

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MARQUETTA WILLIAMS,)
Individually and as Administratrix of)
the Estate of JAMES WILLIAMS,)
Deceased)
2307 10th Street, S.W.)
Canton, Ohio 44706,)

Plaintiff.)

v.)

CITY OF CANTON)
218 Cleveland Avenue, S.W.)
P.O. Box 24218)
Canton, Ohio 44701,)

and)

ROBERT HUBER)
c/o Canton Police Department)
221 3rd Street, S.W.)
Canton, Ohio 44702,)

and)

LESTER MARINO)
c/o Canton Police Department)
221 3rd Street, S.W.)
Canton, Ohio 44702,)

and)

DEFENDANT PSC,)
Name Unknown)
c/o Canton Police Department)
221 3rd Street, S.W.)
Canton, Ohio 44702,)

and)

DEFENDANT SHIFT COMMANDER)
Name Unknown)

CASE NO.:

JUDGE:

COMPLAINT

(Jury Demand Endorsed Hereon)

c/o Canton Police Department)
221 3rd Street, S.W.)
Canton, Ohio 44702,)

and)

LISA BROUKER)
c/o Canton Police Department)
221 3rd Street, S.W.)
Canton, Ohio 44702,)

and)

JOHN GABBARD)
c/o Canton Police Department)
221 3rd Street, S.W.)
Canton, Ohio 44702,)

and)

DAVE DAVIS)
c/o Canton Police Department)
221 3rd Street, S.W.)
Canton, Ohio 44702,)

and)

CHIEF JACK ANGELO)
c/o Canton Police Department)
221 3rd Street, S.W.)
Canton, Ohio 44702,)

Defendants.)

Now comes Plaintiff Marquetta Williams (“Plaintiff”), individually and as Administratrix of the Estate of James Williams, Deceased, by and through undersigned counsel, and for her Complaint against Defendants, states as follows:

INTRODUCTION

1. Plaintiff alleges, including but not limited to, that Defendant Robert Huber (Defendant Huber) used excessive force when he fatally shot James Williams on New Year's Day, January 1, 2022, at his home in Canton, Ohio.

2. Plaintiff brings this action pursuant to 42 U.S.C. § 1983 for the deprivation of Decedent Williams' clearly established rights as secured by the Fourth and Fourteenth Amendments to the United States Constitution.

3. Plaintiff also brings this action pursuant to *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978), and its progeny.

JURISDICTION

4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 as this action is brought pursuant to 42 U.S.C. § 1983 to redress a deprivation of constitutional rights as set forth herein.

VENUE

5. Venue is proper in this Court under 28 U.S.C. §1391 because all incidents, events, and occurrences giving rise to this action occurred in the Northern District of Ohio and, upon information and belief, all of the parties reside in this judicial district.

PARTIES

6. At all times relevant to this action, Plaintiff is/was a resident of the City of Canton, Stark County, Ohio.

7. Plaintiff has been appointed by the Stark County Probate Court on February 10, 2022 as the Administratrix for the Estate of Decedent Williams.

8. Defendant Robert Huber (Defendant Huber) is/was a police officer for Defendant City of Canton, Ohio, and a resident of Stark County, Ohio.

9. Defendant Canton Police Lieutenant Lester Marino (Defendant Lt. Marino) is/was a police officer for Defendant City of Canton, Ohio – and a direct supervisor of Defendant Huber as a CR

SWAT team member – and a resident of Stark County, Ohio.

10. Along with the duties of all other police officer Defendant's mentioned below, Defendant Lt. Marino's duties are defined in the *Rules and Regulations of the Canton Police Department*.

11. The *Rules and Regulations of the Canton Police Department* are issued by the Director of Public Safety and the Chief of Police to employees of the Canton, Ohio Police Department.

