

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE, NORTHERN DIVISION

THE ESTATE OF LEEROY HICKMAN, JR.,)

Plaintiff)

vs.)

No. _____)

DOUG MOORE,)

LESLEY CRAIG,)

ROBERT BERKLEY,)

MATTHEW GILMORE,)

JOHN DOE I,)

JAMES LEE BERRONG,)

BLOUNT COUNTY, TENNESSEE,)

Defendants)

COMPLAINT

Plaintiff sues Defendants and for action says:

1. This is an action for the violation of the constitutional rights of LeeRoy Hickman, Jr. guaranteed to him by the Tennessee and United States Constitutions and taken from him by Officers of the Blount County Sheriff's Department with the inception and execution of a special weapons and tactical plan to serve a misdemeanor arrest warrant with excessive force resulting in Mr. Hickman's death from five gunshot wounds to his back. The action includes claims for assault and battery, official misconduct, and wrongful death.

JURISDICTION

2. This Court has jurisdiction over the statutory and constitutional claims pursuant to 28 U.S.C. §§1331 and 1343; 42 U.S.C. §§1983 and 1988 and over Plaintiff's state claims pursuant to supplemental jurisdiction recognized in federal law pursuant to 28 U.S.C. §1367 and in Rule 18 of the Federal Rules of Civil Procedure.

3. All of the acts complained of occurred in this jurisdiction.

THE PARTIES

4. The personal representative of the Estate of LeeRoy Hickman, Jr. is Janice Hickman, a resident of Blount County, who brings this action in her representative capacity. The acts complained of herein may be stated as if plaintiff's decedent, LeeRoy Hickman, Jr. had survived to make them.

5. Defendant DOUG MOORE is a deputy sheriff for Blount County, Tennessee and, in doing each of the acts complained of, is sued both in his official capacity as Deputy Sheriff for Blount County, Tennessee and in his individual capacity.

6. Defendant LESLEY CRAIG is a deputy sheriff for Blount County, Tennessee and, in doing each of the acts complained of, is sued both in her official capacity as Deputy Sheriff for Blount County, Tennessee and in her individual capacity.

7. Defendant ROBERT BERKLEY is a deputy sheriff for Blount County, Tennessee and, in doing each of the acts complained of, is sued both in his official capacity as Deputy Sheriff for Blount County, Tennessee and in her individual capacity.

8. Defendant MATTHEW GILMORE is a deputy sheriff for Blount County, Tennessee and, in doing each of the acts complained of, is sued both in his official capacity as Deputy Sheriff for Blount County, Tennessee and in his individual capacity.

9. Defendants JOHN DOE I is a deputy sheriff for Blount County, Tennessee whose identity is presently unknown to Plaintiff but known to Defendant Blount County Tennessee and, in doing each of the acts complained of, is sued both in his or her official capacity as Deputy Sheriff for Blount County Tennessee and in his or her individual capacity.

10. Defendant JAMES LEE BERRONG is the sheriff of Blount County, Tennessee and is sued in his official capacity only.

11. Defendant BLOUNT COUNTY, TENNESSEE is a political subdivision of the State of Tennessee.

FACTUAL ASSERTIONS

12. On February 24, 2008, Plaintiff's decedent, LeeRoy Hickman, Jr. was a citizen of this County, State and Country, guaranteed certain constitutional rights and entitled to the protection of his life and those rights by all deputies of the Blount County Sheriff's Department.

13. On February 24, 2008, Plaintiff's decedent was in his home at 2339 Grove St. in Blount County, Tennessee. He was alone sleeping after taking the sleep aid, Ambien.

14. On February 24, 2008, Plaintiff's decedent stood accused of a domestic assault. He and his wife, Mrs. Janice Hickman, had an altercation the previous evening in their kitchen wherein the deceased was said to have been physically and verbally abusive.

15. No one, either from Blount County Sheriff's Department or anyone else, ever told LeeRoy Hickman, Jr. that a misdemeanor warrant had been issued for his arrest.

