicle entirely with REDD still grabbing the steering wheel and WATSON prepared to shoot TYRONE. *See Image No. 15 below.*



Image No. 14.



Image No. 15.

68. TYRONE continued to drive while REDD, still clutching the steering wheel of the truck, lost his footing while WATSON continued to raise her firearm toward TYRONE's face. *See Image No. 16 below.* WATSON shot TYRONE in his head as REDD finally voluntarily released his grip from the steering wheel and fell to the ground beside the truck. *See Image No. 17 below.*



Image No. 16.



Image No. 17.

69. Prior to the shooting, REDD voluntarily reached through the open driver side window of the Pro Wash truck and physically grabbed the steering wheel.

70. REDD was not grabbed by TYRONE at any time while TYRONE drove the truck.

71. No part of REDD or his clothing was caught on or otherwise stuck on the truck driven by TYRONE in the moments before the shooting.

72. There was no one in path of the truck driven by TYRONE when WATSON used deadly force on TYRONE.

73. Prior to discharging her firearm, WATSON did not inform TYRONE of her intention to use deadly force. Nor did WATSON warn TYRONE before she discharged her firearm that she would shoot him if he did not comply with any order which may have been given by her, SMITH, REDD, BLAGG and/or BARBER.

74. TYRONE's body was autopsied on December 7, 2020, and his cause of death was listed as "Gunshot Wound to Head." The medical examiner made the following findings:

[T]he hemorrhagic wound track [of the bullet that entered TYRONE's head] passed through the scalp and entered into the cranial cavity through the right frontal skull bone...The trajectory was from front to back and left to right.

75. In his December 7, 2020 autopsy report, the medical examiner also stated that TYRONE's cranial injury "demonstrated atypically-abraded entrance wound situated on the right forehead. The atypical nature of the wound indicated that the bullet passed through an intermediate target before striking the decedent."

76. At all relevant times on December 3, 2020, including before TYRONE was shot, WATSON, SMITH, REDD, BLAGG and BARBER, and each of them, knew or should have known, that TYRONE was experiencing a mental health crisis.

77. During their December 3, 2020 early morning encounter with TYRONE, WATSON, SMITH, REDD, BLAGG and BARBER, and each of them, had actual and constructive knowledge that TYRONE was experiencing a mental health crisis.

78. At all relevant times on December 3, 2020, including before TYRONE was shot, WATSON, SMITH, REDD, BLAGG and BARBER, and each of them, knew or should have known that TYRONE required emergency medical and/or mental health treatment.

79. At all relevant times, it was reasonably foreseeable to WATSON, SMITH, REDD, BLAGG and BARBER, and each of them, that individuals such as TYRONE, who suffer from mental illness, are susceptible to injury and/or death if handled by police who do not take their mental illness into account.

80. Specifically, WATSON, SMITH, REDD, BLAGG and BARBER, and each of them, were aware that confrontational and aggressive police tactics are likely to produce anxiety in the mind of mentally ill persons, and also likely to produce confusion and fear, as well as a resistance to following instructions.

COUNT I
**KRYSTAL WATSON FOR EXCESSIVE FORCE IN VIOLATION
OF THE FOURTH AMENDMENT**

81. PLAINTIFF hereby restates and realleges all preceding paragraphs as if fully set forth again in this paragraph.

82. To determine whether the force used to seize a suspect was excessive and thus unreasonable, courts look to the totality of the circumstances, which include: (1) the severity of the crime at issue; (2) whether the suspect poses an immediate threat to the safety of the officer or others; and (3) whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

83. It was clearly established in December 2020 that a law enforcement officer, such as WATSON, may not use deadly force against a U.S. citizen unless there is an objectively reasonable basis to do so.

84. It was clearly established in December 2020 that it is unconstitutional for a police officer to kill a criminal suspect who does not pose an imminent threat of death or serious bodily injury to the officer or another individual.

85. The requirement that the threat be reasonably perceived as “immediate” means that if the threat has passed, so too has the justification for the use of deadly force.

86. It was clearly established in December 2020 that it is unconstitutional for a police officer to use deadly force solely to apprehend a fleeing suspected felon.

87. If feasible, law enforcement officers, such as WATSON, have a duty to warn individuals before using deadly force upon them.

88. Prior to December 3, 2020, WATSON trained on the LRPD’s use of force policy, GO 303, including its provision stating that discharging firearms at a moving or fleeing vehicle is prohibited unless it is necessary to prevent imminent death or serious physical injury to the officer or another person.

89. Prior to December 3, 2020, WATSON was trained that officers are prohibited from voluntarily placing themselves in a position in front of an oncoming vehicle where deadly force is the probable outcome.

