

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT BETHEL

FILED IN THE TRIAL COURTS
STATE OF ALASKA
BETHEL SERVICE AREA

FEB 06 2019

By _____
DEPUTY CLERK

PETER TYSON, as personal representative)
of the Estate of Carl Tyson,)
)
Plaintiff,)
)
v.)
BRENT HATCH, individually, and STATE)
OF ALASKA, Department of Public Safety,)
)
Defendants.)
_____)

Case No. 4BE-19-_____ CI

COMPLAINT

Plaintiff Peter Tyson, as personal representative of the Estate of Carl Tyson, by and through his attorneys Angstman Law Office and Law Office of Joshua F. Fannon, for his Complaint for damages, hereby states and alleges as follows:

THE PARTIES

1. Plaintiff Peter Tyson is a resident of Saint Marys, Alaska. He is the biological grandfather of the decedent Carl Tyson and Carl's adopted father. Peter Tyson is the personal representative of the Estate of Carl Tyson.
2. Defendant Brent Hatch is a resident within the Fourth Judicial District, State of Alaska. At the time the claims accrued, Hatch was acting under color of law as an Alaska State Trooper, but was not acting within the scope of his employment. Defendant Hatch is being sued in his individual capacity.
3. Defendant State of Alaska is a sovereign entity that has consented to be sued for its own direct negligence. The Defendant Department of Public Safety ["DPS"] is an agency of the State of Alaska that trains and operates the Alaska State Troopers.

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JURISDICTION & VENUE

4. This Court has jurisdiction over this matter pursuant to AS 22.10.020.
5. Venue is proper because Plaintiff's causes of action accrued within the Fourth Judicial District.

GENERAL ALLEGATIONS

6. In front of Carl Tyson's neighbors, Defendant Brent Hatch shot and killed Carl Tyson in Saint Marys, Alaska, on August 2, 2018.
7. Defendant Hatch was trained or should have been trained by the DPS that an "arrest" involves some sort of physical "seizure" of the arrestee, such as the officer touching the person for the stated purpose of arresting the person for a specific crime or violation.
8. Defendant Hatch was trained or should have been trained by the DPS that A.S. 11.81.370 places conditions on the use of deadly force in Alaska.
9. Defendant Hatch was trained or should have been trained by the DPS that, among other conditions, deadly force may be used only when and to the extent the law enforcement officer reasonably believes the use of deadly force is necessary to make an arrest or terminate an escape from custody.
10. Defendant Hatch was trained or should have been trained by the DPS that the mere fact a person is armed with a weapon such as a firearm or a knife and who is supposed to be "dangerous" and flees into the woods to avoid contact with a law enforcement officer does not entitle the officer to use excessive force, including deadly force, if the officer seeks to apprehend the person.
11. The Alaska Court of Appeals has discussed the Legislature's intent in adopting AS 11.81.370 as follows:

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During the legislature's consideration of the justifiable use of force, the issue whether deadly force could be threatened in situations where actual use would be improper was frequently discussed. Because of the possibility that such threats could tragically escalate a conflict, the legislature concluded that only peace officers making an arrest should have the authority to threaten deadly force in situations where actual use of deadly force was not justified.

12. Defendant Hatch was trained or should have been trained by the DPS that because of the possibility that the threat of deadly force could tragically escalate a conflict, the law in Alaska is that only peace officers making an arrest have the authority to threaten deadly force in situations where actual use of deadly force is not justified.

13. On August 2, 2018, Carl Tyson lived in a house on the corner of Tyson Street and Saint Marys Boulevard in Saint Marys, Alaska.

14. On August 2, 2018, during daylight hours, Carl Tyson was standing near Justin Evan, a Saint Marys' employee on Saint Marys Boulevard and Tyson and Evan were having a verbal disagreement that lasted approximately 15-20 minutes. During this verbal argument there was no physical interaction between Tyson and Evan and no aggressive moves occurred by either man. To eyewitnesses, the interaction between Tyson and Evan just looked like two men verbally arguing, but without any touching or active aggression between Tyson and Evan.

15. Suddenly, Defendant Brent Hatch drove up so recklessly that he collided with the back-end of Evan's parked vehicle, occupied by a local woman and her two-year-old child.

16. When Carl Tyson saw Hatch's sudden and reckless arrival, Tyson ran, first through the lot he lived on and then through an empty lot.

17. Defendant Hatch responded to Tyson beginning to run by immediately jumping out of his vehicle and without pausing to speak with Evan or any other witness, Hatch pursued Carl Tyson at a run. Before entering a small patch of trees, an eyewitness observed Hatch draw his service weapon while continuing to chase after Tyson.

