

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Estate of Wendy Lawrence
Michael Rand, Administrator

V.

Chad Lavoie, individually and in his official capacity, * Jury Trial Requested

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Docket No.

COMPLAINT AND JURY DEMAND

NOW COMES the Estate of Wendy Lawrence, by and through its attorneys, Douglas, Leonard & Garvey, P.C. and complains against the Defendant Chad Lavoie and states as follows:

I. INTRODUCTION

1. This is a civil rights complaint under 42 U.S.C. Section 1983 against Defendant Chad Lavoie for money damages arising from the death of Wendy Lawrence. Ms. Lawrence was a single, 45 year-old woman, who died on September 30, 2013, as a direct result of Lavoie's use of excessive force and other wrongful acts.

2. On September 30, 2013, New Hampshire State Trooper Kevin Leblanc, stopped the plaintiff for erratic driving on I-89. After providing Trooper Leblanc with identification, the plaintiff drove away. Trooper Leblanc briefly pursued her on I-89, but quickly terminated the pursuit. After terminating the pursuit, he continued to drive in a southerly direction on I-89.

3. Trooper Leblanc reinitiated the pursuit of the plaintiff when he came upon her vehicle at the intersection of I-89 and I-93. At that point, Lawrence headed south on I-93. The second

pursuit was terminated by order of Trooper Leblanc's supervisor when Wendy Lawrence exited I-93 at exit 9-S and proceeded into Manchester, New Hampshire driving at the posted speeds.

4. Upon exiting I-93, Ms. Lawrence was followed by Troopers Leblanc, Tibbits and Schack. She traveled approximately one and one-half miles through a densely populated neighborhood and obeyed all posted speed limits and stop signs. See Tab A for course of travel. The state troopers followed her though the neighborhood, past dozens of residential houses, without attempting to stop her or impede her movement in any way. When Ms. Lawrence reached the intersection of Dave Street and Kennard Road in Manchester, New Hampshire, she came to a complete stop at the stop sign at that intersection.

5. While she was stopped at the intersection, Lavoie approached Lawrence from her left in a marked New Hampshire State Police cruiser. As he approached her, his emergency lights and siren were on. Lavoie used his cruiser to block in Lawrence's car. While doing this, the passenger side of his cruiser came into contact with the front of Lawrence's car. At the time Lavoie's cruiser struck Lawrence's car, Lawrence's car was not moving.

6. After hitting Lawrence's car, Lavoie exited the safety of his cruiser and recklessly placed himself in front of Lawrence's car. This was a self-created risk that did not justify Lavoie's summary execution of Wendy Lawrence. There would have been no risk to Lavoie's personal safety had he not chosen to place himself in such a position.

7. At the time Lavoie killed Lawrence, her car did not pose a threat to him. She was unarmed, there was no weapon in her car, and there was no allegation that she was armed or dangerous. Immediately before he blocked her car, Lavoie had observed Ms. Lawrence driving in a safe manner at the posted speed limit. Lavoie knew that Lawrence was only wanted for motor-vehicle related offenses.

8. At all times relevant hereto, Lavoie was on-duty and employed by the State of New Hampshire.

II. JURISDICTION AND VENUE

9. This case arises under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983 and §1988, as amended. This Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §1331 and §1343(a)(3)(4).

10. This court has jurisdiction over the plaintiff's state law wrongful death claim under RSA 556:12 for wrongful death pursuant to 28 U.S.C. §1367(a).

11. This Court is an appropriate venue for this cause of action pursuant to 28 U.S.C. 1391(b)(1) and (b)(2). All actions complained of took place in this judicial district in which Wendy Lawrence resided.

III. PARTIES

12. At all times relevant hereto, the deceased plaintiff, Wendy Lawrence, resided in Canterbury, New Hampshire and was a citizen of the United States of America. The duly appointed administrator of her estate is her son, Michael Rand.

13. At all times relevant hereto, Defendant Chad Lavoie was a resident of the state of New Hampshire. He is a citizen of the United States and acted under color of state law in his capacity as a law enforcement officer employed by the state of New Hampshire. Lavoie is sued individually and in his official capacity as a New Hampshire State Trooper.