90. Prior to December 3, 2020, WATSON was trained that when officers are confronted by an oncoming vehicle, they are required to move out of its path, if possible, rather than fire at the vehicle.

91. On information and belief, at all relevant times, including prior to December 3, 2020, there existed in effect at UAMS PD police policies covering the use of force and handling mentally ill persons on which WATSON, SMITH, REDD, BLAGG and BARBER, and each of them, were trained.

92. At the time WATSON discharged her firearm, TYRONE did not present an objectively reasonable threat of imminent death or serious bodily injury to anyone in the immediate vicinity of scene of the shooting.

93. By discharging her firearm at TYRONE, WATSON used excessive force against TYRONE's person, causing great injury, pain and death.

94. WATSON violated UAMS PD's use of force policy by using deadly force on TYRONE when there was no one in the path of the truck he was driving when WATSON shot him.

95. The force used by WATSON was unnecessary and unreasonable, and TYRONE's great injury, pain and death resulted directly from the use of said force which was excessive.

96. By reason of WATSON's conduct, TYRONE and his heirs-at-law were deprived of rights, privileges and immunities secured to them by the Fourth and Fourteenth Amendments to the U.S. Constitution, including due process, and laws enacted thereunder.

97. The violence WATSON inflicted upon TYRONE was unnecessary, objectively unreasonable and excessive and was, therefore, in violation of his Fourth Amendment Rights. Therefore, WATSON is liable to PLAINTIFF in damages, including loss of life, loss of liberty interest, conscious pain and suffering and punitive damages.

COUNT II
WATSON FOR WRONGFUL DEATH
Pursuant to Arkansas Code § 16-62-102(a) and (b)

98. PLAINTIFF hereby restates and realleges all preceding paragraphs as if fully set forth again in this paragraph.

99. On December 3, 2020, WATSON owed those with whom she professionally interacted, such as TYRONE, a duty of due care which is the duty to act reasonably in the circumstances.

100. For a UAMS law enforcement officer, such as WATSON, that duty of due care encompasses the duty to reasonably assess circumstances and make reasonable deductions in the field expected of a reasonably competent, reasonably well-trained law enforcement officer, such as identifying factors which lead a reasonable mind to suspect a person is suffering from mental illness and/or in the midst of a mental health crisis.

101. For a UAMS law enforcement officer, such as WATSON, that duty of care encompasses the duty to maintain public order and to enforce at all times all such laws, ordinances and regulations for the preservation of good order and the public welfare, including the duty to follow all such laws, ordinances and regulations.

102. Disregarding those duties, WATSON was guilty of one more of the following acts which proximately caused TYRONE's death:

- a) negligently and/or intentionally ignoring and disregarding information and/or indications the reasonable appreciation of which would have prevented TYRONE's death, such as information regarding his mental illness and indications that he was having a mental health crisis;
- b) unreasonably shooting and killing TYRONE; and
- c) being otherwise negligent, neglectful and unreasonable in her interaction with TYRONE and other involved individuals.

103. By reason of the wrongful death of TYRONE, TYRONE and his heirs-at-law have incurred pecuniary damages, emotional distress and severe mental anguish.

104. PLAINTIFF brings Count II pursuant to ACA § 16-62-102(a) and (b) which provides for damages whenever the death of a person shall be caused by a wrongful act notwithstanding the death of the person.

COUNT III
WATSON AND REDD FOR SURVIVAL PURSUANT TO
ARKANSAS CODE ANNOTATED § 16-62-101(a)(1)

105. PLAINTIFF hereby restates and realleges all preceding paragraphs as if fully set forth again in this paragraph.

106. On December 3, 2020, prior to his death, TYRONE suffered personal injuries and great pain proximately caused by the wrongful acts and/or omissions of WATSON and REDD, and each of them, which included physically battering TYRONE and shooting TYRONE, causing his death.

107. By reason of the wrongful acts and/or omissions of WATSON and REDD, and each of them, TYRONE incurred personal injuries and great pain as well as damages in the form of loss of life.

62. PLAINTIFF brings Count III pursuant to ACA § 16-62-101(a)(1) which provides for damages for wrongs done to a person and further provides that such an action may be brought after the death of the person by his executor.

