

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG

MARY BEARD PETERSON,)
Administrator of the Estate of)
Clarence Lightfoot Beard, Jr., deceased,)
and Personal Representative for his statutory)
beneficiaries under § 8.01-50 *et seq.*)

Plaintiff,)

v.)

Case No. _____

Michael B. Eagle, Individually)

and)

Michael A. Huntsman, Individually)

and)

Charles T. Davis, Individually)

and)

Timothy C. Clements, Individually)

and)

Jerry R. Mayberry, Individually)

and)

Thomas B. Lawton, Individually)

and)

Christopher S. Bradner, Individually)

and)

John Does, Individually,)

Defendants.)

COMPLAINT

PARTIES

1. Plaintiff, Mary Beard Peterson is the sister of Clarence Lightfoot Beard, Jr., who is deceased.

2. Ms. Peterson qualified in the Circuit Court Clerk's Office of the City of Lynchburg as Administrator of the Estate of Clarence Lightfoot Beard, Jr. and as personal representative for Mr. Beard's statutory beneficiaries under § 8.01-50 *et seq.* Acting in these capacities, Ms. Peterson asserts claims on behalf of the decedent, Clarence Lightfoot Beard, Jr. under Virginia Code § 8.01-25, and a wrongful death claim against the defendants on behalf of the decedent's beneficiaries under Virginia Code § 8.01-50 *et seq.* Mary Beard Peterson and Samuel Beard, the decedent's brother, are the decedent's sole heirs at law and his statutory beneficiaries.

3. All individual Defendants were employees of the City of Lynchburg Police Department as police officers at the time of the actions complained of herein.

4. Defendants John Does, whom Plaintiff sues in their individual capacity, were police officers in the City of Lynchburg Police Department at the time of the actions complained of herein. Upon information and belief, each of them is individually liable for the death of Mr. Beard, as alleged herein. Plaintiff sues the John Does by fictitious name and will seek leave to amend this Complaint to add their names when their identities have been ascertained.

FACTS

5. Clarence L. Beard, Jr. ("Beard") was a forty-six (46) year old African-American resident of the City of Lynchburg, Virginia with no known criminal record. He had been a resident of Lynchburg since 2002 and resided in Apartment 111 of the James Crossing

Apartment complex ("James Crossing") in the Jackson Heights area of the City of Lynchburg, Virginia.

6. On or about the early morning of September 23 or 24, 2006, Mr. Beard was at his residence at Apartment 111 of James Crossing. He had spent the late hours of the evening and early morning cleaning his carpets in preparation for a periodic inspection of the apartment when he heard a knock on his apartment door.

7. In the apartment with him was Betty Jennings, a transient, older lady that Mr. Beard let stay in Apartment 111 when she needed a place to stay. Ms. Jennings was sleeping on the loveseat in the living room. Also in the apartment was Symone Rose, the sixteen (16) year old daughter of Mr. Beard's fiancée, Roxanne Rose-Brown. Symone Rose was in one of the two apartment bedrooms asleep with her two young nephews on the relevant date and time herein.

8. The events leading to Mr. Beard's death began with a search for a female in James Crossing. The Lynchburg Police Department was seeking to arrest Vivian Carthorne on outstanding warrants for petit larceny and misdemeanor assault and battery.

9. James Crossing security officer David Love ("Love") called 911, and his call was answered by Lynchburg Communications ("Lyncom"). Love incorrectly informed Lyncom that Vivian "Wendy" Carthorne was in Apartment 111, when she was not present in Apartment 111.

10. Apartment 111 was Mr. Beard's apartment, not Vivian Carthorne's apartment. Ms. Carthorne's apartment was next door to Mr. Beard's apartment where she lived with a man named Reuben Johnson.

11. Lynchburg Police Department Officers Michael A. Huntsman ("Huntsman") and Michael B. Eagle ("Eagle") responded to a call they had received from Lyncom dispatching them to James Crossing to arrest Vivian Carthorne on the outstanding warrants.

12. At the time, Huntsman and Eagle were young white male officers, each with approximately twenty (20) months of law enforcement experience.

