

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

**YOSHANTA ALBERT, individually and :
as representative of the Estate of MARC :
DAVIS, and on behalf of their :
minor children, AVA DAVS, MARCAYL- :
E DAVIS, AMINA DAVIS, SERENITY :
MARTIN, AND LEAH DAVIS, :**

: CASE NO. 2:18-CV-96-KS-MTP

Plaintiffs :

VERSUS :

**CITY OF PETAL, LEONARD :
FULLER, in his official capacity as :
Chief of Police for the Petal Police :
Department, OFFICER AARON :
JERNIGAN, in his individual and official :
capacity as police officer for the City of :
Peal, :**

Defendants :

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY

INTRODUCTION

The Plaintiffs, **YOSHANTA ALBERT, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF MARC DAVIS, AND ON BEHALF OF THEIR MINOR CHILDREN, AVA DAVIS, MARCAYLE DAVIS, AMINA DAVIS, SERENITY MARTIN, AND LEAH DAVIS**, by and through their attorneys, allege, upon information and belief, the following:

1. This is a civil action brought by the Plaintiffs, **YOSHANTA ALBERT, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF MARC DAVIS, AND ON BEHALF OF THEIR MINOR CHILDREN, AVA DAVIS,**

MARCAYLE DAVIS, AMINA DAVIS, SERENITY MARTIN, AND LEAH

DAVIS, (hereinafter referred to as “Plaintiffs”), to recover compensatory and punitive damages sustained as a result of the wrongful conduct of the Defendants, **THE CITY OF PETAL, LEONARD FULLER**, in his official capacity as chief of police for the Petal Police Department, and **OFFICER AARON JERNIGAN**, in his official and individual capacity as police officer for the City of Petal, (hereinafter referred to as “Defendants”), in connection with the defendants’ violations of their rights secured by the Civil Rights Act of and 1871, 42 U.S.C. 1983, and right secured by Fourth, Fifth and Fourteenth Amendment to the United States Constitution and the Mississippi Constitution, personal injury laws of this state for the personal injury and wrongful death of Marc Davis, use of excessive force, intentional infliction of emotional distress, false imprisonment, battery and assault.

JURISDICTION AND VENUE

2. Essentially, this action is brought pursuant to 42 USC Section 1983 and 1988 and the Fourth, Fifth, and Fourteenth Amendments. Both Jurisdiction and venue are proper in the Southern District of Mississippi. Jurisdiction is conferred upon this Court 28 U.S.C. 1331 and 1343, as this action seeks redress for the violation of Plaintiffs’ constitutional and civil rights.

3. Venue, pursuant to 28 U.S.C. Section 1391, is proper because a substantial part of the acts and/or omissions occurred in this district.

PARTIES

4. The plaintiffs, **YOSHANTA ALBERT, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF MARC DAVIS, AND ON BEHALD**

OF THEIR MINOR CHILDREN, AVA DAVIS, MARCAYLE DAVIS, AMINA DAVIS, SERENITY MARTIN, AND LEAH DAVIS, are relatives and personal representatives of the estate of Marc Davis, and are citizens and residents of LaPlace, St. John the Baptist Parish, State of Louisiana. Yoshanta Albert, a person of the full age and majority, is the wife of the decedent, Marc Davis, and biological parent to their minor children, Ava Davis, Marcayle Davis, Amina Davis, Serenity Davis, and Leah Davis. Marc Davis died intestate and his wife, Yoshanta Albert, has been appointed administratrix of his estate.

5. At all relevant times, Defendant **CITY OF PETAL** (“Defendant CITY”), is and was a municipal corporation existing under the laws of the State of Mississippi. **CITY OF PETAL** is a political subdivision of the State of Mississippi with the capacity to sue and to be sued. CITY is responsible for the actions, omissions, policies, procedures, practices, and customs of its various agents and agencies, including the Petal Police Department (hereinafter “PPD”) and its agents and employees. At all relevant times, Defendant City was responsible for assuring that the actions, omissions, policies, procedures, practices and customs of the PPD and its employees and agents complied with the laws of the United States and of the State of Mississippi. At all pertinent times, City was the employer of Defendant Fuller and Defendant Jernigan.