12. Per the *Rules and Regulations of the Canton Police Department*, Defendant Lt. Marino's duties include:

- a. Being a Commanding Officer in the Canton Police Department, *Id.* pg. 32;
- b. Being responsible for the direction and control of personnel under his command to assure the proper performance of duties and adherence to established rules, regulations, policies and procedures, *Id.*, pg. 32;
- c. Familiarizing himself with the administrative policy of the Department and diligently executing the program within his area of responsibility providing for: prevention and suppression of crime, protection of life and property, apprehension and prosecution of offenders, preservation of peace, and enforcement of regulatory measures, *Id.*;
- d. Ensuring the proper conduct of roll call assembly during which members are instructed and inspected, *Id.*;
- e. Investigating systematically all cases of apparent or alleged misconduct by his subordinates, *Id.* pg. 33; and
- f. Analyzing crime and incident reports daily to determine trends as a basis for tactical deployment of resources and direction of police operations, *Id.*, pg. 34.

13. Defendant Professional Services Commander (Defendant PSC), Name Unknown, is/was a police officer for Defendant City of Canton, Ohio – and a direct supervisor of Defendant Huber.

14. Per the *Rules and Regulations of the Canton Police Department*, Defendant PSC's duties include:

- a. Commanding and controlling the Office of Professional Standards, *Id.* pg. 40;
- b. Being responsible for the thorough investigation of all administrative and inter-departmental investigations that are lodged by citizens, police officers or the Chief of Police in regards to officer misconduct or violations of departmental rules or regulation, *Id.*;
- c. Having the ultimate responsibility to ensure that all cases assigned to his/her bureau are carefully and thoroughly investigated to the best of his/her ability and in conformance with State and Federal laws, *Id.*;
- d. Interviewing complainants and seeing that complaints have received proper attention, *Id.*, 41;
- e. Being observant, discreet and logical in his/her deductions, loyal and impartial in the performance of their duty, *Id.*;
- f. Conducting investigations into allegations of improper conduct of police department employees that would constitute a violation of work rules or a violation of law and obtaining evidence necessary to affirm or dispel the allegations of improper or illegal activity, *Id.*;
- g. Conducting interviews and/or interrogating witnesses, suspects, victims, and others, both cooperative and hostile, to obtain information relevant to the investigation, *Id.*;
- h. Conducting searches for evidence in a systematic manner and determining the existence of a criminal or administrative violation using investigative methods and techniques, *Id.*; and

- i. Examining crime scenes to gather physical evidence and other information relevant to the investigation, *Id.* pg. 41.

15. Defendant Patrol Shift Commander/ “Acting in Command”/ Senior Sergeant on Duty for Defendant Huber’s Shift, Name Unknown, (Defendant Shift Commander) is/was a police officer/Sergeant/Lieutenant for Defendant City of Canton, Ohio – and a direct supervisor of Defendant Huber.

16. In the absence of the Patrol Shift Commander, the senior sergeant on duty for that shift is “Acting in Command” (and is the Defendant Shift Commander referenced herein) for the purposes of serving as the Officer in Charge.

17. Per the *Rules and Regulations of the Canton Police Department*, Defendant Shift Commander’s duties include:

- a. Acting as the Officer in Charge (OIC) of the daily departmental operations when the Chief of Police and Division Commanders are not on duty, *Id.*, pg. 42;
- b. Coordinating the deployment and activities of patrol personnel, *Id.*;
- c. Being responsible for the conduct of roll calls, dissemination of information and/or materials, and inspection of officers for fitness for duty, *Id.*;
- d. Ensuring proper use of radio procedures by all members under his command, *Id.*;
- e. Advising and assisting subordinates in all phases of police work requiring his/her expertise, *Id.*;
- f. Ensuring proper processing of all complaints received by citizens, *Id.*;
- g. Examining for approval or disapproval all reports or records submitted by officers under his/her command, *Id.*;
- h. Briefing the on-coming Shift Supervisor on actions occurring during his shift;
- i. Providing reviews and appraisals of the performance of subordinate supervisor,

Id. pg. 43;

- j. Reporting any unusual occurrence, homicide, attempted homicide or other aggravated crimes to the Chief of Police immediately, *Id.*;
- k. Closely supervising the activities of his/her subordinates, *Id.*;
- l. Being expressly required to see that all complaints and requests for service anywhere in the City are promptly and properly investigated and that appropriate action is taken, *Id.*; and
- m. Counseling subordinate officers in the performance of their duties and shall take suitable action in the cases of any laxity, misconduct, incompetence, inefficiency or neglect of duty that may come to his attention. *Id.*, pg. 43.