COUNT IV
WATSON, SMITH, REDD, BLAGG AND BARBER FOR VIOLATIONS
OF THE AMERICANS WITH DISABILITIES ACT

63. PLAINTIFF hereby restates and realleges all preceding paragraphs as if fully set forth again in this paragraph.

64. Persons suffering from schizophrenia may experience debilitating thoughts and perceptual distortions. Suspiciousness and a general fear of others' intentions are symptoms of schizophrenia. Paranoid schizophrenia is characterized by predominantly positive symptoms of schizophrenia, including delusions and hallucinations. Hallucinations—seeing or hearing things that others do not—and delusions—firmly held beliefs that persist despite evidence to the contrary—are each classic positive symptoms for schizophrenia.

65. Both of these experiences can be persecutory or threatening in nature. Imagining one is being chased by a person with a machete when the person with the machete does not truly exist is an example of a hallucination or delusion.

66. A schizophrenic may hear a voice or voices in their head that they do not recognize as their own thoughts or internal voice. These voices can be demeaning or hostile, driving a person to do things they would not do otherwise. Schizophrenics also may experience impaired motor or cognitive functions, including disorganized speech and disorganized or catatonic behavior.

67. Schizophrenia is a recognized disability and, at all relevant times, TYRONE was a “qualified individual with a disability,”

68. The ADA defines discrimination as the failure to take necessary steps to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of services for the disabled.

69. Such services include, *inter alia*, provisions necessary to achieve mental health care and protect individuals known to suffer from mental illness from in-custody death, excessive force and/or the use of force when law enforcement encounters them in circumstances constituting a mental health crisis.

70. On December 3, 2020, and at all relevant times, including during his interaction with Kirkland, WATSON, SMITH, REDD, BLAGG and BARBER, TYRONE was suffering from severe impairments, including mental illness and was, therefore, a qualified individual with a disability under Section 504 and under the ADA.

71. WATSON, SMITH, REDD, BLAGG and BARBER discriminated against TYRONE, a “qualified individual with a disability,” within the meaning of the ADA.

The acts and omissions of WATSON, SMITH, REDD, BLAGG and BARBER, and each of them, as alleged herein constitute discrimination in violation of Title II of the ADA, 42 U.S.C. § 12132.

72. UAMS is a governmental entity which engages in offering and providing police services to UAMS patients and visitors—as well to as members of the general public, including mentally ill persons. UAMS is also a recipient of federal funds. UAMS is an entity which must comply with Section 504 and under the ADA.

73. Section 504 requires the recipients of federal funds to make reasonable accommodations to persons with disabilities in their facilities and program activities, and for those who receive their services. It further requires such recipients to modify such facilities, services and programs as necessary to accomplish this purpose. UAMS is the recipient of federal funds, and is subject to the mandate of Section 504.

74. Reasonably well-trained law enforcement officers are advised on the following police protocols, *inter alia*, relating to handling mentally ill persons in the field:

- a) Avoid excitement, confusion, or upsetting circumstances. These may frighten the person, inhibit communications, and increase the risk of physical injury to the subject, the officer or other persons;

- b) Do not abuse, belittle, or threaten the person. Such actions may cause the person to become alarmed and distrustful;
- c) Do not deceive the person. This may limit chances for successful treatment and make future management of the person by other officers more difficult;
- d) Do not take the person's anger personally. Ignore any attacks on your character, physical appearance or profession, and encourage ventilation to safely release the frustration; and
- e) Remain professional in your contacts with the person. With an image of quiet self-assurance and an insistence on your orders being followed, gently indicate that your only intention is to help the person.

75. On December 3, 2020, and at all relevant times, WATSON, SMITH, REDD, BLAGG and BARBER, and each of them, are individuals who were employed by, associated with or otherwise acting as authorized representatives or agents of UAMS.

76. On December 3, 2020, and at all relevant times, WATSON, SMITH, REDD, BLAGG and BARBER, and each of them, were the employees, agents, servants, and/or representatives of UAMS and, in doing the things alleged herein, were acting within the course and scope of said agency or employment.

77. During the police encounter with WATSON, SMITH, REDD, BLAGG and BARBER, TYRONE exhibited behaviors that were incoherent, erratic, confused, fearful and irrational, all of which were observable manifestations of his disability of mental illness.

78. WATSON, SMITH, REDD, BLAGG and BARBER, and each of them, all aware that TYRONE had reportedly engaged in behaviors that were incoherent, erratic, confused, fearful and irrational, all of which were observable manifestations of his disability of mental illness.

79. During the police encounter with WATSON, SMITH, REDD, BLAGG and BARBER, TYRONE was unable to see or hear sufficiently to know or appreciate what was transpiring around him, all manifestations of his disability of mental illness.

80. Instead of accommodating TYRONE's incoherent, erratic, confused, fearful and irrational behaviors, WATSON, SMITH, REDD, BLAGG and BARBER, and each of them, refused to provide the necessary level of accommodation to TYRONE's mental illness, thereby causing TYRONE to die at the hands of WATSON.