6. The defendant **LEONARD FULLER** (“Defendant Fuller”), Chief Law Enforcement Officer for the Petal Police Department, and was and is responsible for the policies, practices, customs, procedures, deliberate indifference, and negligence of Defendant Officer Aaron Jernigan named herein. Defendant Fuller is also responsible for the hiring, training, supervision, discipline, and control of officer personnel under his

command, which includes the defendants named and referenced herein. Defendant Fuller is of full age of majority and upon information and belief a resident of the Southern District of Mississippi. He is sued in his official capacity. At all pertinent time herein, he was acting under color of law and in the course and scope of his employment with the Petal Police Department (“PPD”). He was a policy maker for PPD relating to the practices, policies, customs, and procedures of deputies and administrative personnel.

7. Defendant **OFFICER AARON JERNIGAN** (“Defendant Jernigan”) is, upon information and belief, a person of the full and majority and a resident of the Southern District of Mississippi. At all pertinent times herein, he was acting under the color of state law and in the course and scope of his employment with the PPD. He is sued in his official and individual capacities. Plaintiff believes that Defendant Jernigan is legally responsible and liable for the incident, injuries and damages hereinafter set forth.

8. At all times material throughout this compliant, Defendants acted under color of state law, ordinance and/or regulation, and in the course and scope of their employment with PPD and engaged in the conduct described herein.

FACTUAL BACKGROUND

9. On or about June 2, 2017, Marc Davis was driving on Mississippi Highway 42 when he was involved in a automobile collision with another driver at the intersection of Leeville Road and Mississippi Highway 42 in Petal, MS.

10. Marc Davis contacted emergency services to advise that he had been involved in an automobile accident.

11. Defendant Jernigan of the Petal Police Department responded and arrived upon the accident scene.

12. Upon the arrival of Defendant Jernigan, a disagreement between Defendant Jernigan and Marc Davis developed whereby Defendant Jernigan, under color of law and in the course and scope of his duties, suddenly, unexpectedly, and without warning shot Marc Davis without justification.

13. At all pertinent times, Marc Davis was unarmed and did not possess any weapons.

14. Upon information and belief, after being shot, Marc Davis was immobile and in obvious and critical need of emergency medical care and treatment.

15. Upon information and belief, Defendants did not timely summon medical care or permit medical personnel to treat Marc Davis. The delay of medical care to Marc Davis caused Marc Davis extreme physical and emotional pain and suffering and was a contributing cause of his serious injuries.

16. Eventually, Marc Davis was transported to Forrest General Hospital where he died of his injuries.

17. At all material times herein, the Defendants had no cause, let alone probable cause or reasonable suspicion to arrest, charge and detain the plaintiffs. Their actions were based on malice and bad faith.

18. The conduct of the Defendants in assaulting, battering, using excessive and deadly force, restraining Marc Davis proximately caused physical, emotional and

financial injury to him, as well as serious physical and emotional pain and suffering, mental anguish, shock, fright, physical pain and humiliation, embarrassment and deprivation of his constitutional rights. Plaintiffs suffered fatal trauma, debasement and humiliation as a result of the wrongful conduct of the Defendants.

19. At all times relevant herein, the Defendants acted intentionally, willfully, maliciously and negligently, and with reckless disregard for and deliberate indifference to the Plaintiffs' rights and physical and mental well-being by using excessive and deadly force against the Marc Davis. Additionally, Defendant Jernigan used excessive, arbitrary and/or unreasonable force against Marc Davis.

20. The actions of Defendants, as set forth herein, were the result of the failure of Defendant Fuller to properly train, supervise and discipline its officers, including Defendant Jernigan. This failure to train, supervise and discipline is a consequence of the deliberate policies and practices of the Defendant Fuller and the PPD. These policies and practices are in part responsible for the unconstitutional, wrongful, deliberate, malicious, negligent, careless and intentional actions of the Defendants.

21. At all relevant times herein, Defendant Further, developed, implemented, enforced and sanctioned de facto policies, practices, and/or customs exhibiting deliberate indifference to the Plaintiff's' civil and constitutional rights which caused the violation of their rights.