18. Defendant Canton Police Captain Lisa Broucker (Defendant Captain Brouker) is/was a police officer for Defendant City of Canton, Ohio – and a direct supervisor of Defendant Huber – and a resident of Stark County, Ohio.

19. Per the *Rules and Regulations of the Canton Police Department*, Defendant Captain Brouker's duties include:

- a. Being responsible for the operation of the administrative arm of the Police Department, *Id.* pg. 26;
- b. Having specific responsibilities for all training programs, *Id.*;
- c. Being responsible for the firearms training program and preparing and scheduling the members of the department for such training, *Id.*;
- d. Closely evaluating the performance and capabilities of all trainees and reporting their achievements and his/her recommendations to the Chief of Police, *Id.*;
- e. Reviewing all departmental plans, including operational plans to see they are suitably up to date, *Id.* pg. 27;

- f. Making adjustments when necessary to policy and procedure, *Id.*;
- g. Being responsible for the proper and effective functioning of the Internal Affairs Office and their ability to investigate all reports from within or without regarding personnel or policy problems of an internal or intra-departmental community nature, *Id.*; and
- h. Being responsible for background investigations of police candidates. *Id.*, pg. 28.

20. Defendant Patrol Division Captain/Officer John Gabbard (Defendant Gabbard) is/was a police officer for Defendant City of Canton, Ohio – and a direct supervisor of Defendant Huber – and a resident of Stark County, Ohio.

21. Per the *Rules and Regulations of the Canton Police Department*, Defendant Gabbard’s duties include:

- a. Knowing the administrative policy of the Department and diligently executing the program within his area of responsibility providing for: Prevention and suppression of crime, protection of life and property, apprehension and prosecution of offenders, and preservation of peace, and enforcement of regulatory measures, *Id.*, pg. 29;
- b. Assisting, under direction of the Chief of Police, in the administration of the Department program for: Organizing and conducting personnel training programs, . . . [u]sing personnel records and performance evaluations for individual guidance and improvement, . . . [e]nsuring the proper and economical use of police manpower, property and equipment, and [p]romoting personnel and fleet safety, *Id.*;
- c. Ensuring the proper conduct of roll call assembly, *Id.*;

- d. Analyzing crime and incident reports daily to determine trends as a basis for tactical deployment of resources and direction of police operations, *Id.*; and
- e. Making daily examination of personnel reports and other reports to ensure proper deployment and control of members and employees under his/her command, *Id.*, pg. 30.

22. Defendant Canton Police Captain Dave Davis (Defendant Captain Davis) is/was a police officer for Defendant City of Canton, Ohio – and a direct supervisor of Defendant Huber – and a resident of Stark County, Ohio.

23. Per the *Rules and Regulations of the Canton Police Department*, Defendant Captain Davis' duties include:

- a. Being responsible for the proper performance of assigned duties by subordinates in accordance to established rules, regulations, policy and procedures related to:
 - 1) employee performance and conduct and 2) the appropriate resolution of criminal investigations assigned in the Division under his command, *Id.*, pg. 31;
- b. Being responsible for the administrative duties which include the planning, organizing and directing of the investigations and activities of his/her assigned personnel, *Id.*;
- c. Exercising staff supervision over all functions relating to the Police Department's criminal investigations, resulting arrests and prosecutions, *Id.*;
- d. Investigating systematically all cases of apparent or alleged misconduct by his/her subordinates, preparing reports and recommendations for the Chief of Police, *Id.*;
- e. Analyzing crime and incident reports to determine trends as a basis for special

investigation, *Id.*; and

- f. Being responsible for the communication of information up and down the chain of command as required, *Id.*, pg. 32.

