

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**MONTYE BENJAMIN, as Administratrix
Of the Estate of her Son JAYVIS LEDELL
BENJAMIN, and on her own behalf,**)

Plaintiff,)

-against-)

**LYNN THOMAS, individually and CITY OF
AVONDALE ESTATES; THOMAS GILLIS,
in his official capacity, GARY L. BRODEN,
in his official capacity as Chief of Police,
Avondale Estates Police Department,**)

Defendants.)

Case No.: 1:16-CV _____

**PLAINTIFF’S COMPLAINT
FOR DAMAGES**

JURY TRIAL DEMANDED

PLAINTIFF’S COMPLAINT

COMES NOW, Plaintiff MONTYE BENJAMIN, as Administratrix of the Estate of her son JAYVIS LEDELL BENJAMIN, Deceased, and on her own behalf, by her attorneys Halscott Megaro, P.A., and Patrick Michael Megaro, Esq., for her Complaint against Defendants LYNN THOMAS, individually and in his official capacity, the CITY OF AVONDALE ESTATES; THOMAS GILLIS, in his official capacity, and GARY L. BRODEN, Chief of Police, Avondale Estates Police Department, in his official capacity, respectfully alleges as follows:

I. INTRODUCTION

1. This is an action against Defendants for their tortious, illegal, and unconstitutional acts, which resulted in the homicide of Jayvis Benjamin. On January 18, 2013, Avondale Estates Police Sergeant Lynn Thomas, without provocation or justification, shot and killed Jayvis Benjamin. Officers in the Avondale Estates Police Department, with the full knowledge and participation of Police Chief Gary Broden, conspired to cover-up the unjustified killing.

2. When this case was presented to a Civil Grand Jury of DeKalb County, along with five other officer-involved shootings, only Jayvis Benjamin's case was recommended to be presented to a Criminal Grand Jury to consider criminal charges against defendant THOMAS. District Attorney Robert James disregarded the recommendation of the Civil Grand Jury for months until he decided not to pursue criminal charges against defendant THOMAS for the unjustified and unconstitutional killing. This Complaint, arising from these tragic, outrageous, and unlawful acts, seeks compensatory and punitive damages, costs, disbursements and attorneys' fees pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 1988, and applicable state civil rights law.

II. THE PARTIES

3. JAYVS LEDELL BENJAMIN ("Javis") was killed by a member of the Avondale Estates Police Department in Avondale Estates, DeKalb County, Georgia. All of the events giving rise to the complaint, including the killing of Jayvis Ledell Benjamin, occurred in Avondale Estates, Georgia.

4. At the time of his death, Jayvis Ledell Benjamin was a citizen of the United States and resided in Marietta, Cobb County, Georgia.

5. Plaintiff MONTYE BENJAMIN ("Ms. Benjamin") is Jayvis Ledell Benjamin's mother and, on December 8, 2015, became the administratrix of his estate. Plaintiff is a citizen of the United States and resides in Austell, Cobb County, Georgia.

6. Defendant CITY OF AVONDALE ESTATES ("City") is a municipal corporation operating pursuant to the Constitution and the laws of the State of Georgia within the Northern District of Georgia.

7. At all times relevant hereto, defendant CITY, acting through the Avondale Estates Police Department ("AEPD") was responsible for the policy, practice, supervision,

implementation, and conduct of all AEPD matters and was responsible for the appointment, training, supervision, and conduct of all AEPD personnel, including defendant BRODEN, THOMAS, and GILLIS, for enforcing the rules of the AEPD and for ensuring that AEPD personnel obey the laws of the United States and the State of Georgia.

8. At all times relevant hereto, Defendant LYNN THOMAS (“Thomas”) was a police officer of the AEPD, holding the rank of sergeant, and acting within his capacity as an agent, servant, and employee of defendant CITY.

9. The acts and omissions complained of herein arise from the conduct of defendant THOMAS while he was acting under color of state law, and each act and omission was committed pursuant to defendant THOMAS’ employment and authority as a police officer with defendant CITY.

10. Upon information and belief, defendant THOMAS was under the command of defendant BRODEN.

11. At all times relevant hereto, Defendant THOMAS GILLIS (“Gillis”) was a police officer of the AEPD and acting within his capacity as an agent, servant, and employee of defendant CITY.

12. The acts and omissions complained of herein arise from the conduct of defendant GILLIS while he was acting under color of state law and each act and omission was committed pursuant to his employment and authority as a police officer with defendant CITY.

13. Upon information and belief, defendant GILLIS was under the command of defendant BRODEN.

14. At all times relevant hereto, Defendant GARY L. BRODEN (“Chief Broden”) was the Chief of Police of the AEPD acting within his capacity as an agent, servant, and employee of defendant CITY.

15. The acts and omissions complained of herein arise from the conduct of defendant BRODEN while acting under color of state law, and each act and omissions was committed pursuant to defendant BRODEN’s employment and authority as Chief of Police of the Avondale Estates Police Department.