81. TYRONE's death was preventable by proper application of both use of force techniques and appropriate policies for handling mentally ill persons, *inter alia*. Instead of accommodating TYRONE's needs, WATSON, SMITH, REDD, BLAGG, BARBER and BARRENTINE, and each of them, denied him adequate mental health services and programs available to other that would have prevented his death.

82. The failure to accommodate TYRONE's disabilities was intentional and/or the result of deliberate indifference to TYRONE's rights under Section 504 and Title II of the ADA and was the proximate cause of his death.

COUNT V
PATTERSON AND ST. VINCENT FOR VIOLATIONS OF
FEDERAL EMTALA STATUTE

75. PLAINTIFF hereby restates and realleges all preceding paragraphs as if fully set forth again in this paragraph.

76. In 1986, Congress enacted EMTALA to ensure public access to emergency services regardless of ability to pay. Section 1867 of the Social Security Act imposes specific obligations on Medicare-participating hospitals that offer emergency services to provide a medical screening

examination when a request is made for examination or treatment for an emergency medical condition, regardless of an individual's ability to pay.

77. EMTALA defines “participating hospital” as a hospital that has entered into a provider agreement as defined by the statute. EMTALA applies to any hospital that has an emergency department and receives Medicare payments.

78. An “emergency medical condition” exists where a patient has severe symptoms such that the absence of immediate medical attention could reasonably be expected to result in: (1) placing the patient’s health in serious jeopardy; (2) serious impairment to bodily functions; or (3) serious dysfunction of any bodily organ or part.

79. PATTERSON is the Chancellor of UAMS, a participating hospital as defined by EMTALA.

80. ST. VINCENT is a participating hospital as defined by EMTALA.

81. EMTALA imposes two primary obligations on participating hospitals: (1) if an individual comes to such hospital’s ED requesting examination and treatment for a medical condition, then the hospital has a duty to provide for an appropriate medical screening examination to determine whether or not an emergency medical condition exists; and (2) if an emergency medical condition exists, the hospital must provide either a further medical examination and treatment as may be required to stabilize the medical condition or a transfer of the individual to another appropriate medical facility.

82. To prove a stabilization claim under EMTALA, a plaintiff must show: (1) defendant had actual knowledge of the individual’s unstabilized emergency medical condition; and (2) defendant did not provide further medical examination and treatment required to stabilize the medical condition or failed to transfer the plaintiff to another medical facility

83. EMTALA's statutory requirements are triggered upon a hospital's actual knowledge of the condition through its employees, servants and/or agents. Any hospital's employee, servant and/or agent's actual knowledge of the emergency condition serves as adequate basis for a finding of liability against the hospital.

84. Based on the presentation of TYRONE at ST. VINCENT on December 2, 2020, a reasonably well-trained medical professional who encountered TYRONE around this time would know or should know that he was in the midst of a mental health crisis and in need of help.

108. The December 3, 2020 statements of Franco, Liston and Phillips describe firsthand TYRONE's state when he arrived at UAMS ED at approximately 2:45 am, noting that he:


- a) fearfully reported that he was being chased by someone with a machete;
- b) was "acting weird";
- c) was acting not "in his right mind";
- d) was engaging in odd, repetitious behavior, such as opening and closing the door to the truck;
- e) was "acting crazy";
- f) was acting like there was something not right with him;
- g) was claiming to be "scared"; and
- h) was difficult to understand because he was "mumbling."

109. Based on these observations, a reasonably well-trained medical professional who encountered TYRONE around this time would know or should know that TYRONE was in the midst of a mental health crisis and in need of professional help.

WHEREFORE, Plaintiff, LASHAUN MCFADDEN, by and through her attorneys, LAUX LAW GROUP, and requests judgment against the Defendants, KRYSTAL WATSON, DEVON SMITH, HOWARD REDD, GARAN BLAGG, SEAN BARBER, CAM PATTERSON, M.D., and ST. VINCENT INFIRMARY MEDICAL CENTER, INC., and each of them:

1. That Defendants be required to pay PLAINTIFF's compensatory damages;
2. That Defendants be required to pay actual damages, and punitive damages;
3. That Defendants be required to pay attorney fees per 42 U.S.C. § 1988 and the ADA; and
4. That PLAINTIFF have any other such relief as this Honorable Court deems just and proper.

Respectfully submitted,

/s/ Michael J. Laux 

Michael J. Laux

E. Dist. Arkansas Bar No. 6278834

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