16. From officers responding to the domestic call in the early morning hours of February 24, 2008 at Grove Street, Blount County Sheriff's Department officers knew the following facts about the alleged domestic assault:

- a. Officers could see no visible sign of injury about Mrs. Hickman's person.
- b. Mrs. Hickman recounted that her husband when confronted by his adult daughter apologized to his grandson for his behavior and retreated to his bedroom.
- c. Two uniformed officers had come to the Hickman residence in the early morning hours where Mr. Hickman was then present, knocked on the door and escorted his daughter and grandson from the premises without incident or altercation of any kind.
- d. LeeRoy Hickman, Jr. was alone in his home at 2339 Grove St. and posed no immediate threat to anyone.

17. Blount County Sheriff's Department deputies also knew that the deceased, LeeRoy Hickman, Jr.:

- a. was a former police officer;
- b. had a permit to carry a gun;
- c. had weapons in his home;
- d. had no criminal record of any kind
- e. had lived peacefully with his neighbors on Grove Street for many years.

18. Blount County Sheriff's Department deputies also knew that the deceased was believed by his family to be mentally unstable and allegedly had bragged at some point in the past that he would never be arrested and that if the law ever came for him he would shoot the officers and himself.

19. On February 24, 2008, within the Blount County Sheriff's Department there existed officers for whom a primary responsibility was to serve process including arrest warrants. On information and belief none of the officers directly involved in the instant action had as their primary responsibility the service of arrest warrants.

20. On February 24, 2008, within the Blount County Sheriff's Department there existed officers for whom a primary responsibility was the use of special weapons and tactics. On information and belief none of the officers directly involved in the instant action had as their primary responsibility the use of special weapons or tactics.

21. On February 24, 2008, there were scores if not hundreds of misdemeanor and felony arrest warrants for persons living in Blount County which had been issued but remained un-served.

22. On February 24, 2008, there was a well defined Blount County Sheriff's Department's policy which allowed deputies to use deadly force to affect an arrest only if all other reasonable means of apprehension had been exhausted or were unavailable.

23. On information and belief there was no well defined policy on dealing with persons who were believed to be mentally unstable.

24. On information and belief on February 24, 2008, the Blount County Sheriff's Department had no well defined policy on the authorization and use of special weapons and tactics by officers outside of the S.W.A.T. team.

25. Unbeknownst to Plaintiff's decedent, on February 24, 2008, Defendants Moore, Craig, Berkley and Gilmore had devised a plan to arrest plaintiff's decedent on a misdemeanor warrant by deceit, surprise and threat of deadly force.

26. John Doe I was in charge of supervising the activities of deputies Moore, Craig, Berkley and Gilmore on February 24, 2008, and knew that those officers were selecting from all the outstanding warrants to attempt the arrest of Plaintiff's decedent. John Doe I knew that there was no urgency with apprehending Mr. Hickman inasmuch as he was home alone and posed no threat to anyone, and knew that deputies had devised a special tactics plan which involved deceit, surprise, night-time tactics, and at least the threat of deadly force on a citizen who might be lawfully armed. John Doe I knew that no one had actually asked Mr. Hickman to submit to an arrest and that other means of apprehension were available and had not been tried and that the proposed plan of apprehension involved the threat of deadly force as a first rather than a last resort in clear violation of the Sheriff's Department's excessive force policy and the citizens' constitutional rights.

27. Prior to execution of the fateful plan to arrest LeeRoy Hickman, Jr. at night by a team not wearing uniforms and employing deadly force, no direct contact had been made by any officer with Mr. Hickman by telephone or in person to inform him of the warrant and gain his cooperation therein.

28. During the night of February 24, 2008, Defendants Moore, Craig, Berkley and Gilmore came to Mr. Hickman's home and entered onto his premises and its curtelage in darkness dressed in dark clothing and concealing their identity as agents of law enforcement.

29. Defendant Craig, wearing civilian clothing, knocked on Plaintiff's decedent's door pretending to have trouble with a vehicle parked in the street in front of Mr. Hickman's yard and asked for Mr. Hickman's assistance.