13. Huntsman and Eagle arrived at Mr. Beard's apartment, knocked on the door, and informed Mr. Beard that they were searching for Ms. Carthorne. Mr. Beard informed the two officers that Ms. Carthorne was not in his apartment.

14. The officers had no search warrant for Mr. Beard's apartment and no arrest warrant for Mr. Beard or anyone else in Apartment 111 that night. There were no exigent circumstances to allow the police officers to perform a search of Mr. Beard's apartment absent his consent.

15. Eagle and Huntsman mentioned the name "Reuben" to Mr. Beard. Mr. Beard replied that there was no Reuben residing there, and that this was his (Mr. Beard's) apartment. Nevertheless, Eagle asked whether they could look around Mr. Beard's apartment for Vivian Carthorne and Mr. Beard consented for them to do so.

16. After Eagle determined that Ms. Jennings was not Vivian Carthorne, he searched the kitchen and a closet in the kitchen area while Mr. Beard remained sitting on a couch.

17. Eagle finished searching the kitchen and proceeded down the hallway towards the bedrooms and bathroom. Mr. Beard did not attempt to stop him. Instead, Mr. Beard picked up a dirty dish from the table and took it to the kitchen.

18. Huntsman followed Mr. Beard to the kitchen and told him to sit down in the living room. Mr. Beard left the kitchen.

19. Huntsman stayed in the kitchen and began searching under plates in the kitchen sink. He claims to have found a small baggie containing 0.02 ounces of marijuana located under the plates in the sink. Instead of telling his partner Eagle or Mr. Beard that he found marijuana,

Huntsman grabbed the baggie and put it in his pocket. Upon information and belief, Huntsman made no mention of his alleged discovery until after Mr. Beard had died.

20. This alleged search by Huntsman in the kitchen was unconstitutional and violated Mr. Beard's constitutionally protected rights.

21. Eagle claims that he had just looked into the room where Symone Rose and her two young nephews were sleeping when Mr. Beard came quickly past him in the small hallway from the kitchen, turned and faced him, and said something that he could not understand.

22. Eagle did not ask Mr. Beard to repeat what he had said. Instead, he told Mr. Beard to hold up and asked him what he was doing. Eagle claims that Mr. Beard used his forearm to make physical contact with Eagle's chest.

23. Despite claiming that he did not hear Mr. Beard's statement, Eagle knew from Mr. Beard's physical actions that Mr. Beard was trying to keep him from going into the bedroom.

24. Mr. Beard's physical actions indicate that he was revoking his consent for the officers' warrantless search. Mr. Beard had a constitutional right to revoke his consent to the warrantless search, including by physical actions.

25. Eagle did not attempt to arrest Mr. Beard or inform him that he was under arrest at the time of the alleged contact. Instead, Eagle resumed his questioning by again asking Mr. Beard what he was doing, despite knowing that Mr. Beard's action was to keep him from going into the bedroom.

26. Mr. Beard made no threatening actions, gestures, or statements to any of the officers.

27. Mr. Beard was not armed.

28. Mr. Beard was not intoxicated or under the influence of any illegal substances.

29. The officers had no probable cause or reasonable suspicion to believe that Mr. Beard had committed a crime or posed any immediate danger and possessed no validly lawful reason to arrest or otherwise seize and restrain Mr. Beard.

30. At no time did Eagle or any other defendant officer inform Mr. Beard that he was under arrest or the reason(s) for an arrest.

31. Without letting Mr. Beard know that he was under arrest or the reason for such an arrest, Eagle all of a sudden seized Mr. Beard. He grabbed him from behind and climbed onto Mr. Beard's back until Mr. Beard lost his balance and both fell into the kitchen table. When they got up, they both fell through the coffee table before continuing to struggle on Ms. Jennings' lap as she remained seated on the loveseat.

32. During the alleged struggle with Mr. Beard, Eagle delivered at least five (5) punches to the right side of Mr. Beard's head with his closed fist. Eagle was "yanking" on Mr. Beard's arms and slammed him against the wall with such force that blood spattered from Mr. Beard's nose on the wall.

