

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS**

TROY ELLISON, as Personal Representative)
of the Estate of Eugene Ellison, deceased,)
)
Plaintiff,)
)
v.)
)
DONNA LESHER, TABITHA MCCRILLIS, individually)
and in their official capacities, STUART THOMAS,)
individually and in his official capacity, THE CITY OF)
LITTLE ROCK, a municipality, and BIG COUNTRY)
CHATEAU APARTMENTS, d/b/a, BIG COUNTRY)
CHATEAU, LLC, a corporation,)
)
Defendants.)
)

Case No.: 4:11 CV 752 BSM
 JURY TRIAL DEMANDED

AMENDED COMPLAINT

COMES NOW, Plaintiff, Troy Ellison, Personal Representative of the Estate of Eugene Ellison, deceased, by and through his attorneys, Michael J. Laux and Balkin & Eisbrouch, LLC, and for his cause of action, states as follows:

JURISDICTION and VENUE

1. This action arises under the United States Constitution, particularly under the Fourth and Fourteenth Amendments, and under federal law, particularly the Civil Rights Act of 1871 (42 U.S.C. § 1983), and the laws of the State of Arkansas. This Honorable Court has jurisdiction by virtue of 28 U.S.C. §§ 1331 and 1367.
2. Venue is founded in this Court upon 28 U.S.C. § 1391 as the acts of which Plaintiff complains arose in this District.

PARTIES

3. At all relevant times, Eugene Ellison (“Ellison”) was a citizen of the United States of America and was, therefore, entitled to all legal and constitutional rights afforded citizens of

the United States of America. On December 9, 2010, and for years prior thereto, Ellison resided at the Big Country Chateau Apartments, located at 6200 Colonel Glenn, Unit #213, Little Rock, Arkansas.

4. Troy Ellison ("Plaintiff") and Spencer Ellison, the two surviving biological children of Ellison, are citizens of the United States of America and, therefore, entitled to all legal and constitutional rights afforded citizens of the United States of America. Plaintiff is the court-appointed Personal Representative of the Estate of Eugene Ellison. See October 4, 2011 Order attached as Exhibit A. Plaintiff brings this action on behalf of the estate and on behalf of Ellison's heirs.

5. At all relevant times, including December 9, 2010, Donna Leshner ("Leshner") was employed by the City of Little Rock as a police officer and acted under the color of state law. Prior to December 9, 2010, Leshner was trained in police work, including, but not limited to, the Fourth Amendment of the United States Constitution and the appropriate use of force.

6. At all relevant times, including December 9, 2010, Tabitha McCrillis ("McCrillis") was employed by the City of Little Rock as a police officer and acted under the color of state law. Prior to December 9, 2010, McCrillis was trained in police work, including, but not limited to, the Fourth Amendment of the United States Constitution and the appropriate use of force.

7. At all relevant times, including December 9, 2010 and for years prior thereto, Stuart Thomas ("Thomas") was employed by the City of Little Rock as police chief of the Little Rock Police Department ("LRPD") and acted under the color of state law. At all relevant times, Thomas had the ultimate responsibility within the LRPD for the protection of life, preservation of law and order, investigation of all crimes and the enforcement of the United States

Constitution, Arkansas state laws, city ordinances, and LRPD general orders, rules and regulations. At all relevant times, including December 9, 2010 and for years prior thereto, Thomas had final policy-making authority in terms of creating, adopting, implementing and/or enforcing police policies within the LRPD whether formal or informal. On December 9, 2010 and prior thereto, Thomas knew that certain off-duty LRPD officers, including Leshar and McCrillis, worked as security guards at the Big Country Chateau Apartments. On December 9, 2010 and prior thereto, Thomas was aware of the crime rate associated with the Big Country Chateau Apartments and the surrounding area.

8. At all relevant times, the City of Little Rock ("City") was a municipality organized and existing under the laws of the State of Arkansas. At all relevant times, the City was located in the County of Pulaski, State of Arkansas, and was the employer of the individually-named defendants. The City is and was empowered, funded and directed to pay any § 1983 civil rights judgment for compensatory damages, actual damages, and attorney fees for which any City employee acting within the scope of his or her employment is found liable. The City is an indemnification party for those liable in the acts of which Plaintiff complains.