22. Defendants' unlawful actions were done willfully, knowingly and with the specific intent to deprive Plaintiff of their constitutional rights under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

23. The constitutional abuses and violations by Defendant Fuller, Defendant Jernigan were and are directly and proximately caused by policies, practices and/or customs developed, implemented, enforced encouraged and sanctioned by PPD and Defendant Fuller , including the failure to: (a) adequately supervise and train its deputies and agents, including the Defendants, thereby failing to adequately discourage further constitutional violations on the part of its sheriff deputies; (b) to properly and adequately monitor and discipline its deputies, including Defendant Jernigan.

24. Upon information and belief, Defendant Fuller, through PPD, developed, implemented, enforced, encouraged, and sanctioned a de facto policy, practice, and/or custom of using excessive and deadly force without legal justification.

25. Defendants' unlawful actions were done willfully, knowingly and with the specific intent to deprive Plaintiff's of their civil and constitutional rights.

26. Defendants have acted with deliberate indifference to the civil and constitutional rights of the Plaintiff. As a direct and proximate result of the acts as stated herein the Defendants, the Plaintiff's civil and constitutional rights have been violated which has caused them to suffer physical, mental and emotional injury and pain, mental anguish, suffering, humiliation and embarrassment.

27. Plaintiff is informed, believes and therein alleges that PPD officers exhibit a pattern and practice of using excessive force and/or deadly force against its citizens. PPD's failure to discipline or retrain any of the involved officers is evidence of an official policy, entrenched culture and posture deliberate indifference toward protecting citizens', like Marc Davis, rights and his resulting death and injuries is a proximate result of PPD's failure to properly supervise its police officers and ratify their constitutional conduct.

28. Plaintiff, upon information and belief, herein alleges that Defendant City knew, had reason to know by way of actual or constructive notice of the aforementioned policy, culture, pattern, and/or practice of PPD.

CAUSES OF ACTION

COUNT I (42 U.S.C. 1983 and 4th, 5th and 14th Amendments)

29. The Plaintiffs re-allege and incorporate by reference herein the preceding complaint as though fully set forth therein.

30. That at all times hereinafter mentioned, the acts of the individual Defendants, under color of state law, in using excessive and deadly force, taken with deliberate indifference to Plaintiffs' rights, and were designed to, and did, cause specific and serious pain and suffering to the Plaintiff in violation of his constitutional rights as guaranteed by the Fourth, Fifth and Fourteenth Amendment of the U.S. Constitution. Moreover, through these actions, Defendants are liable for violation of 42 U.S.C. 1983, which prohibits the deprivation under color of state law of rights secured under the U.S. Constitution.

31. Defendant Jernigan's above-described conduct violated Marc Davis' right, as provided under the U.S. Constitution, to be free from excessive and/or arbitrary and unreasonable use of deadly force against him.

32. Plaintiff Marc Davis was forced to endure great conscious pain and suffering because of the conduct of Defendant Jernigan before his death.

33. By their conduct, as described herein, Defendants are liable to the Plaintiffs under 42 U.S. C. 1983 for the violation, under color of state law, of the constitutional right to be free from any deprivation of liberty without due process of law under the fourth, fifth and fourteenth amendment. Defendant Jernigan acted under color of law by

shooting and killing Plaintiff Marc Davis without legal justification and subjecting decedent to excessive force thereby depriving him of the said constitutionally protected rights.

34. As a direct result of the defendants' unlawful actions, Marc Davis has suffered, damages including, wrongful death, loss of survival, physical, mental and emotional injury and pain, mental anguish, suffering, humiliation and embarrassment, funeral and burial expenses. Plaintiff's wife and minor children have suffered loss of Marc Davis' society, comfort, protection, companionship, love affection, solace, and moral support due to Defendants, acting of under color of state law, and without due process of law, deprivation of their right to a familial relationship by use of unreasonable, unjustified and deadly force and violence, causing injuries which resulted in the death of Plaintiff Marc Davis.

