

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Sarah Shoun and Allison Newton, as)
Personal Representatives of the Estate of) Civil Action No.
Wendy Haywood Newton,)
)
Plaintiff,)
)
v.)
)
Horry County, Horry County Sheriff's)
Office, Sheriff Phillip Thompson in his) **JURY TRIAL DEMANDED**
individual and official capacity, Elizabeth)
Orlando in her individual and official)
capacity, Stephen W. Flood in his individual)
and official capacity, and Joshua D. Bishop)
in his individual and official capacity,)
)
Defendants.)

COMPLAINT
42 U.S.C. § 1983
(Wrongful Death)
(Survival Action)

INTRODUCTION

1. This is an action for money damages under 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments to the United States Constitution, and under the South Carolina Tort Claims Act and state common law, against Horry County, Horry County Sheriff's Office ("HCSO"), Sheriff Phillip Thompson, Elizabeth Orlando, Stephen W. Flood, and Joshua D. Bishop.

2. Defendants, acting under color of state law, violated the rights of decedent Wendy Newton by unreasonably seizing her person and depriving her of her liberty and life without due process of law, prohibited under the Fourth and Fourteenth Amendments to the United States Constitution. Defendants falsely imprisoned Newton and negligently caused her conscious pain and suffering and to die by drowning.

3. This action arises under the Constitution and laws of the United States. This Court has original jurisdiction over Plaintiff's federal claims under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3).

4. This action also arises under the laws of South Carolina. This Court has pendent jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367.

5. All material events giving rise to these causes of action occurred in Horry or Marion Counties, South Carolina. Upon information and belief, each Defendant resides in Horry County, South Carolina. Under 28 U.S.C. § 1391(b), venue is proper in the United States District Court for the District of South Carolina.

PARTIES

6. Plaintiff Sarah Shoun and Allison Newton are the duly appointed Personal Representatives of the Estate of Wendy Newton ("Plaintiff") filed in the Probate Court of Marion County with case number 2019-ES-33-40 and, as such, bring this action on behalf of the statutory beneficiaries of Wendy Newton's Estate pursuant to South Carolina Code §15-5-90 and §15-51-10, et seq.

7. Defendant Horry County ("Horry County") is a municipal entity organized under the laws of the State of South Carolina.

8. Defendant HCSO is a law enforcement agency organized under the laws of the State of South Carolina.

9. Defendant Sheriff Thompson ("Sheriff Thompson"), at all relevant times herein, was the Horry County Sheriff and, as such, administrator of a law enforcement agency organized under the laws of the State of South Carolina. Upon information and belief, Sheriff Thompson is

a citizen and resident of Horry County. Sheriff Thompson is sued in his individual and official capacity.

10. Defendant HCSO Sergeant Elizabeth Orlando (“Defendant Orlando”), at all times relevant herein, was the head of the transportation department at the J. Reuben Long Detention Center in Horry County. Upon information and belief, Defendant Orlando is a citizen and resident of Horry County. Defendant Orlando is sued in her individual and official capacity.

11. Defendant Stephen Flood (“Defendant Flood”), at all times relevant herein, was a Lance Corporal officer with the HCSO acting under color of state law and within the course and scope of employment. Upon information and belief, Defendant Flood is a citizen and resident of Horry County. Defendant Flood is sued in his individual and official capacity.

12. Defendant Joshua Bishop (“Defendant Bishop”), at all times relevant herein, was a Lance Corporal officer with the HCSO acting under color of state law and within the course and scope of employment. Upon information and belief, Defendant Bishop is a citizen and resident of Horry County. Defendant Bishop is sued in his individual and official capacity.

FACTS

13. Nearly one in five Americans have a mental illness (43.8 million people). *World Health Organization*. 2004. “Changing History. Annex Table 3: Burden of disease in DALYS by cause, sex, and mortality stratum in WHO regions, Estimates for 2002.” Geneva: World Health Organization. A126-127.