9. At all relevant times, the City was a municipality which participated in the Municipal Legal Defense Program. The acts of which Plaintiff complains constitute a civil rights lawsuit against the City and the other City-employed defendants. The Municipal Legal Defense Program is a primary or secondary indemnification party regarding the acts of the City and the City-employed defendants of which Plaintiff complains.

10. At all relevant times, Big Country Chateau, LLC ("BCC"), was a corporation doing business as Big Country Chateau Apartments ("the complex"), located at 6200 Colonel Glenn, Little Rock, Arkansas. On December 9, 2010 and for months prior thereto, BCC

employed off-duty LRPD officers, including Leshner and McCrillis, to provide security services on the physical premises of the complex. BCC monetarily compensated the LRPD officers it employed, including Leshner and McCrillis, for their security services at the complex. On December 9, 2010 and prior thereto, BCC was aware of the crime rate associated with the complex and the surrounding area. On December 9, 2010, at approximately 8:00 p.m. and for hours prior thereto, Leshner and McCrillis, and each of them, provided security services for BCC.

FACTUAL ALLEGATIONS

11. On December 9, 2010, Leshner and McCrillis worked off-duty as security guards at the complex with each wearing LRPD-issued police clothing. On said date, at approximately 8:00 p.m., Leshner and McCrillis stood before a partially-opened front door at Unit #213 on the second floor of the complex.

12. When Leshner and McCrillis looked inside Unit #213, one or both of them saw Ellison inside seated on a couch, leaning on a walking cane. They asked Ellison if he was okay, to which he responded affirmatively. They again asked him if he was okay, to which he responded with a request that they leave him alone. Leshner and/or McCrillis further engaged Ellison with questions.

13. McCrillis then entered Unit #213 (“the unit” or “Ellison’s home”).

14. After McCrillis entered the unit, Ellison got up from his couch and approached the front door.

15. Leshner then entered the unit; this occurred after McCrillis had entered the unit.

16. At the time McCrillis and Leshner, and each of them, entered the unit, they had not secured a warrant to allow for entry into the unit.

17. At the time McCrillis and Leshar, and each of them, entered the unit, they did not believe that their entry was necessary to prevent physical harm to themselves or others.

18. At the time McCrillis and Leshar, and each of them, entered the unit, they did not believe that such entry was necessary to prevent the destruction of relevant evidence or the escape of a suspect.

19. At the time McCrillis and Leshar, and each of them, entered the unit, they did not believe that such entry was necessary to prevent the frustration of any legitimate law enforcement effort.

20. McCrillis initiated physical contact with Ellison by shoving him when he approached the area of the front door.

21. After McCrillis shoved Ellison, a physical struggle ensued between Ellison, McCrillis and Leshar inside the unit. During the struggle, Ellison was subjected to repeated blows at the hands of both McCrillis and Leshar, and each of them, as well as those delivered with their LRPD-issued ASP batons.

22. During the struggle, McCrillis left the unit and requested back-up over LRPD radio dispatch.

23. LRPD officers Vincent Lucio ("Lucio") and Brad Boyce ("Boyce") heard the request and drove to the complex to assist.

24. When they reached the unit, McCrillis was standing directly in front of the front door of the unit which was open. At that time, McCrillis' LRPD-issued ASP baton was on the ground outside the unit and was not on her person.

25. Lucio looked in the unit and saw Leshar crouched in a corner. Lucio reached inside and pulled Leshar out of the unit.

26. At that time, after Lucio pulled Leshar from the unit, Leshar, McCrillis, Lucio and Boyce were all outside the unit. At that time, only Ellison was inside the unit.

27. Ellison then went deeper into the unit to retrieve his cane.

28. Both Leshar and McCrillis, and each of them, were aware that Ellison was going to retrieve his cane.

29. Using her LRPD-issued firearm, Leshar shot twice into the unit, striking Ellison twice in the chest while he was still inside the unit. At the time Leshar discharged her firearm, she was outside the unit.