24. Defendant Canton Police Chief Jack Angelo (Defendant Chief Angelo) is/was a police officer for the City of Canton, Ohio – acting as Chief of Police and the top decision maker and policy maker at the City of Canton regarding police procedure and policy at the time of the alleged events – and a resident of Stark County, Ohio.

25. Per the *Rules and Regulations of the Canton Police Department*, Defendant Chief Angelo's duties include:

- a. Reserving the right, as chief executive officer of the police department, to alter, amend, or rescind any departmental order or directive. *Id.*, pg. 2.
- b. Having command, control, and supervisory authority over all members and employees of the entire Canton Police Department. *Id.*, pg. 18-19.
- c. Being the Chief Executive Officer of the Police Department, *Id.* pg. 24;
- d. Having exclusive control of stationing and transfer of all supervisors, patrol officers and employees in the department, *Id.*;
- e. Organizing, directing and controlling resources of the Police Department, *Id.*; and
- f. Being responsible for the training of all members of the Department, *Id.*, pg. 24.

26. Defendant City of Canton is a municipal corporation located in Summit County, State of Ohio, and at all times relevant to this action employed Defendants Huber and/or Defendant Chief of Police Jack Angelo and/or Defendants John Does 1-10 named herein as police officers, and has for its address 218 Cleveland Ave. SW, Canton, Ohio, 44702, in Stark County, Ohio.

27. According to its website, Defendant Canton's Police Department requires its police

officers to abide by six major guiding principles.

28. One of Defendant Canton's major guiding principles directs officers "To be fair, honest and display common sense in all actions."

29. Plaintiff asserts that, at all times relevant hereto, Defendant Huber, Defendant Chief Angelo and the other individually named Defendants violated at least one of the City's major guiding principles and thereby acted both inside and outside the course and scope of their employment as police officers for the City of Canton.

30. Redress is being sought from all Defendants in their official and individual capacities, and it is further alleged that Defendants were acting under and/or outside of color of law and/or pursuant to the policies, customs and/or usages of the City of Canton.

31. At all times relevant herein, Defendant(s) John Doe Nos. 1 through 10, (Name and addresses unknown) are believed to be police officers, and/or other supervisors, commanders, police and/or other administrative and/or police department or other employees of Defendant City of Canton whose identity(ies) or involvement with this case, despite reasonable diligence, cannot be ascertained and/or discovered by the Plaintiff at the present time, but whom, through written discovery and/or deposition, may become known as being persons properly included as Defendants in this case.

32. At all times relevant hereto, Defendant Lt. Marino, Defendant PSC, Defendant Shift Commander, Defendant Captain Brouker, Defendant Gabbard, Defendant Captain Davis, Defendant Chief Angelo and John Does 1-10 shall be referred to, from time to time, as the "Supervisory Defendants" as set forth below.

STATEMENT OF FACTS

33. All preceding paragraphs are incorporated as if fully re-written herein.

34. Defendant Huber's and the Supervisory Defendants' alleged misconduct occurred on or about New Year's Day, 2022, at approximately midnight.

35. Based on their experience and knowledge of the city, all Defendants know or have reason to know that people residing within the city are celebrating the arrival of the New Year by shooting their firearms into the air, to wit:

- a. At approximately 11:30pm, December 31, 2022, as reported on Canton Police Incident Number 22-00019, Defendants receive a radio broadcast of a citizen discharging a firearm with the city limits of Canton at 1810th St. NE, for the purpose of "celebratory fire for New Years [sic]."

36. And so, as the hour gets closer to midnight, Decedent Williams, age 46, joins in that activity as he stands on the porch of his home where he lived with his wife, Marquetta Williams, and their three children, J.W.1., P.W., and J.W.2.

