

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

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WESTERN DISTRICT OF KY
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ANGELA BOUGGESS, as Administratrix)
of the Estate of Michael Newby)

Plaintiff)

vs.)

MCKENZIE MATTINGLY)

SERVE:)

McKenzie Mattingly,)

Louisville Metro Division of Police)

633 West Jefferson)

Louisville, KY 40202)

AND)

LOUISVILLE-,JEFFERSON COUNTY)

METRO GOVERNMENT)

SERVE:)

Jerry Abramson, Mayor)

Louisville Metro Hall)

527 West Jefferson Street)

Louisville, KY 40202-2814)

Defendants

3:04c v 180-5

CIVIL ACTION NO. _____

COMPLAINT

I. Preliminary Statement

1. This is a damages action under 42 U.S.C. § 1983 and state law against a police officer and the Louisville-Jefferson County Metro Government, stemming from the officer's fatal shooting of a Louisville Man in his back. Plaintiff alleges that Officer McKenzie Mattingly shot and killed Michael Newby (Newby) without lawful cause, thereby violating Newby's right to be free from unreasonable seizure, in violation of the Fourth and Fourteenth Amendments to

the United States Constitution. Plaintiff further alleges that Officer Mattingly acted negligently, recklessly or wantonly, and within the course and scope of his employment or, in the alternative, that he acted intentionally, thereby violating Newby's rights under Kentucky tort law. Plaintiff further alleges that the of Louisville-Jefferson County Metro Government was deliberately indifferent to the need to train police officers (Including Officer Mattingly) to deal properly with citizens in certain situations and that this failure to train led directly to Newby's death.

II. Jurisdiction and Venue

2. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331, which provides for original district court jurisdiction over cases presenting federal questions.

3. Jurisdiction over the state law claims is conferred upon this Court by 28 U.S.C. § 1367, which provides for supplemental jurisdiction over state law claims which are so related to the federal law claims that they form one case or controversy for Article III purposes.

4. Venue in this district is proper pursuant to 28 U.S.C. § 1391.

III. Parties

5. The plaintiff, Angela Bougess, was duly appointed as Administratrix of the estate of her son, Michael Newby on February 11, 2004, case number 04-P-000603. A copy of the appointment from the Jefferson District Court is attached as Exhibit 1.

6. The defendant, McKenzie Mattingly, in his individual capacity (Officer Mattingly) is a Metro Louisville, Kentucky, police officer.

7. The defendant Louisville-Jefferson County Metro Government (Louisville) is a merged city/county government duly organized under Kentucky law.

IV. Factual Allegations

8. At all relevant times, the defendants acted under color of state law. In addition, at all relevant times, Officer Mattingly acted within the course and scope of his duties as a Louisville Metro Police Officer.

9. At the time of his death, Newby was 19 years old.

10. On or about January 3, 2004, Newby was at the corner of 4600 Market Street and Longworth, when he came into contact with Officer Mattingly. Officer Mattingly got into a scuffle with unidentified individuals over \$100.00 that was intended to purchase narcotics. From information and belief, Newby was not involved in that scuffle. Officer Mattingly was allegedly upset about being robbed of his money and began to chase the young males at the scene. For some unknown reason, Officer Mattingly began to chase Newby and fired 4 shots at him, 3 of the shots hitting him square in his back.

11. From information and belief, the shooting was not reported in a timely fashion, and when it was, it was reported by an off-duty officer who was not involved nor at the scene of the killing. Mattingly was also allegedly wearing a wire, but a tape recording of the incident was never produced.

12. According to the police, Newby got in a scuffle and ran when Officer Mattingly's weapon discharged. There is also information that none of the Officers at the scene, including Mattingly, had any idea that Newby was armed, until after he was shot, handcuffed, and dying on the street.

13. Upon information and belief, Officer Mattingly and his narcotics flex platoon were out of their David District, and they did not notify anyone in the 6th District of their presence or that they were involved in an under cover narcotics investigation. It is also on information and belief that Mattingly and his flex platoon were conducting narcotics

investigations outside of their district pursuant to a policy that was driven by statistics and arrest numbers.

14. Upon information and belief, Officer Mattingly had not been trained properly in undercover narcotics investigations. If he had, he would have known that it is improper for the undercover narcotics officer to pursue, arrest or apprehend potential suspects or get out of his vehicle. It is the duty of the other members of the narcotics flex platoon to pursue, arrest and/or apprehend suspects, not the undercover officer himself.

15. After Newby was shot he did not receive prompt and adequate medical attention and he died in the street with his hands handcuffed behind his back.

16. At the time Officer Mattingly shot and killed Newby, Officer Mattingly was unaware that Newby possessed a firearm, Newby was running away from Mattingly and posed no threat to Officer Mattingly.

17. Officer Mattingly shot and killed Newby either intentionally, or with deliberate indifference to Newby's life, health and safety, or negligently, recklessly and wantonly. Officer Mattingly used excessive force in shooting Newby.

18. Officer Mattingly's actions were so willful, wanton, malicious and in utter disregard for Newby's rights as to warrant the imposition of punitive damages.

19. No reasonable officer could have thought that shooting Newby in the back three times under these circumstances was lawful.

20. Louisville Metro's failure to provide adequate training to Officer Mattingly, especially training about interaction with citizens in under cover narcotics investigations, constitutes deliberate indifference to this obvious need.

21. As a direct and proximate result of Officer Mattingly's unlawful conduct, and the Louisville Metro's deliberate indifference to its police officers' training needs, Newby was

deprived of his enjoyment of life, endured physical pain and suffering, and suffered the destruction of his power to labor and earn money.

V. CAUSES OF ACTION

Count I: Search and Seizure

22. Officer Mattingly's shooting and killing of Newby constitutes an unreasonable seizure.

23. Officer Mattingly thus has deprived Newby of rights secured by the Fourth and Fourteenth Amendments to the United States Constitution.

Count II: Assault and Battery

24. Officer Mattingly's shooting and killing of Newby constitutes assault and battery.

25. Officer Mattingly thus has deprived Newby of rights secured by Kentucky tort law.

Count III: Negligence and Vicarious Liability

26. Officer Mattingly's acts and omissions were negligent, reckless or wanton, and occurred within the scope and course of his employment as a Metro Louisville police officer.

27. The acts and omissions described above were a substantial factor in bringing about Newby's death.

28. As a result, Newby has suffered the destruction of his power to labor and earn money, endured pain and suffering, lost his life and incurred funeral expenses.

29. Officer Mattingly thus has deprived Newby of rights secured by Kentucky tort law.

30. Louisville Metro is vicariously liable for Officer Mattingly's negligent, reckless or wanton conduct.

Count IV: Failure to Train

31. Louisville Metro was deliberately indifferent to its police officers' need for training about interactions in under cover drug investigations.

32. Louisville Metro therefore is liable for the constitutional deprivations caused by Officer Mattingly's shooting and killing of Newby.

Count V: Punitive Damages

33. Officer Mattingly's conduct was so willful, wanton, malicious and in utter disregard for Newby's rights as to warrant the imposition of punitive damages.

VI. Request for Relief

WHEREFORE, the plaintiff requests:

1. Trial by jury of all issues so triable;
2. An award of compensatory and punitive damages against Officer Mattingly, in amounts to be proven at trial;
3. An award of compensatory damages against Louisville Metro, in amounts to be proven at trial;
4. Recovery of his costs, including reasonable attorney fees, under 42 U.S.C. § 1988; and
5. All other relief to which he may be entitled.



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