30. Ellison died as a result of the gunshots fired by Leshar.

31. Neither Lucio nor Boyce witnessed any physical contact between Ellison and Leshar or Ellison and McCrillis.

32. Leshar did not use her LRPD-issued pepper spray on Ellison at any time.

33. McCrillis did not use her LRPD-issued pepper spray on Ellison at any time. Alternatively, McCrillis used her LRPD-issued pepper spray but the pepper spray discharge did not make contact with Ellison.

34. After the shooting of Ellison, Sergeant Chris Phillips of the LRPD signed LRPD documents stating that Leshar and McCrillis, and each of them, were acting in a police capacity on December 9, 2010, prior to the shooting of Ellison.

COUNT I
MCCRILLIS for WARRANTLESS, NON-EXIGENT SEARCH AND SEIZURE
in VIOLATION of FOURTH AMENDMENT

35. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through thirty-four (34) as though fully alleged in Count I.

36. McCrillis did not believe that her entry into Ellison's home was necessary to prevent physical harm to herself or others, the destruction of relevant evidence, the escape of a suspect or the frustration of any legitimate law enforcement effort.

37. McCrillis' conduct proximately caused a deprivation of the rights, privileges and immunities secured to Ellison by the Fourth and Fourteenth Amendments to the United States Constitution and laws enacted thereunder. With this conduct, McCrillis showed a reckless or callous indifference to Ellison's federally-protected rights.

38. The search and seizure of Ellison committed by McCrillis when she entered Ellison's home was unnecessary, unreasonable and excessive. Therefore, McCrillis is liable in damages to Plaintiff pursuant to 42 U.S.C. § 1983, including punitive damages.

COUNT II
LESHER for WARRANTLESS, NON-EXIGENT SEARCH AND SEIZURE
in VIOLATION of FOURTH AMENDMENT

39. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through thirty-eight (38) as though fully alleged in Count II.

40. Leshler did not believe that her entry into Ellison's home was necessary to prevent physical harm to herself or others, the destruction of relevant evidence, the escape of a suspect or the frustration of any legitimate law enforcement effort.

41. Leshler's conduct proximately caused a deprivation of the rights, privileges and immunities secured to Ellison by the Fourth and Fourteenth Amendments to the United States Constitution and laws enacted thereunder. With this conduct, Leshler showed a reckless or callous indifference to Ellison's federally-protected rights.

42. The search and seizure of Ellison committed by Leshar when she entered Ellison's home was unnecessary, unreasonable and excessive. Therefore, Leshar is liable in damages to Plaintiff pursuant to 42 U.S.C. § 1983, including punitive damages.

COUNT III
MCCRILLIS for EXCESSIVE FORCE
in VIOLATION of FOURTH AMENDMENT

43. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through forty-two (42) as though fully alleged in Count III.

44. The force used by McCrillis was excessive, unnecessary and objectively unreasonable, and proximately caused Ellison's personal injuries, great pain and death.

45. McCrillis' conduct proximately caused a deprivation of the rights, privileges and immunities secured to Ellison, Troy Ellison and Spencer Ellison ("the Ellisons") by the Fourth and Fourteenth Amendments to the United States Constitution and laws enacted thereunder. With this conduct, McCrillis showed a reckless or callous indifference to the federally-protected rights of the Ellisons.

46. The violence committed by McCrillis was in violation of the Fourth and Fourteenth Amendment rights of the Ellisons, including due process. Therefore, McCrillis is liable to Plaintiff in damages pursuant to 42 U.S.C. § 1983, including loss of life, loss of liberty interest, conscious pain and suffering and punitive damages.

COUNT IV
LESHAR for EXCESSIVE FORCE
in VIOLATION of FOURTH AMENDMENT

47. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through forty-six (46) as though fully alleged in Count IV.

48. The force used by Leshar was excessive, unnecessary and objectively unreasonable, and proximately caused Ellison's personal injuries, great pain and death.

49. Leshar's conduct proximately caused a deprivation of the rights, privileges and immunities secured to the Ellisons by the Fourth and Fourteenth Amendments to the United States Constitution and laws enacted thereunder. With this conduct, Leshar showed a reckless or callous indifference to the federally-protected rights of the Ellisons.