30. Plaintiff's decedent left the relative safety of his home in the dark to assist Defendant Craig with her vehicle while unbeknownst to him Defendants Moore, Berkley and Gilmore were hiding in and around his home prepared to surprise him.

31. Once Mr. Hickman was lured away from his home to the street, one or more of the officers who had been hiding appeared from the darkness and began shouting commands to Mr. Hickman followed quickly by another officer chambering a shell in a pump shotgun, followed quickly by an officer beginning to shout "gun, gun, gun" and immediately followed by one or more of the officers opening fire.

32. The exact role of each officer among Moore, Craig, Berkley and Gilmore as to both the formulation and execution of the plan to surprise defendant at night both as to their identity and their purpose is unknown to plaintiff but is known to defendants individually.

33. Mr. LeeRoy Hickman, Jr., confused and concerned for his own safety, moved to retreat and was shot dead at close range with five bullets entering the back of his body:

On the right back of the head, in the occipital region, 6.5 inches beneath the top of the head, 2.4 inches to the right of the posterior midline, and approximately 2.0 inches behind the pinna of the right ear

On the right upper back, 9.8 inches beneath the top of the head and 0.5 inches to the right of the posterior midline

On the right upper back, 11.8 inches beneath the top of the head and 2.4 inches to the right of the posterior midline

On the right lower back, 21.1 inches beneath the top of the head and 1.0 inch to the right of the posterior midline

On the left lower back, 30.3 inches beneath the top of the head and 0.25 inch to the left of the posterior midline

34. At no time did Mr. Hickman pose any threat of serious bodily injury to any officer.

35. Following Mr. Hickman's death, officers detained and questioned decedent's wife and daughter for nearly two hours pretending to be conducting a continuing investigation of decedent's alleged wrongdoing and demanding signed accounts of such wrongs, all the while failing to reveal that there was no ongoing case and that the sole purpose of their being asked to give statements was to justify the killing of their husband and father.

36. Following two hours of detention and interrogation Sheriff James Lee Berrong informed Mrs. Janice Hickman and her daughter of the death and demanded that his officers be given permission to search their home, again invading their privacy, solely for the purpose of justifying Mr. Hickman's killing.

37. Following Plaintiff's decedent's death Sheriff Berrong took possession of Plaintiff's residence and ordered his officers or agents to collect all evidence from the scene and subsequently for a Hazmat team to wash away the evidence of Plaintiff's decedent's location when shot.

38. As a direct and proximate result of defendants' actions LeeRoy Hickman, Jr. lost his life. In the moments before his death, LeeRoy Hickman, Jr. suffered anguish, physical and mental, and because of his death lost his time and his survivors incurred expenses for his funeral expenses, suffered the loss of his earning capacity, and the pecuniary value of his life as well as his mutual society and protection.

FIRST COUNT:
ASSAULT AND BATTERY

39. The foregoing allegations are incorporated into this cause of action as though set out verbatim.

40. Defendants' Moore, Craig, Berkley and Gilmore plan and actions to use and in using excessive force were intentional, unlawful and harmful and as such constituted an assault and battery which proximately caused the death of LeeRoy Hickman, Jr.

41. Defendant John Doe I's failure to adequately supervise Defendants Moore, Craig, Berkley and Gilmore effectively authorized the use of excessive force were intentional, unlawful and harmful and proximately caused and contributed to the assault and battery upon LeeRoy Hickman, Jr. on February 24, 2008.

42. Defendants Moore, Craig, Berkley and Gilmore and John Doe I acted by virtue of and under the color of the authority of being Blount County Deputy Sheriffs.

43. Plaintiff sues Defendant BLOUNT COUNTY TENNESSEE pursuant to T.C.A. §8-8-302 for the actions of its Deputy Sheriffs resulting in an assault and battery upon LeeRoy Hickman, Jr..

SECOND COUNT:
WRONGFUL DEATH

44. The foregoing allegations are incorporated into this cause of action as though set out verbatim.

45. Defendants' Moore, Craig, Berkley and Gilmore plan and actions to use and in using excessive force arose from an improper motive and were official misconduct which proximately caused the death of LeeRoy Hickman, Jr.