Defendant Huber

37. All preceding paragraphs are incorporated as if fully re-written herein.

38. At this point, Defendant Huber, who is in a police car and on the phone with his wife, hears gunfire coming from the area near Plaintiff's home.

39. Defendant Huber drives to the front of Plaintiff's home and sees the top of a person's head near a patio on the side of the house with a privacy fence around it.

40. The privacy fence is about six feet high and made of vertical, wide slats of wood that wrap around Plaintiff's porch.

41. The fence obscures the view into and out of the porch area.

42. Defendant Huber sees the top of the patio door leading into the house open and close.

43. Defendant Huber has never before been to the house.

44. Defendant Huber turns off his marked Canton Police car.

45. Defendant Huber gets out of the police car and walks up the steps of the porch and peers through a window.

46. Defendant Huber sees a “large male” walking with a full-size rifle in the house.

47. Defendant has never previously met the male.

48. Defendant Huber backs off the porch and moves into the street where he activates his Body Worn Camera (BWC).

49. Defendant Huber radios dispatch, saying he needs additional officers to respond and that a male was putting a rifle away.

50. A bit later, Defendant Huber hears gunfire coming from the area of the porch.

51. Defendant Huber again approaches the porch with his gun drawn, and *at this time*:

- a. Defendant Huber is not on site to arrest anyone on a warrant;
- b. Defendant Huber does not see any fighting or altercation;
- c. Defendant Huber does not hear any fighting or altercation;
- d. Defendant Huber does not hear threatening words coming from inside the home;
- e. Defendant Huber does not hear any loud voices;
- f. Defendant Huber does not hear loud music;
- g. Defendant Huber does not smell marijuana or see people consuming drugs or alcohol;
- h. Defendant Huber does not see anyone in the path of any gunfire;
- i. Defendant Huber does not observe a barricaded subject or a hostage;

- j. Defendant Huber does not see an active shooter threatening someone;
- k. Defendant Huber does not see anyone hiding or lying in wait to ambush anyone;
- l. Defendant Huber does not see anyone making threats toward the porch;
- m. Defendant Huber does not see anyone making threats from the porch to any person;
- n. The fence blocks Defendant Huber's view of who is on the porch;
- o. The fence blocks Defendant Huber's view of what is on the porch;
- p. The fence blocks Defendant Huber's view of what is happening on the porch;
- q. The fence blocks Defendant Huber's view of the what is happening behind the person(s) on the porch;
- r. The fence blocks Defendant Huber's view into the home;
- s. The fence blocks Defendant Huber's view of who is in the home;
- t. Defendant Huber does not use any bullhorn to make any warnings or commands;
- u. Defendant Huber does not use his radio to call for backup;
- v. Defendant Huber does not use his radio to report his location as he approaches the fenced-in porch;
- w. Defendant Huber does not radio being confronted as he approaches the fenced-in porch;
- x. Defendant Huber does not radio that another person is being confronted as he approaches the fenced-in porch;
- y. Defendant Huber does not use his radio to report "shots fired" at him by Decedent;
- z. Defendant Huber does not use his radio to report being under attack;

aa. Defendant Huber does not wait for officers to set a perimeter, before he approaches the fenced-in porch;

bb. Defendant Huber makes no attempt to de-escalate or announce his presence from any distance before he approaches the fenced-in porch;

cc. From previous radio traffic, Defendant Huber is aware that Canton residents are celebrating the arrival of the New Year by discharging their firearms; and

dd. Defendant Huber knows it's approximately midnight on New Year's Day.

52. And so, Defendant Huber approaches the fence, getting within a few feet of it.

53. Then, Defendant Huber aims his gun at the wooden fence and shoots multiple times.

54. Defendant Huber's bullet(s) go through the fence, striking Decedent in the chest.

55. Defendant Huber's bullet(s) also shatter the glass door behind Decedent which opens into Plaintiff's home where Plaintiff and Plaintiff and Decedent's children are present.