50. The violence committed by Leshar was in violation of the Fourth and Fourteenth Amendment rights of the Ellisons, including due process. Therefore, Leshar is liable to Plaintiff in damages pursuant to 42 U.S.C. § 1983, including loss of life, loss of liberty interest, conscious pain and suffering and punitive damages.

COUNT V
CHIEF THOMAS for PERMITTING and MAINTAINING a WIDESPREAD CUSTOM of WARRANTLESS SEARCHES AND SEIZURES and EXCESSIVE FORCE (*Monell*)

51. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through fifty (50) as though fully alleged in Count V.

52. At all relevant times, including December 9, 2010 and for years prior thereto, Thomas knowingly, and/or with reckless or callous indifference to the constitutional rights of the citizens of Little Rock, permitted and/or maintained a widespread "custom" of allowing violations of LRPD general orders by LRPD officers and allowing warrantless searches and seizures and acts of excessive force by LRPD officers. Thomas permitted this custom by:

- a) disregarding, ignoring and/or covering up allegations of police misconduct;
- b) performing meaningless internal investigations intended to exonerate officers against whom allegations of misconduct are made;

- c) failing to request or timely request independent investigations to verify such allegations; and
- d) verbalizing to LRPD officers and the public at large that violations of LRPD general orders are trivial and unimportant.

53. This pattern of police misconduct was so pervasive as to constitute a “custom or usage” with the force of law.

54. The custom described above was the moving force behind the violations of Ellison’s constitutional rights committed by Leshner and McCrillis, and each of them, and proximately caused Ellison’s personal injuries, great pain and death. The custom described above also proximately caused a deprivation of the rights, privileges and immunities secured to the Ellisons by the Fourth and Fourteenth Amendments to the United States Constitution, including due process, and laws enacted thereunder.

55. As a result of the customs described above, Ellison was subjected to excessive force and caused to die and, as a result, Thomas is liable to Plaintiff in damages under 42 U.S.C. § 1983, including loss of life, loss of liberty interest, conscious pain and suffering and punitive damages.

COUNT VI

The CITY for PERMITTING and MAINTAINING a WIDESPREAD CUSTOM of WARRANTLESS SEARCHES AND SEIZURES and EXCESSIVE FORCE (*Monell*)

56. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through fifty-five (55) as though fully alleged in Count VI.

57. At all relevant times, including December 9, 2010 and for years prior thereto, the City knowingly, and/or with reckless or callous indifference to the constitutional rights of the citizens of Little Rock, permitted and/or maintained a widespread “custom” of allowing

violations of LRPD general orders by LRPD officers and allowing warrantless searches and seizures and acts of excessive force by LRPD officers. The City permitted this custom by:

- a) disregarding, ignoring and/or covering up allegations of police misconduct;
- b) performing meaningless internal investigations intended to exonerate officers against whom allegations of misconduct are made;
- c) failing to request or timely request independent investigations to verify such allegations; and
- d) verbalizing to LRPD officers and the public at large that violations of LRPD general orders are trivial and unimportant.

58. This pattern of police misconduct was so pervasive as to constitute a “custom or usage” with the force of law.

59. The custom described above was the moving force behind the violations of Ellison’s constitutional rights committed by Leshler and McCrillis, and each of them, and proximately caused Ellison’s personal injuries, great pain and death. The custom described above also proximately caused a deprivation of the rights, privileges and immunities secured to the Ellisons by the Fourth and Fourteenth Amendments to the United States Constitution, including due process, and laws enacted thereunder.

60. As a result of the customs described above, Ellison was subjected to excessive force and caused to die and, as a result, the City is liable to Plaintiff in damages under 42 U.S.C. § 1983, including loss of life, loss of liberty interest, and conscious pain and suffering.

COUNT VII
LESLER and MCCRILLS for WRONGFUL DEATH/NEGLIGENCE
Pursuant to Arkansas Code § 16-62-102(a) and (b)

61. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through sixty (60) as though fully alleged in Count VII.