14. Of the 43.8 million Americans with mental illness, 10 million have a serious mental illness, which include major depression, schizophrenia, bipolar disorder, obsessive-compulsive disorder, panic disorder, posttraumatic stress disorder and borderline personality disorder. *Id.*

15. According to Substance Abuse and Mental Health Services Administration approximately 216,000 South Carolinians have a serious mental illness, and the state ranks 37th for availability of mental health services nationwide (including Washington, D.C.).

16. Despite these figures, between 2008 and 2012, South Carolina had the largest percentage of general fund public mental health budget cuts in the nation.

17. Horry County receives approximately 100 calls per month related to mental health.

18. Defendants have ignored duties to those suffering from mental illness and perpetuated an archaic custom of portable, illegal, and unconstitutional incarceration of them.

19. It is the policy, custom, and practice of Defendants to transport mental health patients—non-suspect, non-criminal, and non-violent persons—from one health facility to another in prisoner convict vans and under prisoner convict conditions, including being restrained and/or locked inside the van without the freedom to leave. This policy, custom, and practice regularly occurs without any legal process to the mental health patients.

20. Upon information and belief, despite the fact that it transports at least dozens of non-inmate, non-criminal mental health patients each year, Defendants do not have an official policy or training as to the proper, legal, and constitutional transportation of these persons.

21. Horry County and HCSO's systemic indifference toward those with mental illness directly resulted in the suffering and deaths of Wendy Newton and Nicollette Green.

22. During the flooded aftermath of Hurricane Florence, Defendants transported Wendy Newton and Nicollette Green in a small caged compartment of a prisoner transport van that ultimately got stuck in flood water, filled with water, and took the lives of these two innocent women by drowning.

23. Wendy Newton had the medical condition schizophrenia. Despite her disease, Newton cared for and raised three children – controlling the periods of illness with treatment and prescribed medication.

24. In September 2018, Hurricane Florence made its way into the Carolinas bringing horrific wind and rain much like Hurricane Matthew had less than two years prior.

25. As the threat of Hurricane Florence grew, Newton became anxious. During her time of anxiety, she saw a scene from a movie that triggered her schizophrenia. Having suffered through these fears before, and recognizing she needed help, she and her family arranged for a voluntary medical transport through Chadbourne Police Department to McLeod Loris Hospital.

26. On the morning of September 18, 2018, EMS and police transported Newton from her home to McLeod Loris Hospital.

27. McLeod Loris Hospital admitted Newton to the Emergency Department, where Dr. Eric J. Larson examined her and determined her existing mental illness was exacerbated due to her inability to obtain her medication during the hurricane. Dr. Larson sedated Mrs. Newton and requested a transfer for her to Rebound Behavioral Health in Lancaster, South Carolina.

28. Upon information and belief, on the afternoon of September 18, 2018, the J. Reuben Long Detention Center (“JRLDC”) located in Horry County received a request to transfer Mrs. Newton from the hospital to Rebound Behavioral Health.

29. Defendant Orlando is the JRLDC supervisor responsible for processing transfer requests. She assigned Defendant Flood and Defendant Bishop to transfer Mrs. Newton and Mrs. Green with actual and/or constructive knowledge that the women would be transferred in a caged compartment of a prisoner transport van during dangerous flood conditions.

30. At approximately 5:00 pm, Defendant Flood and Defendant Bishop picked up Mrs. Newton from the hospital and restrained her in a small caged, locked compartment of an Horry County prisoner transport van along with Nicolette Green (another mentally ill patient who was previously transported from Waccamaw Mental Health to JRLDC to await further transport). Neither woman was a patient of a governmental entity.

31. Upon information and belief, Mrs. Newton's emergency room admission and transfer request were not an emergency or involuntary commitment and were not done upon written affidavit or certification by a physician.

32. Upon information and belief, Defendants were not carrying out a court order or any lawful process in the restraint and transportation of Mrs. Newton.

33. Upon information and belief, no written affidavit or certification pursuant to S.C. Code Ann. § 44-17-410 exists and Defendants had no lawful basis upon which to restrain, seize, and imprison Newton or to deprive her of liberty.