56. Defendant Huber uses his radio, saying "Shots fired, shots fired," and, "Police! Get down now! Police! Get down now!"

57. After shooting Decedent, Defendant Huber runs to his cruiser and radios dispatch, "CanCom, Shots fired, send us everybody."

58. With blood all over his shirt, Decedent Williams staggers into his house and falls.

59. Decedent dies on the living room floor in the presence of his children.

60. Defendant Huber makes no effort to provide medical care to Decedent.

COUNT I
(Excessive Force)

61. All preceding paragraphs are incorporated as if fully re-written herein.

62. This claim is brought pursuant to Title 42 U.S.C. § 1983.

63. Title 42 U.S.C. §1983 states, in relevant part: “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .”

64. The Fourth Amendment to the United States Constitution states, in relevant part, “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . .”

65. For decades, United States Supreme Court has interpreted the Fourth Amendment to the United States Constitution to prohibit a police officer’s use of excessive force during the arrest of a citizen. *See, e.g., Tennessee v. Garner*, 471 U.S. 1, 2 (1985).

66. While acting under color of state law, Defendant Huber deprived Plaintiff of his well-established right to be free from excessive force, per the authority cited herein.

67. At all times relevant to this action, Plaintiff asserts Decedent had the well-established constitutional right not to be subjected to excessive force while being arrested, even if the arrest was otherwise proper.

68. In other words, on January 1, 2022, Defendant Huber was only permitted to use the amount of force necessary under the circumstances to arrest Decedent.

69. At all times relevant to this matter, Defendant Huber is clothed with the authority of the state and misused that authority.

70. In this case, Plaintiff claims Defendant Huber used excessive force when he arrested and/or seized the person of Decedent, to wit:

- a. Defendant Huber shot at Decedent, as stated above, and knowing or having reason to know that Decedent was celebrating the arrival of New Year's Day;
- b. Defendant Huber intentionally fired his service weapon at Decedent and killed him with gunfire while Decedent posed no threat of death or serious bodily harm to Defendant Huber;
- c. Defendant Huber fired at Decedent through a wooden fence which blocked Defendant Huber's view of the scene in front of him, putting at risk the lives of Decedent, Plaintiff, and their children, and did in fact take the life of Decedent;
- d. Defendant Huber fired at Decedent while Decedent was not firing or pointing a weapon at Defendant Huber; and
- e. The taking of Decedent's life was not necessary to stop Decedent's celebration of New Year's Day.

71. As a result of the actions of Defendant Huber, Plaintiff was damaged as detailed in the Damages section of this Complaint.

COUNT II
(Supervisory Liability)

72. All preceding paragraphs are incorporated as if fully re-written herein.

73. This claim is brought pursuant to Title 42 U.S.C. § 1983.

74. The Supervisory Defendants is/are the direct supervisors of Defendant Huber.

75. The Supervisory Defendants have supervisory authority over the Canton Police Department and/or Defendant Huber.

76. At all times relevant to this action, the Supervisory Defendants knew or reasonably should have known of, and/or participated in, and/or condoned, and/or ratified:

- a. Defendant Huber's shooting through a wooden fence at a civilian without being able to know his target and beyond;
- b. Defendant Huber's use of cover and hide, without announcing his presence or setting a perimeter prior to using lethal force when no one was in imminent danger of harm;
- c. Defendant Huber's running to the fenced-in porch area without announcing his presence or securing the scene, thereby making the scene more dangerous to Decedent, Plaintiff, and their children;
- d. Defendant Huber's force tactics against Decedent at the fenced-in porch area;
- e. Defendant Huber's use of lethal force while facing no threat of lethal force;
- f. Defendant Huber's use of lethal force while facing no threat of lethal force in a previous police shooting and previous use of force in a third incident where the subject posed no risk of imminent serious physical harm to Defendant Huber that had been brought to Internal Affairs; and
- g. Defendant Huber's pattern, practice, and/or routine of using lethal force and/or using force capable of causing serious physical harm to citizens who do not pose a lethal threat or threat of serious physical harm to Defendant Huber or any other person.