33. Huntsman also hit Mr. Beard with a number of punches, pulled on his legs, and sprayed Mr. Beard with Capstun pepper spray. Upon information and belief, the Capstun pepper spray canister was empty when investigators retrieved it.

34. Throughout the altercation, Mr. Beard continued to yell at the police officers asking them "*What are you doing, what are you doing?*" He also continually yelled, "*You got the wrong man.*" Eagle and Huntsman heard these statements.

35. Symone Rose was awakened when she heard a thump. She got up from her bed, walked around the corner into the living room, and was overcome with pepper spray. When she

saw the Eagle and Huntsman beating Mr. Beard she yelled, "*Why y'all beating on him like that?*" The officers responded by cursing at the sixteen (16) year-old Symone Rose.

36. As the officers continued to deliver punches to Mr. Beard, Symone Rose asked Mr. Beard what happened. Mr. Beard yelled back, "*I don't know Symone, tell them that I'm Clarence. I'm Clarence Beard, they got the wrong man.*"

37. After Huntsman and Eagle got handcuffs on Mr. Beard they radioed for backup. Lynchburg Police Department Officers C.T. Davis ("Davis"), T.C. Clements ("Clements"), and J.R. Mayberry ("Mayberry"), the shift supervisor, arrived in the apartment.

38. Defendant Clements, Davis, and Mayberry joined in the struggle with Mr. Beard and grabbed and physically restrained Mr. Beard as they placed "flex cuffs" on Mr. Beard's legs. As shift supervisor, Mayberry was supposed to have leg shackles in the trunk of his car, but did not have the leg shackles.

39. In the process of placing flex cuffs on Mr. Beard's legs, Eagle got back onto the couch, crawled over and put his knee in Mr. Beard's back until other officers directed him to "go on and get off the couch."

40. After Mr. Beard was restrained with handcuffs and flex cuffs on his legs in a "hog-tie" fashion, Huntsman, Clements, Davis and James Crossing security officer Adam Krawczyk ("Krawczyk") carried Mr. Beard out of the apartment and Building 836 at approximately 3:26 a.m. They carried him face down from the apartment.

41. As Huntsman, Clements, Davis and James Crossing security officer Krawczyk carried Mr. Beard out of the apartment they noticed that Mr. Beard jerked and kicked, but that he said nothing and made no sounds, unlike his prior verbalizations. The officers could not see Mr. Beard's face as they carried him face down.

42. Upon information and belief, Mr. Beard suffered a rhythm disturbance of his heart, which ultimately proved fatal.

43. The officers laid Mr. Beard face down on the ground on his chest with his hands and legs restrained behind him. Defendants Eagle, Huntsman, Clements, Davis, Mayberry, Lawton, Bradner, and John Does congregated around Mr. Beard's body or were otherwise nearby, but failed to check his vital signs, and failed to determine if Mr. Beard needed medical attention or any other form of assistance necessary for his health and safety, and failed to provide necessary basic medical attention which they were trained to provide. They also did not perform a standard search incident to arrest at this time.

44. A crowd gathered outside of the apartment building near where Mr. Beard's body lay face down. After Mr. Beard was brought out of Building 836, an unidentified female bystander noticed that Mr. Beard was not breathing and needed immediate attention. She reported this to Defendant John Doe who was providing crowd control.

45. After Defendant John Doe failed to respond to her pleas for the police to help Mr. Beard, the female bystander began a loud series of pleas directed to the police officers on the scene. These officers included Eagle, Huntsman, Clements, Davis, Mayberry, Lawton, Bradner, and other John Does. Her pleas that Mr. Beard was in distress and needed care included:

"How come that man ain't breathing? ... How come I don't see his back moving?
... I still don't see his stomach moving, I swear to God that main ain't breathing ...
Please attend to him, he still ain't moving his stomach or chest ... Just check
him."

46. As Mr. Beard lay face down on the ground in medical distress, and despite the pleas from the female bystander to assist Mr. Beard, Defendants Eagle, Huntsman, Clements, Davis, Mayberry, Lawton, Bradner, and John Does, refused or otherwise failed to determine if

Mr. Beard needed medical attention or any other form of assistance necessary for his health and safety and failed to provide necessary and basic medical care that they were trained to provide.