34. The two innocent, non-criminal, non-violent women were locked in the cage with no windows, internal operating doors, or functioning escape mechanism.

35. By the day of Mrs. Newton's transport, Hurricane Florence was downgraded to a tropical storm and there were no mandatory medical evacuations applicable to Horry County. (Executive Order No. 2018-36, Sept. 15, 2018).

36. In the aftermath of Hurricane Florence, flood waters posed an imminent threat to parts of Horry and Marion Counties that included the direct routes to transfer Mrs. Newton and Mrs. Green.

37. Defendant Orlando and Horry County Cpl. Christopher Maxim and LCpl. Russell Herring, and Defendants Flood and Bishop discussed the danger of driving in the flood conditions

and that Defendants Flood and Bishop should not take a route via Highway 9 or through the Town of Nichols, which was under evacuation orders, due to the danger from flooding and road closures.

38. Defendants Bishop and Flood nevertheless proceeded to drive through Nichols. They encountered a barricade manned by the National Guard, which allowed them to pass solely because they were law enforcement. A National Guardsman warned Defendants Bishop and Flood that, earlier in the day, he had to turn around on that route because of high flood waters. Defendants Bishop and Flood drove through the barricade.

39. Defendant Flood drove through water less than a mile after the barricade but proceeded any way towards the cresting Pee Dee River. As they approached the river, the water crested and pushed the van against the driver's side guard rail. Defendant Bishop got out of his door and Defendant Flood eventually got out through his window.

40. At approximately, 5:49 p.m. on September 18, 2018, Defendant Bishop radioed to JRLDC that the transport van was stuck and under water, and the two females in the back were trapped. Defendants Bishop and Flood did not know where they were to accurately radio in their location, and Defendants' personnel did not know the route they had taken to locate them as soon as possible.

41. Defendant Bishop climbed on top of the van to open the back doors and, because Defendants did not have any keys to unlock the cage and could not open it through the passenger side door, he shot off the padlock between the front and rear cage compartments but still could not open the steel divider to free Mrs. Newton and Mrs. Green.

42. For approximately an hour, Newton and Green remained trapped in the cage compartment of the van desperately attempting to escape and breathe.

43. At 6:59 p.m., approximately an hour and ten minutes after Defendant Bishop first radioed for help, he reported that he could no longer hear the women in the van screaming for help. The rescue team that eventually arrived attempted to cut off the top of the van to rescue Mrs. Newton and Mrs. Green. They probed the interior through a hole in the roof but did not detect anything and determined the women were dead. They marked the van with a life jacket and left the dead women trapped under water in the van.

44. On September 19, 2018, South Carolina Department of Natural Resources personnel dove to recover Mrs. Newton and Mrs. Green's bodies from the van.

45. On October 24, 2018, the HCSO terminated Defendants Flood and Bishop. They are also the subjects of criminal charges arising out of Newton and Green's deaths.

46. Newton died in a modified 2016 Ford Transit van. The modified Ford Transit van has three compartments: (1) front compartment where deputies sit in captain chairs; (2) small, middle cage compartment (where Newton and Green were placed); and (3) larger, back cage compartment. Horry County took the cage compartments from an outdated prisoner transport van and force-fitted them into the 2016 Ford Transit.

47. The middle cage and back cage are separated by a metal grate protected by a padlock. The middle cage had no windows, and two doors. The internal door, or cage door, was steel, and locked automatically when shut such that Newton could not have opened the steel door to free herself from the flood water. The outside door is a sliding door typical of a Ford Transit that would not open due to the pressure of the rushing flood waters.

48. The metal grate that separated the two caged compartments could have operated as an escape but it was locked and none of the Defendants possessed a key to the door that locked automatically and accessed a cage in which they regularly transported multiple mental health

patients. Defendants knew that 317 entrapments occurred in 2017, and therefore extraction tools were essential equipment for EMS, and transport services. The vehicle was a death trap.