COUNT II (*Monell Claim* - 42 U.S.C. 1983)

35. Plaintiffs repeat and reiterated the allegations previously set forth herein.

36. At all relevant times herein, Defendant Fullman and Defendant City developed, implemented, enforced, encouraged, and sanctioned de facto policies, practices, and/or customs exhibiting deliberate indifference to the civil rights and constitutional rights of the Plaintiff, including the use of excessive and deadly force, that caused the violation of such rights.

37. Despite having such notice, Plaintiff, upon information and belief, alleges that Defendant City, Defendant Fuller and Defendant Jernigan, and/or each of them, approved, ratified, condoned, encouraged, sought to cover up, and/or tacitly authorized the

continuing pattern and practice of misconduct and/or civil rights violations by PPD that bright about Defendant Jernigan unlawfully shooting Plaintiff Marc Davis to death.

38. Defendants' unlawful actions were done willfully, knowingly and with the specific intent to deprive the Plaintiffs' rights under 42 U.S.C. 1983 and fourth, fifth and fourteenth amendment.

39. The unlawful conduct of the defendants was directly and proximately caused by policies, practices and/or customs developed, implemented, enforced, encouraged and sanctioned by Defendant Fuller, including, using excessive and deadly force, without legal justification, failing to adequately supervise and train his officers and agents including Defendant Jernigan, thereby failing to adequately discourage further civil and constitutional violation on the part of his officers, and failing to properly and adequately monitor and discipline his officers, including Defendant Jernigan.

40. As a direct result of the defendants' unlawful actions, Marc Davis has suffered, damages including, wrongful death, loss of survival, physical, mental and emotional injury and pain, mental anguish, suffering, humiliation and embarrassment, funeral and burial expenses. Plaintiff's wife and minor children have suffered loss of Marc Davis' society, comfort, protection, companionship, love affection, solace, and moral support due to Defendants, acting of under color of state law, and without due process of law, deprivation of their right to a familial relationship by use of unreasonable, unjustified and deadly force and violence, causing injuries which resulted in the death of Plaintiff Marc Davis.

COUNT III (Municipal liability - 42 U.S.C. 1983)

41. Plaintiff Marc Davis' constitutional rights were violated when he was shot and

killed by Defendant Jernigan. The Plaintiffs 'injuries directly resulted from Defendant Jernigan's excessive use of deadly force in shooting and killing Plaintiff Marc Davis.

42. The City of Petal is also liable under 42 U.S.C. § 1983 for failing to supervise and train its police officers, and for overlooking and covering up officer misconduct. In addition, the City had a general policy, pattern and/or practice of not disciplining police officers for their conduct, thereby sanctioning the police officers' actions, which amounted to a departmental policy of overlooking constitutional violations. The City's failure to supervise and train its police officers, and the City's willful blindness towards the constitutional violations of its employees, constitute gross negligence and/or deliberate and conscious indifference to citizens' rights.

43. Additionally, municipalities may be held liable under 42 U.S.C. § 1983 for constitutional torts that are committed pursuant to a policy, procedure, practice, or custom of the municipality. Even if the City's practice of overlooking constitutional torts was not authorized by an officially adopted policy, the practice may be so common and well-settled that it fairly represents official policy. In the present case, the City's formal and informal actions in overlooking, hiding and/or tacitly encouraging police misconduct through other officers, the PPD, the PPD police chiefs, including Defendant Fuller, reflect a policy, practice custom and procedure authorizing and allowing the use of excessive force that violated the civil rights of Marc Davis. Consequently, the City is liable for harm caused to others, such as Plaintiffs, as a result of its policies, practices customs and procedures.

44. Defendant City is liable for the constitutional torts of Defendant Jernigan because the City sanctioned the following customs, practices, and policies, including but not

limited to, using excessive and deadly force to carry out its duties, using deadly force when such force is not necessary or permitted by law, ignoring the serious need for training and supervision of its officers in regards to the use of force, failing to adequately supervise and/or observe its officers.

45. At the time Defendant Jernigan shot and killed Plaintiff Marc Davis, Defendant Jernigan was acting pursuant to an official city policy, practice, custom and procedure overlooking and/or authorizing police officer's excessive and deadly use of force.