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18. When Hatch arrived at the scene he personally observed no objective facts (a) showing that there was any crime in progress; (b) that Tyson was engaged in a misdemeanor; (c) showing that Tyson was in the custody of Justin Evan; (d) showing that Evan had already, in fact, "arrested" Tyson; or (e) showing probable cause to believe Tyson had committed a felony using deadly force against another and was immediately endangering life.

19. When Hatch arrived at the scene, Hatch had no reasonable suspicion that an imminent public danger existed or that serious harm to persons or property had recently occurred and that Tyson presented that danger or caused that harm.

20. Defendant Hatch was trained or should have been trained by the DPS that it is not a crime to run from a police officer even if a person happens to be armed when the person flees.

21. Carl Tyson emerged from the empty lot onto Yup'ik Road, meaning Tyson's short run after seeing Hatch's arrival, only totaled approximately 225 feet.

22. Defendant Hatch pointed his gun at Carl Tyson as Tyson ran from Hatch. Tyson's neighbors observed Hatch point his gun at Tyson as Tyson fled.

23. When Hatch drew his gun and began pointing it at Tyson, Tyson was not visibly armed with a weapon and had nothing in his hands.

24. Having run a total of approximately 225 feet, Tyson stopped running on Yup'ik Road, turned and saw Hatch pointing his gun at him.

25. When Tyson turned and saw Hatch pointing his gun at him, Tyson was not visibly armed with a weapon and had nothing in his hands.

26. In reaction to observing Hatch pointing his gun at him, Carl Tyson non-aggressively and slowly reached a hand into his "hoodie" sweatshirt's front pouch and removed an uluaq.

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This means that Hatch was already pointing his gun at Carl Tyson and acting out an obvious threat as to the use of deadly force well before there was any appearance of the uluaq.

27. When Hatch was pointing his gun at Tyson before the appearance of the uluaq, Hatch had no knowledge Tyson had been, in fact, arrested by Justin Evan.

28. In showing Hatch the uluaq, Carl Tyson held it out with his elbow locked.

29. Tyson holding out the uluaq using a straight arm and a locked elbow would not have been perceived by a reasonable officer at the scene as presenting an imminent risk of serious physical harm to another person since a locked elbow is not consistent with active aggression or an apparent intent to cause immediate physical harm to another.

30. The common understanding and expectation in the Saint Marys' community is that the uluaq is not a fighting weapon. An uluaq is a domestic tool. If Hatch simply stayed out of "arm's reach" the uluaq posed no danger whatsoever to Hatch even if Hatch subjectively believed the uluaq might pose some abstract risk because such tools have a cutting or scraping edge.

31. At no point prior to being shot did Carl Tyson make stabbing or swiping motions with the uluaq. Until Carl Tyson was shot, Tyson's elbow remained locked.

32. Carl Tyson did not lunge or charge at Hatch with the uluaq prior to being fatally shot by Hatch.

33. After Hatch's arrival at the scene, Carl Tyson did not swear or yell at Hatch or otherwise indicate rage or an intent to be aggressive towards Hatch or anyone else prior to being fatally shot.

34. After Hatch's arrival at the scene, Carl Tyson did not make any verbal threats to cause harm to Hatch or anyone else.

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35. Even after Tyson saw Hatch pointing his gun at him, Tyson's facial expression appeared blank, calm, and non-threatening.

36. When Carl Tyson posed no objective threat of immediate serious physical injury to Hatch and was physically too far away from Hatch for Hatch to reasonably fear he was within "striking distance" of the uluaq, Hatch deliberately discharged his gun at Tyson multiple times, fatally wounding Carl Tyson.

37. Hatch shot at Tyson in rapid succession, without pausing to see the effect of each bullet or to give Tyson time to comply (assuming some sort of "compliance" is what Hatch sought.)

38. It was practical for Hatch to give a verbal warning prior to his use of deadly force against Tyson.

39. During the incident that is the subject of the complaint, Defendant Hatch was armed with a Taser that would have allowed Hatch to incapacitate Tyson from a distance using non-deadly force, assuming for purposes of argument, that any force was appropriate under the circumstances.

40. At the scene, Hatch denied to an eyewitness that he was armed with a Taser when the eyewitness clearly saw the Taser on Hatch's belt moments after Hatch fatally shot Carl Tyson.

41. Hatch threatening and using deadly force was not reasonably necessary under the circumstances to accomplish any valid legal objectives.