46. Defendant John Doe I's failure to adequately supervise Defendants Moore, Craig, Berkley and Gilmore effectively authorized the use of excessive force arose from an improper

motive and were official misconduct and proximately caused and contributed to the death of LeeRoy Hickman, Jr. on February 24, 2008.

47. Defendants Moore, Craig, Berkley and Gilmore and John Doe I acted by virtue of and under the color of the authority of being Blount County Deputy Sheriffs.

48. Plaintiff sues Defendant BLOUNT COUNTY TENNESSEE pursuant to T.C.A. §8-8-302 for the actions of its Deputy Sheriffs resulting in the wrongful death of LeeRoy Hickman, Jr., and all damages permitted by law including all claims under T.C.A. §20-5-113 and loss of consortium.

THIRD COUNT:
VIOLATIONS OF TITLE 42 U.S.C. §§1983 AND 1988

49. The foregoing allegations are incorporated into this cause of action as though set out verbatim.

50. Defendants Moore, Craig, Berkley, Gilmore, and John Doe I and Sheriff James Lee Berrong were each acting under color of state law in doing the acts complained of herein.

51. Defendants Moore, Craig, Berkley, Gilmore, and John Doe I violated Plaintiffs rights under the Fourth Amendment to the United States Constitutional to be free from the use of excessive force and to be free from unreasonable seizures; under the Fifth Amendment to be free from punishment without due process of law; and under the Fourteenth Amendment the right to be free from cruel and unusual punishment.

52. Devising a primary plan for the seizure of an alleged misdemeanor offender by threat of deadly force is per se unreasonable and in violation of the Fourth Amendment.

53. Defendants are liable to Plaintiff for damages, cost and attorney fees pursuant to 42 U.S.C. §§1983 and 1988. Pursuant to 42 U.S.C. §1988(a) Defendants are further liable under Tennessee laws for the protections of Plaintiff's civil rights where those rights are not inconsistent with Plaintiff's rights under the federal constitution.

FOURTH COUNT:
VIOLATIONS OF RIGHTS GUARANTEED BY THE TENNESSEE CONSTITUTION

54. The foregoing allegations are incorporated into this cause of action as though set out verbatim.

55. Plaintiff sues defendants for a remedy at law for the violation of his Tennessee Constitutional rights as guaranteed her by Article I, Section 17 of the Tennessee Constitution.

56. Defendants MOORE, CRAIG, BERKLEY, GILMORE, and JOHN DOE I were each acting under color of state law in doing the acts complained of.

57. Defendants MOORE, CRAIG, BERKLEY, GILMORE, and JOHN DOE I violated Plaintiffs rights under the Tennessee Constitution under Article I, Sections 7 and 8 to be free from the use of excessive force; to be free from punishment without due process of law; and Article 1, Section 16 to be free from cruel or unusual punishment.

58. Defendants are liable to Plaintiff for the death and all damages incurred as a result of defendants' violation of plaintiff's decedent's rights under the Tennessee Constitution.

FIFTH COUNT:
LIABILITY OF BLOUNT COUNTY TENNESSEE UNDER 42 U.S.C. §1983

59. The foregoing allegations are incorporated into this cause of action as though set out verbatim.

60. Defendant BLOUNT COUNTY TENNESSEE is prohibited from following an unconstitutional custom and policy which permits its officers to use excessive and deadly force for arrests in violation of the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

61. Blount County is liable under 42 U.S.C. §1983 for the death and violation of constitutional rights inflicted by its deputies because it had a custom and policy of inadequate supervision within the Sheriff's Department which among other things:

- a. allowed for the service of outstanding arrest warrants by deputies not trained for such service and not in a unit designated with such responsibility;
- b. allowed for selective service of warrants on a basis other than ranking warrants by their urgency or public safety;
- c. allowed for the use of special operational tactics including plain clothes officers, non-uniformed officers night-time live fire operations, and multiple officer involved coordinated tactics by officers not trained in such tactics and not in a special unit trained together for such tactics;
- d. allowed for the approval of a special operational plan to apprehend a citizen accused of a misdemeanor with the threat of deadly force as a first rather than last resort in violation of the County's own excessive force policy.