16. Upon information and belief, defendants THOMAS and GILLIS were and are under the command of defendant BRODEN.

III. JURISDICTION AND VENUE

17. This action arises under the Fourth, Eighth, Thirteenth, and Fourteenth Amendments to the United States Constitution and under 42 U.S.C. §§ 1983 and 1988 and the state common law and constitution. Jurisdiction of this Court is predicated upon 28 U.S.C. §§ 1331, 1343(a)(3) and (4), 1367(a), and the doctrine of pendent jurisdiction.

18. The acts complained of herein occurred in the Northern District of Georgia and venue is lodged in this Court pursuant to 28 U.S.C. § 1391(b).

IV. JURY DEMAND

19. Plaintiff demands trial by jury in this action.

V. FACTUAL ALLEGATIONS

20. Jayvis Ledell Benjamin was a 20-year-old unarmed college student when he was shot and killed by defendant THOMAS, a uniformed Avondale Estates police officer.

21. At the time he was shot and killed, Jayvis Ledell Benjamin worked at Wrapcity Vinyl in Decatur, Georgia.

22. The shooting death occurred on or about January 18, 2013, at approximately 5:30 P.M. in the yard of 33 Kensington Road, Avondale Estates.

23. On the evening of the incident, defendant THOMAS was wearing his official City of Avondale Estates Police Department uniform and at all times hereto was acting within the course and scope of his employment with defendant CITY.

24. At all material times, defendant THOMAS was an actor under color of state law.

25. On the evening of the incident, defendant THOMAS observed a 2003 Ford Mustang fail to stop at the intersection of Covington Highway and Kensington Road.

26. Defendant THOMAS followed the Mustang onto Kensington Road and located it a short time later in the yard of 33 Kensington Road.

27. The Mustang had left the roadway, struck a telephone pole, and came to rest in the yard.

28. Several neighbors came from their homes to investigate the crash.

29. Defendant THOMAS stopped his police vehicle in the roadway in front of 3113 Kensington Road and approached the vehicle.

30. Jayvis Ledell Benjamin was injured as a result of the accident and began to exit the vehicle.

31. At no time did Jayvis Ledell Benjamin make any sudden movements or gestures that could be interpreted by defendant THOMAS as aggressive or threatening nor did Jayvis Ledell Benjamin say anything that would cause defendant THOMAS to fear imminent bodily harm.

32. Clearly, Jayvis Ledell Benjamin had no intent to harm defendant THOMAS or any other person.

33. Defendant THOMAS could see Jayvis Ledell Benjamin was unarmed and under these circumstances, defendant THOMAS had no reason to believe that Jayvis Ledell Benjamin posed a danger to himself or any other person.

34. Jayvis Ledell Benjamin was unarmed and posed no threat to defendant THOMAS.

35. According to an official report of the incident prepared by defendant GILLIS, Jayvis Ledell Benjamin refused commands to stop and stay in his vehicle.

36. Without provocation, defendant THOMAS pulled his service weapon, a Glock model 22, .40 caliber semi-automatic pistol and fired a single shot at Jayvis Ledell Benjamin that struck him in the chest at a distance of three to four feet.

37. Jayvis Ledell Benjamin immediately fell to the ground.

38. Emergency rescue personnel arrived on scene and transported Jayvis Ledell Benjamin to Grady Healthcare.

39. All lifesaving efforts failed and Jayvis Ledell Benjamin was declared deceased at 6:26 P.M.

40. Defendant THOMAS, following the shooting, was placed on administrative leave.

41. An inquest was opened as a result of the officer-involved shooting death of Jayvis Ledell Benjamin and an autopsy was performed.

42. It was determined the fatal shot was slightly left to right in a downward direction entering the chest and abdomen front to back.

43. The manner of death was classified as HOMICIDE.

44. Upon information and belief, an internal affairs investigation into the incident was completed without any discipline imposed against defendant THOMAS.

45. Defendant BRODEN, upon information and belief, never recommended any discipline or retraining of defendant THOMAS and/or defendant GILLIS.

46. Upon information and belief, defendant BRODEN, on behalf of and pursuant to policies approved by, defendant CITY, approves all discipline of all the officers under his command.

47. In accordance with policy, all officer-involved shootings are referred to the DeKalb County District Attorney's Office.

48. Upon information and belief, the District Attorney, in and for DeKalb County, Georgia, conducted an investigation into the unlawful killing.

49. Reasonable efforts to obtain relevant documents, including a videotape of the shooting taken from defendant THOMAS' dash camera, were unsuccessful because, at the time of the request, the District Attorney claimed privilege from disclosure pursuant to the Georgia Public Records law.

50. In May 2015, the District Attorney presented the information gained during his investigation of the unlawful and unjustified killing of Jayvis Ledell Benjamin to a Civil Grand Jury in DeKalb County, one of six cases involving officer-involved shootings.

51. Upon review of the facts of Jayvis Ledell Benjamin's case, the Civil Grand Jury in DeKalb County recommended the case be presented to a Criminal Grand Jury in DeKalb County to consider charges against defendant THOMAS for the unjustified killing.

52. Upon information and belief, the District Attorney never presented Jayvis Ledell Benjamin's case in accordance with the recommendation of the Civil Grand Jury.