77. The Supervisory Defendants knew or reasonably should have known that their acts and/or failures to act would likely cause the constitutional injury that befell Plaintiff and Decedent, to wit: by endorsing, promoting, encouraging, and/or not disciplining Defendant Huber's actions, and/or by keeping him employed at the City, and/or by allowing him to continue to use his firearm as a police officer, Decedent was killed and Plaintiff lost her husband as a result of Defendant

Huber's reckless, wanton, and/or willful actions which were endorsed, condoned, and/or ratified by Defendants.

78. The Supervisory Defendants had a duty and/or were required by his/their training to take action to discipline and/or otherwise prevent Defendant Huber and/or the other Defendants from engaging in the above-stated conduct.

79. Despite his/their knowledge of Defendant Huber's misconduct, as stated above, the Supervisory Defendants took no action, failed to impose reasonable discipline, failed to follow chain of command, failed to document the instances of misconduct, and/or otherwise abandoned his/their supervisory duties.

80. As a result of his/their failures and/or abandonment of his/their supervisory duties, as stated above, the Supervisory Defendants created an environment that condoned the aforementioned misconduct and perpetuated and/or facilitated and/or aided Defendant Huber in the baseless seizure of Decedent's person and the taking of his life when he posed no lethal threat to Defendants or anyone else.

81. The Supervisory Defendants engaged in acts and omissions that were the product of a reckless or callous indifference to Decedent's and Plaintiff's constitutional rights, to wit:

- a. Defendants trained, endorsed, and/or condoned Defendant Huber to shoot at subjects in the manner detailed above, i.e., when the subject was not visible to Defendant Huber or posing a direct threat to him or the life of another;
- b. Defendants knew or had reason to know that Defendant Huber and Officer Paris coordinated their stories of the night of Decedent's shooting with the assistance and coaching of their police union leadership and the assistance of Defendants to

create an artificial narrative of the events of January 1, 2022, all to protect Defendants from civil or criminal liability; and

- c. Despite having the aforesaid knowledge, Defendants continue to condone the conduct and actions of Defendant Huber as stated above.

82. By their acts and failures to act as stated above, the Supervisory Defendants in fact caused Plaintiff's constitutional deprivation: to wit, Decedent was seized/killed with lethal force while celebrating the arrival of the New Year in violation of the 4th and 14th Amendments to the United States Constitution.

83. As a consequence of the Supervisory Defendants' actions as aforesaid, Plaintiff was damaged as detailed in the Damages section of this Complaint.

COUNT III (Monell)

Unwritten Policy or Custom

84. All preceding paragraphs are incorporated as if fully re-written herein.

85. This claim is brought pursuant to Title 42 U.S.C. § 1983.

86. The Supervisory Defendants are the top policymakers for the City of Canton Police Department.

87. Defendant City of Canton maintains an armed police force, the Canton Police Department, with the power to arrest citizens.

88. Defendant City of Canton is aware that each year, on/about New Year's Eve, citizens routinely discharge firearms within the city limits to celebrate the arrival of New Year's Day, to wit: the city maintains reports and records of this holiday behavior.

89. Defendant City of Canton has an unwritten policy or custom of “shoot first and ask questions later,” in situations where, as here, a citizen has firearms in his possession and is discharging it.

90. The “shoot first” policy or custom is known to the Supervisory Defendants, to wit: the Supervisory Defendants approved, ratified, encouraged, sanctioned, and/or promoted this policy or custom throughout the Canton Police Department.

91. Following the death of Decedent, the Supervisory Defendants continue to approve, ratify, encourage, sanction, and/or promote the “shoot first” policy or custom as they expressed support for Defendant Huber’s actions regarding the death of Decedent, impose no discipline on Defendant Huber, and change none of the officer training at the city.