The County's lack of supervision of deputies with respect to service of warrants, special tactics, and excessive use of force was the moving force behind LeeRoy Hickman, Jr.'s death.

62. Blount County is further liable under 42 U.S.C. §1983 by its custom and practice of failing to supervise its deputies through a five member civil service board as required by Blount County Private Acts of 1972, Chapter 332, and particularly its operation in direct contravention of section 4 of such law's limits on the term of board members to three years. No new member has been appointed to the Board by the County Commission since February 17, 2005. The Board has become a de facto extension of the Sheriff's decisions and exercises no independent supervisory authority as required by law and as such was a moving force in the failure to supervise Blount County Sheriff's Department Deputies and the violations of LeeRoy Hickman, Jr.'s civil rights herein.

63. Defendant BERRONG is a sufficiently high ranking official of Defendant BLOUNT COUNTY TENNESSEE so as to make his acts, customs and policies those of Defendant BLOUNT COUNTY TENNESSEE.

64. The County is liable under 42 U.S.C. §1983 because officials with final decision-making authority either approved or acquiesced after the fact in the planned use of force against LeeRoy Hickman, Jr. in violation of the County's own excessive force policy. Such approval taken together with the existence of a clear, persistent and well-known pattern by Blount County Deputies of the use of excessive force and particularly the threat of force as a primary police tactic rather than a tactic of last resort amounts to a custom of deliberate indifference to citizen rights, and was a moving force in the constitutional violations described herein.

65. Defendant BLOUNT COUNTY TENNESSEE is liable pursuant to 42 U.S.C. §§1983 and 1988 for the damages, attorney fees and cost caused to Plaintiff for which its unconstitutional customs and policies were a moving force.

SIXTH COUNT:
LIABILITY OF BLOUNT COUNTY TENNESSEE UNDER THE GOVERNMENT TORT
LIABILITY ACT

66. The foregoing allegations are incorporated into this cause of action as though set out verbatim.

67. Deputies Moore, Craig, Berkley, Gilmore and John Doe I are employees of Blount County.

68. Defendant BLOUNT COUNTY TENNESSEE is liable under the Governmental Liability Act "GTLA" for negligence of its employees and agents for actions that are not specifically excluded from that Act.

69. Plaintiff sues Defendant BLOUNT COUNTY TENNESSEE under the "GTLA" for the negligence of each of the officers to prevent the other officers from committing the complained of acts to Plaintiff's decedent which failure proximately caused the use of excessive force and the death of LeeRoy Hickman, Jr..

70. Plaintiff sues Defendant BLOUNT COUNTY TENNESSEE under the "GTLA" for negligent acts of each of its officers that are not excluded by the provisions of that statute.

SEVENTH COUNT:
VIOLATIONS OF THE COMMON LAW DUTY OF OFFICE

71. The foregoing allegations are incorporated into this cause of action as though set out verbatim.

72. Defendants MOORE, CRAIG, BERKLEY, GILMORE, and JOHN DOE I had a duty to not fail or neglect the performance of a duty of their office as Blount County Deputy Sheriffs.

73. Defendant BERRONG had a duty to not fail or neglect the performance of a duty of his office as Blount County Sheriff.

74. In doing each of the acts complained of Defendants violated their common law duty to perform the duties of their respective offices and those violations resulted in injuries and death to Plaintiff.

75. Plaintiff sues Defendants for damages resulting from the failure and neglect to perform the duties of their offices.

WHEREFORE, Plaintiff sues Defendants for damages allowed by law as to each Count of the Complaint and demands a jury consisting of persons who are not taxpayers of Blount County Tennessee who have a financial interest in a judgment against Defendant BLOUNT COUNTY TENNESSEE in this cause.

DUNGAN, MEARES & WEBB

BY: _____
MICHAEL H. MEARES, BPR #012185
Attorneys for Plaintiff
307 College Street
Maryville, Tennessee 37804
(865) 977-0632