47. Upon information and belief, approximately four minutes after Mr. Beard was taken out of the building, and approximately two and one half minutes after individuals in the crowd asked the police to check Mr. Beard because he was not breathing, one police officer finally rolled Mr. Beard over to perform a search incident to arrest and found that Mr. Beard had no pulse, was not breathing, and was unresponsive.

48. Emergency medical services was contacted and told to expedite their arrival.

49. Mr. Beard suffered bodily injuries as a result of the aforementioned circumstances, including without limitation, a rhythm disturbance of his heart, a two inch long abrasion on the right forehead, and two bruises approximately two inches in diameter on right forehead.

50. When emergency medical services arrived at the hospital with Mr. Beard, Mr. Beard was pronounced dead.

51. The Office of the Chief Medical Examiner for the Western District of Virginia attributed Mr. Beard's death to a fatal rhythm disturbance of Mr. Beard's heart. While the medical examiner found that Mr. Beard suffered from heart disease, the medical examiner noted that physical exertion was a contributing cause of the fatal rhythm disturbance of the heart.

COUNT I
ASSAULT

(Defendants Eagle, Huntsman, Clements, Davis, and Mayberry)

52. The allegations of all preceding numbered paragraphs are repeated and realleged as if fully set forth herein.

53. Plaintiff asserts this claim under Virginia Code § 8.01-25.

54. Under the circumstances set forth above, Defendants Eagle, Huntsman, Clements, Davis, and Mayberry, without legal excuse, committed threatening acts that put Mr. Beard in reasonable fear of imminent physical injury.

55. Such acts were intended to cause either harmful or offensive contact with Mr. Beard or his apprehension of such contact, and created in Mr. Beard's mind a reasonable apprehension of an imminent battery.

56. The attempted arrest of Mr. Beard was an unlawful arrest and any threatening acts and force used in making the arrest constituted assault upon Mr. Beard.

57. Alternatively, even if the arrest has been a lawful, the amount of the threatening acts and force used by Defendants Eagle, Huntsman, Clements, Davis, and Mayberry was unreasonable and excessive and constituted assault.

58. Defendants Eagle, Huntsman, Clements, Davis, and Mayberry failed to act reasonably and justifiably under the circumstances and encouraged each other in their assault.

59. Mr. Beard had the legal right to resist the defendants' unlawful arrest with such reasonable force as was necessary to repel the unwarranted undertaking of the defendants, and such force did not constitute assault or battery.

60. The assault was a proximate cause of the rhythm disturbance of Mr. Beard's heart.

61. Defendants Eagle, Huntsman, Davis, Clements, and Mayberry are liable to Plaintiff for the compensatory damages caused by their assault of Mr. Beard, such damages to include compensation for the physical injuries the officers caused Mr. Beard to suffer, their effect on his health, the physical pain and mental anguish Mr. Beard suffered, the insulting character of the injury, and any shame, humiliation, embarrassment, and indignity he suffered.

62. In the assault of Mr. Beard, Defendants Eagle, Huntsman, Davis, Clements, and Mayberry acted with actual malice toward Mr. Beard or acted willfully and wantonly with a conscious disregard of Mr. Beard's rights and safety.

63. Defendants Eagle, Huntsman, Davis, Clements, and Mayberry are liable to Plaintiff for punitive damages for their assault of Mr. Beard.

COUNT II
BATTERY

(Defendants Eagle, Huntsman, Clements, Davis, and Mayberry)

64. The allegations of all preceding numbered paragraphs are repeated and realleged as if fully set forth herein.

65. Plaintiff asserts this claim under Virginia Code § 8.01-25.

66. Under the circumstances set forth above, Defendants Eagle, Huntsman, Davis, Clements, and Mayberry committed intentional and unwanted touchings of Mr. Beard without justification, excuse, or the consent of Mr. Beard.

67. The attempted arrest of Mr. Beard was an unlawful arrest and any force used in making the arrest constituted battery upon Mr. Beard.