92. Defendant City of Canton also maintains an unwritten policy or custom of allowing officers to shoot in the direction of citizens when: 1) the officer cannot make out his target or beyond due to visual obstructions, 2) the officer is not facing an actual threat of death or serious physical harm, and/or 3) the officer knows or has reason to believe the person is not trying to shoot, injure, or harm any other person.

93. The aforesaid unwritten policy or custom put Decedent, Plaintiff, and her children at unreasonable risk of grievous bodily harm, injury, or death.

94. The aforesaid unwritten policy or custom did in fact cause the death of Decedent.

95. At all times relevant hereto, the Supervisory Defendants initiated, authorized, condoned, ratified, and/or encouraged the aforesaid unwritten policies or customs.

96. The Supervisory Defendants worked in the Canton Police Department at the time the aforesaid policies or customs were in place.

97. The Supervisory Defendants reviewed documents, discussed, and/or received other information at the Canton Police Department about the manner in which Defendant Huber shot and killed Decedent while he was celebrating the arrival of the New Year.

98. The Supervisory Defendants approved of Defendant Huber's conduct.

99. The Supervisory Defendants were thus on actual and/or constructive notice of these policies or customs but did nothing about them.

Objective Indifference - Failure to Train or Discipline

100. All preceding paragraphs are incorporated as if fully re-written herein.

101. Upon information and belief, Defendant City of Canton does not train its police force on the constitutional limits of the use of deadly force, to wit: Defendant City of Canton never trained Defendant Huber on how to approach a person who is discharging firearms into the air (and at no particular person) while celebrating the arrival of the New Year.

102. Upon information and belief, Defendant City of Canton does not train officers, such as Defendant Huber, to deescalate situations – or not shoot first and ask questions later – where persons, like Decedent, are discharging firearms to celebrate the arrival of the New Year.

103. Upon information and belief, Defendant City of Canton does not discipline officers, such as Defendant Huber, who shoot and/or kill persons, like Decedent, who are discharging firearms to celebrate the arrival of the New Year.

104. Upon information and belief, Defendant City of Canton does not discipline officers, such as Defendant Huber, who fail to deescalate situations where persons, like Decedent, are discharging firearms to celebrate the arrival of the New Year.

105. The need for said training and discipline, as aforesaid, is so obvious that the failure of Defendants to conduct said training and discipline establishes Defendants' objective deliberate

indifference to the constitutional rights of Plaintiff and Decedent and all who live in the City of Canton.

106. As a consequence of Defendant City of Canton's unwritten policies or customs and failure to train and discipline as aforesaid, Plaintiff was damaged as detailed in the Damages section of this Complaint.

DAMAGES

107. All preceding paragraphs are incorporated as if fully re-written herein.

108. As a direct and proximate result of Defendants' actions, as set forth above, Plaintiff has been damaged, including but not limited to: Decedent (Plaintiff's husband) was shot and killed, her privacy fence was damaged, the sliding glass door to her home was destroyed, and she has endured pain, anguish, embarrassment, humiliation, feelings of powerlessness, harm to self-esteem, emotional distress, fear, anxiety, loss of sense of personal safety, dignity, and legal fees and costs.

PRAYER FOR RELIEF

109. WHEREFORE, Plaintiff prays for judgment against the Defendants, jointly and severally, for not less than \$1,000,000.00, including but not limited to:

A. Compensatory and consequential damages in an amount to be determined by the Court in excess of the Court's jurisdictional amount;

B. Punitive damages in an amount to be determined at trial, for the willful, reckless, and malicious conduct of Defendants;

C. Equitable relief, including, without limitation, that Defendant City of Canton be made to adopt an appropriate policy to prevent future instances of the type of misconduct described herein;

D. Attorneys' fees and the costs of this action and other costs that may be associated with this action; and

E. Any and all other relief that this Court deems equitable, just and proper.

JURY DEMAND

Plaintiff respectfully demand a trial by jury of the within matter.

Respectfully submitted,

/s/ Robert F. DiCello

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