46. The unlawful conduct of the defendants was directly and proximately caused by policies, practices and/or customs developed, implemented, enforced, encouraged and sanctioned by Defendant Fuller, including, using excessive and deadly force, without legal justification, failing to adequately supervise and train his officers and agents including Defendant Jernigan, thereby failing to adequately discourage further civil and constitutional violation on the part of his officers, and failing to properly and adequately monitor and discipline his officers, including Defendant Jernigan.

47. As a direct result of the defendants' unlawful actions, Marc Davis has suffered, damages including, wrongful death, loss of survival, physical, mental and emotional injury and pain, mental anguish, suffering, humiliation and embarrassment, funeral and burial expenses. Plaintiff's wife and minor children have suffered loss of Marc Davis' society, comfort, protection, companionship, love affection, solace, and moral support due to Defendants, acting of under color of state law, and without due process of law, deprivation of their right to a familial relationship by use of unreasonable, unjustified and deadly force and violence, causing injuries which resulted in the death of Plaintiff Marc Davis.

COUNT IV (Negligence)

48. Plaintiffs repeat and reiterate the allegations previously set forth herein.

49. Police officers, including Defendants, have a duty to use reasonable care to prevent harm or injury to others. This duty includes using appropriate tactics, giving appropriate commands, giving warnings, and not using any force unless necessary, using less than lethal options, and only using deadly force as a last resort.

50. Defendant Jernigan breached this duty of care by and through, including but not limited to failing to properly assess the need to use force or deadly force against Plaintiff Marc Davis, the negligent tactics and handling of the situation with Plaintiff Marc Davis, including pre-shooting negligence, the negligent detention and use of force, including deadly force against Plaintiff Marc Davis, failing to provide prompt medical care to Plaintiff Marc Davis, failing to properly use non-lethal training.

51. Defendant City is vicariously liable for the wrongful acts of Defendant Jernigan.

52. Defendant Jernigan, while working as officers for the PPD, and acting within the course and scope of their duties, intentionally shot Plaintiff Marc Davis and used unreasonable and excessive force against him. As a result of the actions of Defendant Jernigan, Plaintiff Marc Davis suffered severe pain and suffering and ultimately died from his injuries. Defendant Jernigan had no legal justification for using force against Plaintiff Marc Davis, and their use of force while carrying out their duties as police officers was an unreasonable and unprivileged use of force.

53. The unlawful conduct of the defendants was directly and proximately caused by policies, practices and/or customs developed, implemented, enforced, encouraged and sanctioned by Defendant Fuller, including, using excessive and deadly force, without

legal justification, failing to adequately supervise and train his officers and agents including Defendant Jernigan, thereby failing to adequately discourage further civil and constitutional violation on the part of his officers, and failing to properly and adequately monitor and discipline his officers, including Defendant Jernigan.

54. As a direct result of the defendants' unlawful actions, Marc Davis has suffered, damages including, wrongful death, loss of survival, physical, mental and emotional injury and pain, mental anguish, suffering, humiliation and embarrassment, funeral and burial expenses. Plaintiff's wife and minor children have suffered loss of Marc Davis' society, comfort, protection, companionship, love affection, solace, and moral support due to Defendants, acting of under color of state law, and without due process of law, deprivation of their right to a familial relationship by use of unreasonable, unjustified and deadly force and violence, causing injuries which resulted in the death of Plaintiff Marc Davis.

COUNT V (Intentional tort –battery)

55. Defendant Jernigan, while working as officer for the PPD, and acting within the course and scope of their duties, intentionally shot Plaintiff Davis, and used unreasonable and excessive force against him. As a result of the actions of Defendant Jernigan, Plaintiff Davis suffered severe pain and suffering and ultimately died from his injuries. Defendant Jernigan had no legal justification for using force against Plaintiff Davis, and their use of force while carrying out his duties as police officer was an unreasonable and unprivileged use of force.

56. The unlawful conduct of the defendants was directly and proximately caused by policies, practices and/or customs developed, implemented, enforced, encouraged and

sanctioned by Defendant Fuller, including, using excessive and deadly force, without legal justification, failing to adequately supervise and train his officers and agents including Defendant Jernigan, thereby failing to adequately discourage further civil and constitutional violation on the part of his officers, and failing to properly and adequately monitor and discipline his officers, including Defendant Jernigan.