49. Defendants customarily used the prison transport van when transporting more than one mental health patient. In 2018, Horry County deputies made almost 50 multi-part trips, which required patients like Newton and Green to endure extended periods of seizure, restraint, and confinement in prison conditions.

50. Defendants consciously and deliberately used a prisoner van to transport non-criminal patients and, in doing so, imprisoned the occupants with no reasonable means of escape and in violation of their constitutional and common law rights.

51. Because of the systemic failures of Defendants, Newton and Green watched for over an hour as the Pee Dee River filled their cage compartment and drowned them.

52. Defendants treated Newton as a prisoner rather than a mental health patient who committed no crime and exhibited no violence but, instead, simply sought medical treatment.

53. Defendants intentionally placed Newton and Green in a prisoner transport van in a caged compartment with no windows and transported them in the cage without having the keys to unlock the padlock. This directly resulted in Newton's unlawful imprisonment, restraint, seizure and deprivation of life and liberty.

54. Defendants intentionally placed Newton in the small, caged compartment rather than the larger cage compartment, which they managed to open during the flood.

55. Defendants Bishop and Flood ignored known dangerous road conditions and the instruction of superior officers to not drive through Nichols or on Highway 9.

56. Defendants Bishop and Flood ignored the warnings of the National Guard regarding the flooded road conditions and, instead, consciously and deliberately drove the van carrying Newton into dangerous flood conditions that warranted evacuation of an entire town.

57. Defendants failed to know the van's route or location such that they initially told dispatch the wrong location and significantly delayed emergency response to the flooded vehicle.

58. Defendants failed for over an hour to free Newton from imprisonment, restraint, seizure, and deprivation of her liberty in a flooding cage compartment of a prisoner transport van.

59. Defendants proximately caused the conscious suffering and death of Wendy Newton by imprisoning, restraining, and seizing her in a cage of a prisoner transport van; and operating the vehicle and transportation in a manner that grossly and consciously disregarded her life, liberty, and safety.

60. The News & Observer and The Sun News investigated mental health care in South Carolina, focusing on Horry County and transport. The News & Observer and The Sun News found that mental health patients commonly endure hours-long trips in handcuffs or cramped metal cages, even when they have shown no signs of violence. *'How many have to die?' SC mental health patients endure nightmare transport conditions*, News & Observer, May 29, 2019.

61. Upon information and belief based on the news stories, in 2018, Horry County deputies transported patients in handcuffs or cages: (1) 452 times for a duration of more than 1 hour, (2) 146 times for a duration of 1 to 2 hours, (3) 211 times for a duration of 2 to 3 hours, (4) 46 times for a duration of more than 3 to 4 hours, and (5) 8 times for a duration of more than 4 hours.

62. Defendants were aware that many of the mental health transports required mental health patients to endure lengthy trips.

63. The prisoner transport van used for Newton's transfer was owned by Horry County, purchased through contract with the State of South Carolina, and provided to the HCSO per the Horry County Fleet Policy.

64. Horry County maintains a Fleet Policy that applies to all vehicles titled in Horry County's name, and "utilized by employees and elected or appointed officials", including the transport van in which Newton drowned.

65. Horry County's Fleet Policy states: "Individual departments may approve, and are encouraged to, policy that expands on the provisions of this policy, but may not approve departmental policy that conflicts or contradicts the provisions of this policy."

66. According to the Fleet Policy, Horry County requires from HCSO information about the uses of the vehicles down to the exact mileage of each trip. Horry County had the obligation and authority to oversee and monitor Defendants' use, assignment, and operation of the prisoner transport van in which Newton suffered and died.

67. The customary, regular, and continued use of a County vehicle to seize, restrain, and imprison mental health patients violated Newton's constitutional rights.

68. Upon information and belief, Defendants do not have a written policy regarding transportation of non-inmate mental health patients.

69. JRLDC maintains an "Inmate Transportation Procedure." It requires that the transportation supervisor, Defendant Orlando in this case, must ensure that assigned officers are aware of certain information, including special instructions on the route to follow.