62. On December 9, 2010, Leshar and McCrillis, and each of them, owed Ellison a duty to exercise reasonable care in the performance of their security duties at the complex so as not to cause injury to Ellison.

63. Disregarding that duty, Leshar and McCrillis, and each of them, were guilty of one more of the following acts which proximately caused Ellison's death:

- a) entered Ellison's home without legal justification;
- b) physically battered and assaulted Ellison without legal justification; and
- c) shot and killed Ellison without legal justification.

64. By reason of the wrongful death of Ellison, Plaintiff and Spencer Ellison have incurred pecuniary damages and severe mental anguish.

65. Plaintiff brings Count VII pursuant to Ark. Code. Ann. § 16-62-102(a) and (b) which provides for damages whenever the death of a person shall be caused by a wrongful act notwithstanding the death of the person.

WHEREFORE, Plaintiff prays for judgment against Leshar and McCrillis, and each of them, in an amount which will fully and fairly compensate Plaintiff for damages suffered.

COUNT VIII
LESHAR and MCCRILLIS for SURVIVAL
Pursuant to Arkansas Code § 16-62-101(a)(1)

66. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through sixty-five (65) as though fully alleged in Count VIII.

67. On December 9, 2010, prior to his death and including his shooting, Ellison suffered personal injuries and great pain proximately caused by Leshar and McCrillis' wrongful acts which included repeated blows to Ellison's body with their hands and LRPD-issued ASP batons and the firing of Leshar's LRPD-issued firearm at Ellison.

68. By reason of the wrongful acts of Leshner and McCrillis, and each of them, Ellison incurred personal injuries and great pain as well as damages in the form of loss of life.

69. Plaintiff brings Count VIII pursuant to Ark. Code. Ann. § 16-62-101(a)(1) which provides for damages for wrongs done to a person and further provides that such an action may be brought after the death of the person by his executor.

WHEREFORE, Plaintiff prays for judgment against Leshner and McCrillis, and each of them, in an amount which will fully and fairly compensate Plaintiff for damages suffered.

COUNT IX

**BCC through LESHER and MCCRILLIS for WRONGFUL DEATH/NEGLIGENCE
Pursuant to Arkansas Code § 16-62-102(a) and (b) (*Derivative Liability*)**

70. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through sixty-nine (69) as though fully alleged in Count IX.

71. On December 9, 2010, at approximately 8:00 p.m., Leshner and McCrillis, and each of them, were agents, servants and/or employees of BCC.

72. On December 9, 2010, BCC, by and through its agents, servants and/or employees, including Leshner and McCrillis, and each of them, owed Ellison a duty to exercise reasonable care in the performance of their security duties at the complex so as not to cause injury to Ellison.

73. Disregarding that duty, BCC, by and through its agents, servants and/or employees, Leshner and McCrillis, and each of them, was guilty of one or more of the following acts which proximately caused Ellison's death:

- a) entered Ellison's home without legal justification;
- b) physically battered and assaulted Ellison without legal justification; and
- c) shot and killed Ellison without legal justification.

74. By reason of the wrongful death of Ellison, Plaintiff and Spencer Ellison have incurred pecuniary damages and severe mental anguish.

75. Plaintiff brings Count IX pursuant to Ark. Code. Ann. § 16-62-102(a) and (b) which provides for damages whenever the death of a person shall be caused by a wrongful act notwithstanding the death of the person.

WHEREFORE, Plaintiff prays for judgment against BCC in an amount which will fully and fairly compensate Plaintiff for damages suffered.

COUNT X
BCC for WRONGFUL DEATH/NEGLIGENCE
Pursuant to Arkansas Code § 16-62-102(a) and (b) (*Direct Liability*)

76. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through seventy-five (75) as though fully alleged in Count X.

77. On December 9, 2010, and for months prior thereto, BCC owed Ellison a duty to exercise reasonable care in the training, monitoring and appropriate retention of its security guard employees, including Leshner and McCrillis, as well as to provide its security guard employees with resources and equipment to facilitate the performance of their employment duties with reasonable care.