57. As a direct result of the defendants' unlawful actions, Marc Davis has suffered, damages including, wrongful death, loss of survival, physical, mental and emotional injury and pain, mental anguish, suffering, humiliation and embarrassment, funeral and burial expenses. Plaintiff's wife and minor children have suffered loss of Marc Davis' society, comfort, protection, companionship, love affection, solace, and moral support due to Defendants, acting of under color of state law, and without due process of law, deprivation of their right to a familial relationship by use of unreasonable, unjustified and deadly force and violence, causing injuries which resulted in the death of Plaintiff Marc Davis.

58. Defendant City is vicariously liable for the wrongful acts of Defendant Jernigan.

COUNT VI (Mississippi Tort Claims Act, MS Code, 11-46-11, et seq)

59. Defendant Jernigan, as an officer, and particularly, an employee of the City of Petal, has a duty to refrain from acting in reckless disregard of the safety and well-being of person. This duty includes protecting the civil rights of Marc Davis, using appropriate tactics, giving appropriate commands, giving warnings, a not using force unless necessary, using less than lethal options, and only using deadly force as a last resort.

60. Defendant Jernigan breached this duty of care by and through, including but not limited to failing to properly assess the need to use force or deadly force against Marc Davis, negligent tactics and handling of the situation with Plaintiff Marc Davis, including pre-shooting negligence, the negligent detention and use of force, including deadly force against Plaintiff Marc Davis, failing to provide prompt medical care to Plaintiff Marc Davis, failing

to properly use non-lethal training.

61. Defendant City is vicariously liable for the negligent, wrongful, reckless acts of Defendant Jernigan.

62. Defendant Jernigan, while working as officer for the PPD, and acting within the course and scope of his duties, acted with reckless disregard when he shot and killed Plaintiff Marc Davis and used unreasonable and excessive force against him. As a result of the actions of Defendant Jernigan, Plaintiff Marc Davis suffered severe pain and suffering and ultimately died from his injuries. Defendant Jernigan had no legal justification for using force against Plaintiff Marc Davis, and his force while carrying out his duties was an unreasonable and unprivileged use of force.

63. The unlawful conduct of the defendants was directly and proximately caused by policies, practices and/or customs developed, implemented, enforced, encouraged and sanctioned by Defendant Fuller, including, using excessive and deadly force, without legal justification, failing to adequately supervise and train his officers and agents including Defendant Jernigan, thereby failing to adequately discourage further civil and constitutional violation on the part of his officers, and failing to properly and adequately monitor and discipline his officers, including Defendant Jernigan.

64. As a direct result of the defendants' unlawful actions, Marc Davis has suffered, damages including wrongful death, loss of survival, physical, mental and emotional injury and pain, mental anguish, suffering, humiliation and embarrassment, funeral and burial expenses. Plaintiff's wife and minor children have suffered loss of Marc Davis' society, comfort, protection, companionship, love, affection, solace, and moral support due to the Defendants, acting under color of state of law, and without due process of law, deprivation of their right to a familial relationship by use of unreasonable, unjustified and deadly force and violence, causing injuries which resulted in the death of Plaintiff Marc Davis.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against the Defendants in an amount that will compensate them for:

- a. Violation of their rights under 42 U.S.C. 1983 and Fifth and Fourteenth Amendment, and applicable state law;
- b. Compensatory damages including, but not limited to, any emotional distress, humiliation, reimbursement of compensable costs, and other compensatory damages permitted by law and according to proof at trial;
- c. Awarding pre-judgment interest to the Plaintiffs;
- d. Awarding the costs and the expenses of this litigation of the Plaintiffs;
- e. Awarding reasonable attorneys' fees and costs to the Plaintiffs as provided by law; and
- f. Granting all such other relief as Court deems necessary, just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all claims so tried in this action.

Respectfully submitted,

/s/ DASHAWN HAYES

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WAIVER OF SERVICE REQUESTED