68. Alternatively, even if the arrest had been lawful, the amount of the force used by Defendants Eagle, Huntsman, Clements, Davis, and Mayberry was unreasonable and excessive and constituted battery.

69. Defendants Eagle, Huntsman, Clements, Davis, and Mayberry failed to act reasonably and justifiably under the circumstances and encouraged each other in their battery of Mr. Beard.

70. Mr. Beard had the legal right to resist the defendants' unlawful arrest with such reasonable force as was necessary to repel the unwarranted undertaking of the defendants, and such force did not constitute assault or battery.

71. The battery was a proximate cause of the rhythm disturbance of Mr. Beard's heart and Mr. Beard's other bodily injuries.

72. Defendants Eagle, Huntsman, Davis, Clements, and Mayberry are liable to Plaintiff for the compensatory damages caused by their battery of Mr. Beard, such damages to include compensation for the physical injuries the officers caused Mr. Beard to suffer, their effect on his health, the physical pain and mental anguish Mr. Beard suffered, the insulting character of the injury, and any shame, humiliation, embarrassment, and indignity he suffered.

73. In the battery of Mr. Beard, Defendants Eagle, Huntsman, Davis, Clements, and Mayberry acted with actual malice toward Mr. Beard and acted willfully and wantonly with a conscious disregard of Mr. Beard's rights and safety.

74. Defendants Eagle, Huntsman, Davis, Clements, and Mayberry are liable to Plaintiff for punitive damages for their battery of Mr. Beard.

COUNT III
FALSE ARREST AND IMPRISONMENT
(Defendants Eagle, Huntsman, Clements, Davis, and Mayberry)

75. The allegations of all preceding numbered paragraphs are repeated and realleged as if fully set forth herein.

76. Plaintiff asserts this claim under Virginia Code § 8.01-25.

77. Under the circumstances set forth above, Defendants Eagle, Huntsman, Clements, Davis, and Mayberry intentionally and unlawfully seized Mr. Beard and restricted his freedom of movement without legal right, amounting to false arrest and imprisonment.

78. The false imprisonment resulted from the intentional use of force, words, and acts which Mr. Beard could not ignore and to which he was physically forced to submit.

79. The attempted arrest of Mr. Beard was an unlawful arrest and the officers had no probable cause or reasonable grounds or suspicion to arrest or restrain Mr. Beard.

80. Defendants failed to act in good faith and upon reasonable belief in the validity and legality of the seizure, restraint, and arrest of Mr. Beard.

81. In the false arrest and false imprisonment of Mr. Beard, Defendants Eagle, Huntsman, Davis, Clements, and Mayberry acted with actual malice toward Mr. Beard or acted willfully and wantonly with a conscious disregard of Mr. Beard's rights and safety.

82. Defendants Eagle, Huntsman, Davis, Clements, Mayberry are liable to Plaintiff for the false arrest and false imprisonment of Mr. Beard in compensatory and punitive damages.

COUNT IV
WILLFUL AND WANTON CONDUCT/ GROSS NEGLIGENCE
(Defendants Eagle, Huntsman, Clements, Davis, and Mayberry)

83. The allegations of all preceding numbered paragraphs are repeated and realleged as if fully set forth herein.

84. Defendants Eagle, Huntsman, Clements, Davis, and Mayberry had a duty to safeguard and preserve Mr. Beard's life and health.

85. Under the circumstances set forth above, the attempted arrest of Mr. Beard was an unlawful arrest and Defendants Eagle, Huntsman, Clements, Davis, and Mayberry breached their duty owed to Mr. Beard as the amount of force they used was unreasonable, excessive, and not justifiable.

86. Under the circumstances set forth above, Defendants Eagle, Huntsman, Clements, Davis, and Mayberry acted with actual malice toward Mr. Beard and acted willfully and wantonly with a conscious disregard of Mr. Beard's rights and safety.

87. In the alternative, if it is deemed that Defendants Eagle, Huntsman, Clements, Davis, and Mayberry did not act in a willful and wanton manner, these Defendants were nevertheless grossly negligent in their actions by showing such indifference to Mr. Beard that constituted an utter disregard of caution amounting to a complete neglect of the safety of Mr. Beard.