70. As to a medical transport for an inmate, the policy provides that inmates are transported individually. The medical transportation for Newton and Green violated even the

inmate transport policy because Defendants transported two mental health patients and placed them in the same cage compartment.

71. Defendants routinely and customarily use a prisoner transport van to transport more than one mental health patient and these practices were well known to all Defendants.

72. Horry County is subject to municipal liability based on the execution of a government policy or custom of transporting mental health patients in cages in prisoner transport vans as described herein in violation of the Fourth and Fourteenth Amendments and thereby inflicting injury on Wendy Newton and dozens of other similarly situated persons.

73. Horry County engaged in the widespread and persistent practice of its employees transporting non-criminal mental health patients in locked cages in prisoner transport vans. This custom or policy is fairly attributable to Horry County as its own and is the moving force behind the particular constitutional violations alleged herein.

74. Based on the allegations herein, the transportation custom occurs frequently and has occurred over a prolonged duration such that Horry County has actual and/or constructive knowledge of the unconstitutional practice by its employees.

75. The custom itself is unconstitutional and also is a direct and proximate cause of unconstitutional conduct and constitutional violations as described herein.

76. Horry County failed to put a stop to or correct the widespread pattern of unconstitutional conduct by Defendants and HCSO officers. The underlying facts of this case are an example of a specific violation that is part of the widespread pattern.

77. Sheriff Thompson is subject to supervisor liability.

78. Sheriff Thompson supervises and controls the HCSO employees, including the Defendants named herein. Sheriff Thompson knew: (1) his deputies routinely used the prisoner

transport van to transport person(s) with mental illness for prolonged periods of time and without process of law; (2) the vehicle was not safe; (3) there were no safety mechanism in place to extract a trapped person; (4) deputies received no training for use and operation of a prisoner transport van for mental health patients; (5) no policy existed as to transportation of mental health patients; (6) no policy existed as to transportation of patients during storm or other conditions; and (7) Defendants regularly and customarily seized and restrained mental health patients without an affidavit, certification, or court order.

79. Sheriff Thompson had actual or constructive knowledge that his employees engaged in such conduct that posed a pervasive and unreasonable risk of constitutional injury to citizens such as Newton and Green.

80. Sheriff Thompson's failure to act in the face of such knowledge and widespread abuses demonstrates he was deliberately indifferent to, authorized, and/or acquiesced in the constitutionally offensive conduct of his subordinates.

81. Defendant Orlando is subject to supervisor liability.

82. Defendant Orlando supervises and controls the HCSO employees whose employment duties include transportation, including Defendants Bishop and Flood, and the vehicles and routes used for such transportation. Defendant Orlando knew: (1) the deputies routinely used the prisoner transport van to transport person(s) with mental illness without process of law; (2) the transportation customarily lasted for prolonged durations without specification of a route and deputies on shift change regularly passed off mental health patients at public places such as gas stations; (3) there were no safety mechanism in place to extract a trapped person; (4) deputies received no training for use and operation of a prisoner transport van for mental health patients; (5) no policy existed as to transportation of mental health patients; (6) no policy existed

as to transportation of patients during storm or other conditions; and (6) Defendants regularly and customarily seized and restrained mental health patients without an affidavit, certification, or court order.

83. Defendant Orlando had actual or constructive knowledge that the employees with transportation duties engaged in such conduct that posed a pervasive and unreasonable risk of constitutional injury to citizens such as Newton and Green.

84. Defendant Orlando's failure to act in the face of such knowledge and widespread abuses demonstrates she was deliberately indifferent to, authorized, and/or acquiesced in the constitutionally offensive conduct of her subordinates

85. There is an affirmative, proximate causal link between Sheriff Thompson and Defendant Orlando's conduct and the particular constitutional injury (described herein) suffered by Newton.

86. Defendants failed to train, supervise, or create any policy to prevent the widespread misuse of the prisoner transport vans that violated patients' constitutional and common law rights.