78. Disregarding that duty, BCC was guilty of one or more of the following acts and/or omissions which proximately caused Ellison's death:

- a) failed to require its security guard employees, including Leshner and McCrillis, to familiarize or timely familiarize themselves with residents of the complex;
- b) failed to provide a means of communication between its security guard employees, including Leshner and McCrillis, and the BCC or complex office regarding residents of the complex and/or emergencies affecting residents;

- c) failed to provide its security guard employees, including Leshner and McCrillis, with a roster of residents of the complex;
- d) failed to apprise its security guard employees, including Leshner and McCrillis, of resident identities and habits;
- e) failed to provide a plan for, or means of, resident identification and/or verification by security guard employees, including Leshner and McCrillis;
- f) failed to enforce complex rules and/or the law regarding security guard employee entry into resident units; and
- g) tolerated, permitted and/or allowed its security guard employees, including Leshner and McCrillis, to enter resident units and use force without legal justification to do so.

79. By reason of the wrongful death of Ellison, Plaintiff and Spencer Ellison have incurred pecuniary damages and severe mental anguish.

80. Plaintiff brings Count X pursuant to Ark. Code Ann. § 16-62-102(a) and (b) which provides for damages whenever the death of a person shall be caused by a wrongful act notwithstanding the death of the person.

WHEREFORE, Plaintiff prays for judgment against BCC in an amount which will fully and fairly compensate Plaintiff for damages suffered.

COUNT XI
BCC for SURVIVAL
Pursuant to Arkansas Code § 16-62-101(a)(1) (*Direct Liability*)

81. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through eighty (80) as though fully alleged in Count XI.

82. On December 9, 2010, prior to his death and including his shooting, Ellison suffered personal injuries and great pain, proximately caused by BCC's wrongful acts and/or omissions which included the failure to train and/or monitor its security guard employees, including Leshner and McCrillis, as well as the failure to provide its security guard employees,

including Leshner and McCrillis, with resources and equipment to permit them to perform their employment duties with reasonable care.

83. By reason of the wrongful acts of BCC, Ellison incurred personal injuries and great pain as well as damages in the form of loss of life.

WHEREFORE, Plaintiff prays for judgment against BCC in an amount which will fully and fairly compensate Plaintiff for damages suffered.

WHEREFORE, Plaintiff, Troy Ellison, by and through his attorneys, Michael J. Laux and Balkin & Eisbrouch, LLC, requests judgment against the defendants and each of them:

1. That defendants be required to pay Plaintiff's compensatory damages;
2. That defendants be required to pay economic and non-economic damages, including but not limited to loss of life, loss of liberty interest and mental anguish;
3. That Leshner, McCrillis and Thomas be required to pay punitive damages;
4. That Leshner, McCrillis, Thomas and the City be required to pay reasonable attorney fees per 42 U.S.C. § 1988; and
5. That Plaintiff receive any other such relief as this Honorable Court deems just and proper.

Respectfully submitted,

/s/ Michael J. Laux
Michael J. Laux
E. Dist. Arkansas Bar No. 6278834
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IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
PROBATE DIVISION 17th

IN THE MATTER OF THE ESTATE OF)
EUGENE ELLISON, DECEASED,)
)
)
)
)
)

PROBATE NO.
60 PR 2011 (1750)

FILED 10/04/11 12:19:00
Larry Crane Pulaski Circuit Clerk


ORDER APPOINTING ESTATE ADMINISTRATOR

THIS MATTER being heard on the petition of petitioner, Troy Ellison, to be appointed the administrator of the Estate of Eugene Ellison, due notice being formally waived and this Honorable Court being fully apprised in the premises,

IT IS HEREBY ORDERED:

1. Troy Ellison's petition to be appointed administrator of the Estate of Eugene Ellison is GRANTED without opposition.
2. Administrator, Troy Ellison, will faithfully discharge all duties associated with the administration of the Estate of Eugene Ellison, will proceed in compliance with all aspects of the Arkansas Probate Code and will follow all orders entered by this Honorable Court.

Entered this date: Oct 4, 2011



JUDGE

Troy Ellison
7903 Standish Rd.
Little Rock, AR 7220

Exhibit A