IV. STATEMENT OF FACTS

14. Plaintiff incorporates all of the preceding and succeeding paragraphs.

15. On or about 6:20 pm on Monday, September 30, 2013, Trooper Kevin Leblanc stopped Wendy Lawrence in the southbound lane of I-89 for erratic driving. Ms. Lawrence was

driving a maroon colored 2000 Chevrolet Monte Carlo. The speed limit on I-89 is either 65 or 70 m.p.h., depending on the stretch of road involved.

16. While stopped, Trooper Leblanc asked Ms. Lawrence to produce her New Hampshire driver's license. She was unable to produce a valid New Hampshire driver's license. However Trooper Leblanc was able to positively identify her based on her official state of New Hampshire non-driver identification card. Trooper Leblanc then proceeded to his cruiser to check the status of her license.

17. Based on information he obtained, Trooper Leblanc determined that Ms. Lawrence's license was under suspension.

18. While Trooper Leblanc was in the process of checking the status of her license, Ms. Lawrence drove off in a southbound direction on I-89.

19. Trooper Leblanc briefly pursued her at speeds over 80 mph until he terminated the pursuit with his supervisor's approval.

20. After ending the pursuit, Trooper Leblanc continued southbound on I-89 and located Ms. Lawrence in her car at the southbound entrance to I-93. When he located Ms. Lawrence's car, Trooper Leblanc observed that she had been involved in a minor accident with one or more other cars and that at least one car had sustained damage. Ms. Lawrence's car did not appear damaged and she proceeded to drive onto the southbound entrance ramp to I-93.

21. Trooper Leblanc reinitiated the pursuit and followed Ms. Lawrence southbound on I-93 at speeds of around 80 mph. The speed limit is 65 miles per hour. Other troopers in the vicinity were notified and assisted Trooper Leblanc in following Ms. Lawrence on I-93.

22. The pursuit of Ms. Lawrence was terminated for a second time by order of Lieutenant Shapiro of the State Police when Ms. Lawrence exited I-93 at exit 9-S in Manchester. When

the pursuit was terminated, Troopers Leblanc, Tibbits, Conlon, and Schack turned off their emergency lights and sirens but continued to follow Ms. Lawrence at a safe distance and at a normal speed. Like Ms. Lawrence, the Troopers following her obeyed local traffic laws as they drove through residential Manchester neighborhoods. For a period of several minutes, the three Troopers maintained visual contact with Ms. Lawrence, but made no attempt to stop her.

23. Trooper Schack had his dash cam on and recorded the events that led up to and followed Lavoie's fatal shooting of Wendy Lawrence. No other troopers involved in the pursuit recorded the pursuit and fatal shooting. The reason they did not use their dash cams is unknown.

24. Immediately before Lavoie shot and killed Ms. Lawrence, she drove through residential areas of Manchester in a non-erratic fashion, at a normal speed, and stopped at multiple stop signs and lights. The manner in which she drove through the residential neighborhoods of Manchester did not pose a risk of harm to anyone as she was driving reasonably and at the posted speed limits.

25. Troopers Leblanc, Tibbits, and Schack followed Ms. Lawrence to the intersection of Dave Street and Kennard Road in Manchester, New Hampshire, where she came to a full stop at the intersection stop sign and waited for oncoming traffic to pass by. See Tab A for map of her course of travel.

26. The three troopers pulled their cruisers in a row behind Ms. Lawrence's stopped car. Trooper Leblanc was stopped immediately behind Ms. Lawrence. Troopers Tibbits and Schack were behind Trooper Leblanc.

27. While Ms. Lawrence was at a full stop at the intersection, a fourth state trooper, Chad Lavoie, came on the scene and approached Ms. Lawrence from her left side on Kennard Road. Before he approached Ms. Lawrence, Trooper Lavoie had observed that she had come to

a full stop at the intersection of Dave Street and Kennard Road. As Lavoie approached the car Ms. Lawrence was driving, he had his emergency lights and siren on.