53. Upon information and belief, on or about March 11, 2016, the District Attorney notified Plaintiff he would not pursue criminal charges stemming from the unlawful and unjustified killing of Jayvis Ledell Benjamin.

AS AND FOR A FIRST CLAIM FOR RELIEF

42 U.S.C. § 1983 – Excessive Force

52. Plaintiff repeats and re-alleges paragraphs 20 through 53 as if the same were fully set for at length herein.

53. By reason of the foregoing, and by using excessive force resulting in the unjustified and unlawful murder of Jayvis Ledell Benjamin, and by conspiring to keep the truth about his murder hidden from public view, defendants deprived Plaintiff of rights, remedies, privileges, and immunities guaranteed to every citizen of the United States, in violation of 42 U.S.C. § 1983, including, but not limited to, rights guaranteed by the Fourth, Eighth, Thirteenth, and Fourteenth Amendments to the United States Constitution, and took numerous overt steps in furtherance of such conspiracy, as set forth above.

54. Defendants acted under pretense and color of state law in their individual and official capacities and within the scope of their respective employments as AEPD officers. Said acts by defendants were beyond the scope of their jurisdiction without authority of law, and in abuse of their powers, and said defendants acted willfully, knowingly, and with the specific intent to deprive Plaintiff of his constitutional rights secured by 42 U.S.C. § 1983, and by the Fourth, Eighth, Thirteenth, and Fourteenth Amendments to the United States Constitution.

55. As a direct and proximate result of the misconduct and abuse of authority detailed above, plaintiff suffered the damages hereinbefore alleged.

AS AND FOR A SECOND CLAIM FOR RELIEF

Negligent Hiring/Training/Retention of Employment Services

56. Plaintiff repeats and re-alleges paragraphs 20 through 53 as if the same were fully set forth at length herein.

57. Defendant CITY, through the AEPD, owed a duty of care to Jayvis to prevent the conduct alleged because, under the same or similar circumstances, a reasonable, prudent, and careful person should have anticipated the likelihood of Jayvis' death or to those in a like situation would probably result from the foregoing conduct.

58. Upon information and belief, all of the individual defendants were unfit and incompetent for their positions.

59. Upon information and belief, defendant CITY knew or should have known through the exercise of reasonable diligence that the individual defendants were potentially dangerous.

60. Upon information and belief, defendant CITY's negligence in screening, hiring, training, disciplining, and retaining these defendants proximately caused Jayvis' death.

61. As a direct and proximate result of the unlawful conduct, Jayvis suffered the damages hereinbefore alleged.

AS AND FOR A THIRD CLAIM FOR RELIEF

Wrongful Death

62. Plaintiff repeats and re-alleges paragraphs 20 through 53 as if the same were fully set forth at length herein.

63. By reason of the foregoing, the statutory distributees of Jayvis' estate suffered pecuniary and non-economic loss resulting from the loss of love, comfort, society, attention, services and support. Defendants are liable to Ms. Benjamin for the wrongful death of Jayvis.

64. As a consequence, Ms. Benjamin has suffered damages in an amount to be determined at trial.

AS AND FOR A FOURTH CLAIM FOR RELIEF

Georgia State Constitution Art. I, § 1

65. Plaintiff repeats and re-alleges paragraphs 20 through 53 as if he same were fully set forth at length herein.

66. By reason of the foregoing, and by using excessive force against Jayvis Ledell Benjamin, killing him, defendants deprived him of his rights, remedies, privileges, and immunities guaranteed to every Georgian by Art. I, § 1 of the Georgia Constitution.

67. In addition, defendants conspired among themselves to deprive Jayvis Ledell Benjamin of his constitutional rights secured by Art. I, § 1 of the Georgia Constitution, and took numerous overt steps in furtherance of such conspiracy, as set forth above.

68. Defendants acted under pretense and color of state law and in their individual and official capacities and within the scope of their respective employments as defendant CITY and/or AEPD officers, agents, or employees.

69. Said acts by defendants were beyond the scope of their jurisdiction, without authority of law, and in abuse of their powers, and said defendants acted willfully, knowingly, and with the specific intent to deprive Jayvis Ledell Benjamin of his constitutional rights secured by Art. I, § 1 of the Georgia Constitution.

70. Defendants, their officers, agents, servants, and employees were responsible for the deprivation of Jayvis' state constitutional rights.

71. Defendant CITY as employer of defendants BRODEN, THOMAS and GILLIS, is responsible for their wrongdoing under the doctrine of respondeat superior.

72. As a direct and proximate result of the misconduct and abuse of authority detailed above, Plaintiff suffered damages hereinbefore alleged.

WHEREFORE, Plaintiff respectfully requests judgment against defendants as follows:

(A) an order awarding compensatory damages in an amount to be determined at trial, but in no event less than \$5,000,000;

(B) an order awarding punitive damages in an amount to be determined at trial, but in no event less than \$10,000,000;

(C) reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

(D) for such other and further relief as the Court may deem just and proper, together with attorneys' fees, interest, costs and disbursements of this action.

Dated: May 12, 2016
Orlando, Florida

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