87. Defendants owed a duty of care to Newton to transport her safely and in a constitutional manner.

88. Defendants breached their duty to Newton by transporting her in an unconstitutional manner as described herein and causing her to consciously suffer and die by drowning.

89. Defendants' actions and inactions described herein proximately caused Newton's conscious pain and suffering and death.

FOR A FIRST CAUSE OF ACTION
Violation of Federal Civil Rights 42 U.S.C. § 1983
**(4th and 14th Amendment – Unreasonable Seizure and Deprivation of Life and Liberty
without Due Process)**

(Survival)

90. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is incorporated by reference as if repeated verbatim herein.

91. Based upon the facts and allegations above, the Defendants, acting under color of state law, customs, policy, and/or practices at all times mentioned herein knew of Newton's constitutional rights, including the right to due process and to be free from unreasonable seizures.

92. The 14th Amendment to the United States Constitution protects Wendy Newton's right to life, liberty, and personal safety.

93. The 4th Amendment to the United States Constitution protects Wendy Newton's right to be free from unreasonable seizure and restraint.

94. Defendants knew of Newton's clearly established constitutional rights but proceeded to violate them as described herein, including the following particulars:

- a. Consciously and deliberately transporting her in a prisoner van in a locked metal cage with another mental health patient;
- b. Consciously and deliberately transporting her in a prisoner van in a locked metal cage without the key to open one access door and without access to freedom, light, medical care, drinking water, or reasonable means of escape or ability to protect herself;
- c. Consciously and deliberately entering into a pattern and practice of unreasonably seizing mental health patients, including Newton, without a warrant, probable cause, or reasonable suspicion of a crime;
- d. Consciously failing to implement formal policies and train employees as to proper, constitutional, and safe transportation of non-criminal mental health patients;

e. Consciously and deliberately entering into a pattern and practice of depriving mental health patients, including Newton, of their life and liberty without due process of law;

f. Knowingly, deliberately, and consciously failing to choose a designated transport route;

g. Knowingly, deliberately, and consciously failing to follow local evacuation orders and warnings of the National Guard;

h. Knowingly, deliberately, and consciously driving around a barricade to access dangerous roads;

i. Knowingly, deliberately, and consciously continuing to drive on a dangerous road.

95. As a direct and proximate result of Defendants' acts of willful, conscious, and deliberate indifference, Newton suffered deprivation of her rights secured by the Fourth and Fourteenth Amendments to the United States Constitution.

96. As a result, Newton suffered conscious pain, mental and physical suffering, indignity, and mental anguish prior to her death.

97. Plaintiff suffered and continue to suffer the loss of Newton's life, her love and support, mental anguish, grief, shock, sorrow, emotional distress, incurred funeral expenses and loss of Newton's financial support.

FOR A SECOND CAUSE OF ACTION
Violation of Federal Civil Rights 42 U.S.C. § 1983
**(4th and 14th Amendment – Unreasonable Seizure and Deprivation of Life and Liberty
without Due Process)**
(Wrongful Death)

98. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is incorporated by reference as if repeated verbatim herein.

99. Based upon the facts and allegations above, the Defendants, acting under color of state law, customs, policy, and/or practices at all times mentioned herein knew of Newton's constitutional rights, including the right to due process and to be free from unreasonable seizures.

100. The 14th Amendment to the United States Constitution protects Wendy Newton's right to life, liberty, and personal safety.

101. The 4th Amendment to the United States Constitution protects Wendy Newton's right to be free from unreasonable seizure and restraint.