28. At the time Lavoie approached Ms. Lawrence he was aware that Lt. Shapiro had ordered the pursuit terminated, knew that the pursuit had been ended, and knew that the reason that Ms. Lawrence had been pursued originally was merely due to the suspension of her driver's license.

29. As Lavoie approached her, he decided to use his cruiser to block Ms. Lawrence in. Lavoie should have known, based on his personal observations and knowledge of the circumstances, that Ms. Lawrence did not pose an immediate threat to life or danger to others. He also should have known that at least three other Troopers had been following Ms. Lawrence through Manchester neighborhoods for several minutes without incident and that nothing had occurred during this time that indicated that her driving or any other conduct created a risk of harm to the public.

30. Lavoie drove his cruiser directly in front of Ms. Lawrence's car, which remained fully stopped at the intersection, for the purpose of blocking her car in place. See photo at Tab B.

31. The 2000 Monte Carlo that Lawrence was driving contained an airbag control module that recorded a near-deployment event. While the airbags did not deploy, the collision between the vehicles caused sufficient acceleration and g-forces to occur that the airbag control module was activated. As a result, data from the seconds immediately preceding the collision was recorded. That data was subsequently retrieved from the airbag control module, and reflects that during the five full seconds before impact was recorded, Lawrence's car did not move. The data retrieved from her vehicle are as follows:

Table 1

| | Brake Circuit | Speed | Engine RPM | Percent Throttle |
|--------------------------------|----------------------|--------------|-------------------|-------------------------|
| 8 Seconds before impact | | | | |
| | OFF | N/R | N/R | N/R |
| 7 Seconds before impact | ON | N/R | N/R | N/R |
| 6 Seconds before impact | OFF | N/R | N/R | N/R |
| 5 Seconds before impact | ON | 0 | 1152 | 0% |
| 4 Seconds before impact | OFF | 0 | 1600 | 15% |
| 3 Seconds before impact | OFF | 0 | 3968 | 64% |
| 2 Seconds before impact | OFF | 0 | 2560 | 15% |
| 1 Second before impact | OFF | 0 | 1536 | 49% |

32. The data reflect that during the five seconds before impact, Lawrence's vehicle did not record any vehicle speed. The fact that the airbag control module did not record any vehicle speed indicates that during the five seconds before impact, Lawrence's vehicle did not move forward at all.

33. The data reflect that Lawrence's foot was on the throttle, but no movement was recorded prior to the collision.

34. While Lavoie was in the process of using his cruiser to block in Lawrence's car, and before he was completely stopped, the two cars made low speed contact causing minor damage to Lavoie's cruiser in an area behind its front passenger side wheel arch. The car Ms. Lawrence was driving was slightly damaged on the passenger side front bumper. See photos at Tab C and D.

35. Ms. Lawrence did not "ram" Lavoie's cruiser, despite Lavoie's later assertion that she did so.

36. Immediately upon getting out of his cruiser, Lavoie removed his service handgun from its holster and with his gun in his right hand and moved from the driver's side front door to the rear of his cruiser behind the bumper and in front of Lawrence's car. Lavoie placed himself in a stationary position with his gun extended facing Ms. Lawrence's windshield a few feet away. This took from three to four seconds according to Lavoie. See Tab E.

37. Rather than remaining in his cruiser or standing in a safe position, Lavoie got out of his cruiser and placed himself in a position that provided him with a direct line of fire into Ms. Lawrence's head and neck through her windshield.

38. After placing himself in this position and aiming his service weapon at Ms. Lawrence, Lavoie fired all eleven shots in his gun, in kill shot fashion, toward Ms. Lawrence's head.

Lavoie kept firing and did not move until his gun was in lock back. See eleven bullet holes in Tab F.

39. Lavoie moved from a place of safety into a position that would give him a direct and clear line of fire at Ms. Lawrence. By taking this action, he created the very danger that he subsequently claimed warranted his killing of Wendy Lawrence. Neither a police created urgency nor a self-created danger legally justifies the use of deadly use of force against a citizen. Young v. City of Providence, 404 F.3d 4 (1st Cir.2005); Estate of Starks v. Enyart, 5 F.3d 230 (7th Cir. 1993); Estate of Fry v. City of Galena, Kansas, 450 F.Supp.2d 1236 (D.Kan.2006).