42. It was practical and reasonable for Hatch to have simply retreated if he subjectively believed Tyson was too close since Tyson was not charging Hatch or posing an immediate risk of serious physical harm to anyone.

43. Defendant Hatch was trained or should have been trained by the DPS that he was prohibited from using more force than is necessary under the circumstances.

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44. Defendant Hatch was trained or should have been trained by the DPS that he was authorized to use deadly force against another person only when he had no other reasonable and practical alternative, and reasonably believes deadly force is necessary (1) to save his own life or the life of another; (2) to prevent serious physical injury to the officer or another; or (3) because he had probable cause to believe the person has committed a felony using deadly force against another and will immediately endanger life.

45. Defendant Hatch was trained or should have been trained by the DPS that law enforcement officers may not kill suspects who do not pose an immediate threat to their safety or the safety of others simply because they are armed.

46. Defendant Hatch exceeded his legal authority to threaten and utilize deadly force against Carl Tyson in violation of standards as to which he had or should have had clear notice.

47. Defendant Hatch engaged in unnecessary, and unreasonable force contrary to standards as to which he had or should have had clear notice.

48. Defendant Hatch's acts or omissions were willful, reckless, or intentional misconduct, malicious, or with gross negligence. The evidence of "malice" includes the way in which Hatch violated limits on his authority and the restrictions on the use of force to which he had clear notice. Defendant Hatch also acted with reckless disregard of Carl Tyson's interests and the value of his life.

49. After shooting Carl Tyson, Defendant Hatch refused to transport Tyson to the Saint Marys' health clinic even though it was approximately only a 2-minute drive from where Tyson was shot. Carl Tyson was obviously suffering and making strained breathing noises after being shot, but Hatch refused to arrange for Tyson to receive immediate medical care. Hatch caused Tyson to suffer and then die in the street.

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50. There are one or more statutory beneficiaries to the Estate of Carl Tyson, including but not limited to Tyson's adopted son, M.M. who was born in 2014.

FIRST CAUSE OF ACTION
**(Assault and Battery by Defendant Hatch in violation of Alaska law/
Wrongful Death and Survivorship Claims)**

51. Plaintiff incorporates by reference the allegations in paragraphs 1-50 of the Complaint.

52. Defendant Hatch had a duty to Carl Tyson to refrain from threatening or using deadly force against Tyson that was not authorized by Alaska law or other applicable controlling standards which limited Hatch's authority, use of force, or discretion.

53. Defendant Hatch had a duty to refrain from assaulting, physically injuring, and killing Carl Tyson, including but not limited to a duty to avoid unnecessary, unreasonable and non-privileged use of deadly force contrary to clearly established Alaska law.

54. Defendant Hatch's acts and omissions put Carl Tyson in imminent fear of harmful or offensive contact.

55. Defendant Hatch offensively touched, physically injured and ultimately killed Carl Tyson by inflicting unlawful, unnecessary, unreasonable, and excessive deadly force against him.

56. Defendant Hatch's acts were done outside of Hatch's lawful authority or discretion.

57. Defendant Hatch's acts and omissions were done corruptly, maliciously, and in bad faith. Evidence in support of these allegations, includes but is not limited to the following: (a) Hatch had no objective or subjective basis to believe Tyson had committed a crime, let alone a crime involving serious physical injury to another, or was subject to arrest, or posed a risk of immediate serious physical harm to others; (b) Hatch drew his weapon at a time when he could see Tyson held nothing in his hands and appeared unarmed; (c) Hatch pointed his weapon at

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Tyson when he could see Tyson held nothing in his hands and appeared unarmed and therefore escalated the situation in violation of the intent of AS 11.81.370; (d) Hatch acted in violation of law for which any reasonable officer had clear notice; (e) Hatch refused to employ lesser force when that non-deadly force was practical; (f) Hatch failed to give a sufficient verbal warning prior to the use of deadly force; (g) Hatch refused to increase the distance between himself and Tyson even though this was practical; (h) Hatch shot at Tyson in rapid succession without pausing to give Tyson reasonable time to comply; (i) Hatch refused medical aid to Tyson to alleviate his suffering and attempt to save his life; and (j) Hatch lied about being armed with a Taser when he obviously was, supporting the inference Hatch knew his use of deadly force was unlawful and excessive at the time.

58. Defendant Hatch's acts and omissions were a legal cause of a series of separate injuries to Carl Tyson, including but not limited to Hatch's initial assault when he pointed the gun at Tyson, each bullet wound Hatch inflicted, causing Tyson's suffering prior to his death, and causing Tyson's death.