102. Defendants knew of Newton's clearly established constitutional rights but proceeded to violate them as described herein, including the following particulars:

a. Consciously and deliberately transporting her in a prisoner van in a locked metal cage with another mental health patient;

b. Consciously and deliberately transporting her in a prisoner van in a locked metal cage without the key to open one access door and without access to freedom, light, medical care, drinking water, or reasonable means of escape or ability to protect herself;

c. Consciously and deliberately entering into a pattern and practice of unreasonably seizing mental health patients, including Newton, without a warrant, probable cause, or reasonable suspicion of a crime;

d. Consciously failing to implement formal policies and train employees as to proper, constitutional, and safe transportation of non-criminal mental health patients;

e. Consciously and deliberately entering into a pattern and practice of depriving mental health patients, including Newton, of their life and liberty without due process of law;

f. Knowingly, deliberately, and consciously failing to choose a designated transport route;

g. Knowingly, deliberately, and consciously failing to follow local evacuation orders and warnings of the National Guard;

h. Knowingly, deliberately, and consciously driving around a barricade to access dangerous roads;

i. Knowingly, deliberately, and consciously continuing to drive on a dangerous road.

103. As a direct and proximate result of Defendants' acts of willful, conscious, and deliberate indifference, Newton suffered deprivation of her rights secured by the Fourth and Fourteenth Amendments to the United States Constitution.

104. As a result, Newton suffered conscious pain, mental and physical suffering, indignity, mental anguish, and death.

105. Plaintiff suffered and continue to suffer the loss of Newton's life, her love and support, mental anguish, grief, shock, sorrow, emotional distress, incurred funeral expenses and loss of Newton's financial support.

FOR A THIRD CAUSE OF ACTION
False Imprisonment against All Defendants
(South Carolina Tort Claims Act)
(Survival and Wrongful Death)

106. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is incorporated by reference as if repeated verbatim herein.

107. Defendants intentionally restrained Mrs. Newton in a prisoner transport van cage compartment and, further, failed to have keys to unlock the padlock on the grate between the small and large cage compartments with the keys to the van.

108. Defendants' restraint of Mrs. Newton was unlawful as it was not pursuant to any court order or process and she was a health patient and not a criminal or prisoner.

109. Defendants deprived Mrs. Newton of her liberty without justification, proximately resulting in damages suffered during the transport and entrapment, and ultimately resulting in her death by drowning.

FOR A FOURTH CAUSE OF ACTION
Negligence and Gross Negligence as to All Defendants
(South Carolina Tort Claims Act)
(Survival and Wrongful Death)

110. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is incorporated by reference as if repeated verbatim herein.

111. Defendants undertook to transport Newton and owed her a duty to provide safe and constitutional transportation.

112. Defendants intentionally and consciously failed to do what it is incumbent upon them to do in transporting Newton and intentionally acted as they ought not to in violating her constitutional rights and willfully and wantonly disregarding her safety. Defendants failed to exercise slight care in the transportation of Newton and failed to use the care necessary under the circumstances.

113. Defendants breached their duties by the negligently and grossly negligent conduct described herein.

114. As a direct and proximate result of the negligent, grossly negligent, willful and wanton conduct of Defendants, Plaintiff suffered the injuries and damages described herein, including the following:

- a. Violation of Newton's constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution to be free from unreasonable seizure of her person and deprivation of her life and liberty without due process;
- b. Loss of Newton's physical liberty;
- c. Newton's conscious physical pain and suffering, mental anguish, emotional trauma and suffering;
- d. Death of Wendy Newton and loss of her life to her statutory beneficiaries as well as their grief, shock sorrow, loss of companionship, loss of Newton's financial support, funeral expenses and wounded feelings, and all damages described herein.

PRAYER

115. WHEREFORE, Plaintiffs pray that the Court enter judgment against the Defendants, jointly and severally, and award them:

- a. Actual and consequential damages to compensate the estate for pain, suffering, mental anguish, fear, apprehension, indignity, and death, and the statutory beneficiaries for grief, shock, sorrow, wounded feelings, loss of companionship, emotional distress, pecuniary loss in funeral expenses, and loss of the deceased's financial support;
- b. Punitive damages;
- c. Attorneys' fees and costs, including those recoverable under 42 U.S.C. § 1988; and
- d. Such further relief as the Court deems just and proper.

THE BRITTAIN LAW FIRM, P.A.

s/Thomas C. Brittain

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