40. The force used by Lavoie when he summarily executed Ms. Lawrence by firing the entire clip of his service weapon at Ms. Lawrence was unwarranted, unreasonable, excessive, and unjustifiable.

41. While New Hampshire has the death penalty, it does not apply to driving without a license or being a habitual driving offender. The capital punishment statute gives the accused a right to a jury trial and due process before the ultimate penalty is imposed.

42. As a result of Lavoie's use of excessive and unreasonable force against Ms. Lawrence, she sustained multiple gunshot wounds to her neck and upper torso. She suffered for over an hour before she eventually died.

43. Lavoie did not seek to take the plaintiff into custody by opening her door or coordinating the use of non-deadly force to effect her arrest with the three other armed troopers who had preceded him to the scene. He made no attempt to disable the vehicle by shooting out tires or the radiator. He fired no warning shot. Instead, he fired upon her repeatedly, stopping only when his service pistol was emptied. See Cole v. Bone, 993 F.2d 1328 (8th Cir. 1993) citing Tennessee v. Garner, 471 U.S.1, 11-12 (1985), concerning a warning prior to use of deadly force.

44. From his stationary position Lavoie fired at the plaintiff and her vehicle until the chamber of his weapon was empty, his gun went into lock back and the clip was ejected. See Tab E showing the clip behind the cruiser. When the gun went into lock back, Lavoie moved to his right and actually reloaded his weapon with a new magazine and chambered a round to make the pistol ready again for immediate use against the defenseless and bleeding Wendy Lawrence.

45. The elapsed time between Lavoie getting out of his cruiser and firing his eleventh shot at Ms. Lawrence was 5 to 6 seconds. Three seconds of that time was spent discharging his weapon according to the audio track of the dash camera.

46. One shot entered the right side of Ms. Lawrence's neck, perforating her lung and striking a rib. Another entered the left side of her neck and exited through her shoulder. A third shot made a one-half inch hole in the left side of her neck while a fourth entered her left shoulder. She also had a deep bullet graze wound on her left hand. After the shooting, Ms. Lawrence remained conscious for a period of time. Her condition deteriorated substantially during her ambulance transport to Elliot Hospital.

47. At all relevant times, starting when Lawrence had come to a full stop at the intersection of Dave St. and Kennard Road, and continuing until the time when Trooper Lavoie's gun went into lock back, the windows in Ms. Lawrence's car were up and fully closed.

48. After shooting Ms. Lawrence, Lavoie went over with his gun drawn and loaded to the driver's side of the car and at gunpoint commanded Lawrence not to move.

49. At that time Ms. Lawrence was alive and conscious but bleeding heavily from multiple gunshot wounds. Her hands were on the steering wheel and her car was not moving.

50. Lavoie violated numerous standing policies of the State Police that govern pursuits and the use of deadly force against citizens, a few of which are cited below.

51. The Division of State Police has a written pursuit policy that has been in effect since 2005. See relevant excerpts attached at Tab G which are incorporated herein by reference.

The preamble states:

Deciding whether to pursue a motor vehicle is among the most critical decisions made by Division members.

The primary purpose of this policy is to secure a balance between the protection of the lives and safety of the public and police officers, and law enforcement's duty to enforce the law and apprehend violators. Chapter 41-GA.1.0.

52. That the identity of the driver is known affects whether a pursuit is justified because:

The Division member must consider whether the identity of the violator is known and an arrest at a later time is possible.

The Division member must weigh the need to apprehend against the duty to protect life. (Emphasis in original). Id. 2.1.A. and B.

53. Pursuits are to be terminated (as occurred twice here):

If the violator's identity is established and it is reasonable to believe that apprehension can be made at a later time with less potential danger to the Division member and public. Id. 2.2.A.3.

54. The policy also discourages boxing in of a car such as was involved here:

BOXING IN a violator's moving vehicle is permitted only under extraordinary circumstances. These tactics substantially increase the risk inherent in the pursuit and shall only be employed:

- a. at low speeds, or
- b. in response to imminent threat to the safety of the public or a police officer.