59. Carl Tyson was damaged by Defendant Hatch's acts and omissions, including but not limited to bodily injury, pain and suffering, intentional infliction of emotional distress and pecuniary loss. Defendant Hatch's acts and omissions were outrageous and were done with malice or reckless indifference entitling Plaintiff to punitive damages.

60. Plaintiff, in his representative capacity, is making a claim for wrongful death pursuant to AS 09.55.580, as well as a survivorship claim pursuant to AS 09.55.570.

SECOND CAUSE OF ACTION
(Negligence by Defendant Hatch)

61. Plaintiff incorporates by reference the allegations in paragraphs 1-60 of the Complaint.

62. Defendant Hatch owed a duty of reasonable care to Carl Tyson.

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63. Defendant Hatch breached his duty of reasonable care to Carl Tyson, including but not limited to the following reasons: (a) in negligently drawing his gun in response to a citizen who had chosen to (lawfully) run in response to his arrival and then showing that drawn gun to Carl Tyson, causing Tyson to show his possession of an uluaq and thus escalating the police contact in a manner which led to Hatch shooting Tyson; and (b) in negligently failing to obtain immediate medical treatment for Carl Tyson who was obviously showing distressed breathing after being shot.

64. Defendant Hatch's breach of his duty of reasonable care owed to Carl Tyson was a proximate cause of Tyson sustaining damages.

65. Defendant Hatch's acts and omissions were outrageous and reckless, entitling Plaintiff to punitive damages.

THIRD CAUSE OF ACTION

(Direct Negligence Against the Defendant State of Alaska, Department of Public Safety, under Alaska law)

66. Plaintiff incorporates by reference the allegations in paragraphs 1-65 of the Complaint.

67. Defendant State of Alaska, DPS, had a duty to use reasonable care in the training of its State Troopers, including but not limited to (a) when there is or is not an apparent arrest; (b) the limited authority a trooper has to threaten deadly force and the conditions which must exist when the threat is made; (c) the limited authority a trooper has to use deadly force and the conditions which must exist before deadly force is used; (d) the duty to warn or retreat before the use of deadly force; (e) the duty to use lesser levels of force rather than deadly force; (f) the duty to avoid unnecessary, unreasonable, unlawful acts by troopers and avoid excessive force.

68. Defendant State of Alaska, DPS, breached its duty to properly train Defendant Hatch.

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69. As a result of the State of Alaska, DPS' breach of duty of reasonable care as to training, Carl Tyson was the victim of various torts inflicted by Defendant Hatch and he and his estate, including his statutory beneficiarie(s) were damaged.

70. Plaintiff is entitled to damages against the State of Alaska, DPS, for its direct negligence.

FOURTH CAUSE OF ACTION
(Vicarious Liability Against the Defendant State of Alaska as an Alternative Theory)

71. Plaintiff incorporates by reference the allegations in paragraphs 1-70 of the Complaint.

72. At all relevant times, Defendant Hatch was employed by the State of Alaska, DPS and acting under "color of law."

73. Plaintiff alleges that Defendant's intentional torts did not fall within the scope of his employment. However, to the extent that there are any acts or omissions of Defendant Hatch that do fall within the scope of his employment or otherwise support the imposition of vicarious liability against the employer under law or equity, Plaintiff asserts the Defendant State of Alaska is vicariously liable jointly and severally for the damages caused by those acts or omissions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

1. For judgment against the Defendants in excess of \$100,000, the precise amount to be decided by a jury;
2. For an award of punitive damages as allowed by law;
3. For the imposition of vicarious liability as allowed by law or equity;
4. For pre-judgment and post-judgment interest, attorneys' fees, and costs incurred

in this matter; and

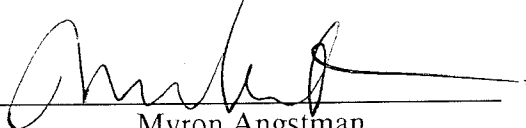
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5. For such other relief as this court deems just and equitable.

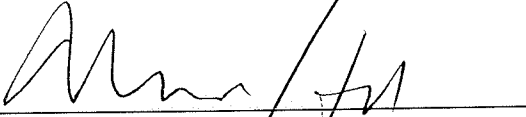
DATED this 6 day of February 2019, at Bethel, Alaska.

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By: 
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Alaska Bar No.: 7410057

DATED this 6 day of February 2019, at Palmer, Alaska.

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