Id. 2.3.A7.

55. Finally the use of deadly force is only permitted as a "last resort:"

Division members involved in a pursuit shall not fire any weapon from or at a moving vehicle nor engage in any vehicle contact action except as a last resort to prevent imminent death or serious bodily injury to the Division member or another person where deadly force would otherwise be justified. Id. 9.

56. No reasonable police officer under these facts and circumstances could have believed that taking this woman's life was justified.

57. Lavoie knew, or should have known, that the actions he took were likely to cause Lawrence to sustain significant pain and suffering and cause her to suffer the loss of her life. All of these harms could easily have been avoided had Lavoie not resorted to deadly force without adequate justification under the law.

58. Ms. Lawrence was subsequently treated at the location of the shooting and transported by ambulance to Elliot Hospital where she died from multiple gunshot wounds inflicted solely by Trooper Lavoie. No other person fired a weapon.

V. CAUSES OF ACTION

COUNT I.

Violation of Civil Rights (Title 42 U.S.C. §1983)

59. Plaintiff re-alleges and incorporates herein by reference the preceding and succeeding allegations in this Complaint.

60. In committing the acts complained of herein, Lavoie acted under color of state law to deprive the plaintiff of her constitutional rights protected by the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States including, but not limited to: a) the right to be free from unreasonable searches and seizures; b) the right not to be deprived of life without due process of law; c) the right to be free from the use of excessive force by persons acting under color of state law; and d) the right to just compensation for the taking of her life.

61. The firing of eleven rounds of deadly gunshots at an unarmed, non-dangerous woman seated in a motionless car constitutes the use of excessive and unreasonable force in violation of the Fourth and Fourteenth Amendments of the United States Constitution.

62. As a direct and proximate result of Lavoie's violation of her constitutional rights, the plaintiff suffered general and special damages as alleged in this Complaint and is entitled to relief under 42 U.S.C §1983.

63. Plaintiff is entitled to attorney fees pursuant to applicable law, including, but not limited to, 42 U.S. C. Section 1988.

64. The conduct of Lavoie was willful, oppressive and/or reckless, and was of such a nature that punitive damages should be imposed in an amount commensurate with the wrongful acts alleged herein.

65. As a state employee, Lavoie will be fully defended by the Attorney General's Office and indemnified by the state government for all costs of defense and from any verdict under the provisions of RSA 99-D.

COUNT II

New Hampshire Wrongful Death Act (RSA 556)

66. The plaintiff re-alleges and incorporates herein by reference the allegations set forth in the preceding and succeeding paragraphs of this complaint.

67. The Estate of Wendy Lawrence seeks compensation for its loss as well as the individual loss and bodily wounds and pain and suffering of Wendy Lawrence that survived her death pursuant to RSA 556:15.

68. Under RSA 556:12, damages include the mental and physical pain suffered by the deceased as a result of her injuries, the reasonable expenses occasioned to the estate by her injuries and death, the probable duration of her life but for the injuries, hedonic damages for the loss of enjoyment of life itself, and the capacity to earn money during Ms. Lawrence's probable working life.

69. Compensation and damages for these losses, which occurred as a direct and proximate result of acts committed by the defendant, are sought in the amount to be determined by a jury.

70. The defendant performed the actions that directly or proximately resulted in and caused the death of the plaintiff in an intentional, wanton or reckless manner thereby entitling the plaintiff to an additional award of enhanced compensatory damages to be determined by the jury.

WHEREFORE, the Estate of Wendy Lawrence, respectfully prays that this Honorable Court:

- A. Schedule this matter for trial by jury, and, after trial:
- B. Award the plaintiff damages pursuant to RSA: 556 of \$2,000,000;
- C. Award the plaintiff enhanced compensatory damages;
- D. Award the plaintiff reasonable attorney's fees;
- E. Award the plaintiff interest and costs;
- F. Award the plaintiff punitive damages; and
- G. Grant such other and further relief as is just and equitable.

Respectfully submitted,
ESTATE OF WENDY LAWRENCE
By its attorneys,
DOUGLAS, LEONARD & GARVEY, P.C.

Date: December 30, 2014

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