88. The aforementioned acts of the defendants in Apartment 111 were a proximate cause of Mr. Beard's physical injuries.

89. Defendants Eagle, Huntsman, Davis, Clements, and Mayberry are liable to Plaintiff for the compensatory damages caused by their conduct, such damages to include compensation for the physical injuries the officers caused Mr. Beard to suffer and their effect on his health, the physical pain and mental anguish Mr. Beard suffered, the insulting character of the injury, and any shame, humiliation, embarrassment, and indignity he suffered.

90. Defendants Eagle, Huntsman, Davis, Clements, and Mayberry are liable to Plaintiff for punitive damages for their actions.

COUNT V
WILLFUL WANTON CONDUCT/ GROSS NEGLIGENCE RESULTING IN
THE WRONGFUL DEATH OF CLARENCE L. BEARD, JR.
(Defendants Eagle, Huntsman, Clements, Davis, Mayberry, Lawton, Bradner, and John Does)

91. The allegations of all preceding numbered paragraphs are repeated and realleged as if fully set forth herein.

92. Defendants Eagle, Huntsman, Clements, Davis, Mayberry, Lawton, Bradner, and John Does had a duty to safeguard and preserve life and health, including that of Mr. Beard.

93. This duty remained with Defendants while Mr. Beard was in their custody and care including while he was physically restrained in handcuffs and leg restraints and placed face down on his chest on the ground.

94. Defendants Eagle, Huntsman, Clements, Davis, Mayberry, Lawton, Bradner, and John Does knew or should have known from the surrounding circumstances, including the pleas of bystanders, that Mr. Beard needed immediate medical assistance while in their custody and care.

95. Defendants Eagle, Huntsman, Clements, Davis, Mayberry, Lawton, Bradner, and John Does breached their duty to Mr. Beard by failing to check his vital signs, failing to determine if Mr. Beard needed medical attention or any other form of assistance necessary for his health and safety, and failing to provide necessary basic medical attention which they were trained to provide.

96. Defendants Eagle, Huntsman, Clements, Davis, and Mayberry acted with actual malice toward Mr. Beard or acted willfully and wantonly with a conscious disregard of Mr. Beard's rights and safety.

97. In the alternative, if it is deemed that Defendants Eagle, Huntsman, Clements, Davis, and Mayberry did not act in a willful and wanton manner, these Defendants were grossly negligent in their actions by showing such indifference to Mr. Beard that constituted an utter disregard of caution amounting to a complete neglect of the safety of Mr. Beard.

98. The conduct of Defendants Eagle, Huntsman, Clements, Davis, Mayberry, Lawton, Bradner, and John Does of failing to render necessary medical care to Mr. Beard while he was in police custody and care was the proximate cause of Mr. Beard's death.

99. Defendants Eagle, Huntsman, Davis, Clements, and Mayberry are liable to Plaintiff for the compensatory damages caused by their conduct, such damages including:

- a) Sorrow, mental anguish, and loss of solace suffered by the beneficiaries, including society, companionship, comfort, guidance, kindly offices, and advice of the decedent;
- b) any reasonably expected loss of services, protection, care, and assistance which the decedent provided to the beneficiaries;
- c) any expenses for the final care, treatment, and hospitalization of the decedent incident to the injuries resulting in his death; and
- d) reasonable funeral expenses.

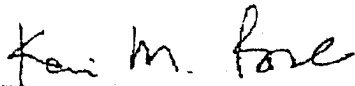
100. Defendants Eagle, Huntsman, Clements, Davis, Mayberry, Lawton, Bradner, and John Does are liable to Plaintiff for punitive damages for the wrongful death of Mr. Beard.

WHEREFORE, Plaintiff, Mary Beard Peterson, by counsel, prays that judgment be entered in her favor on Counts I, II, III, and IV against Defendants Eagle, Huntsman, Clements, Davis, and Mayberry, jointly and severally, in the amount of Five Million Dollars (\$5,000,000.00) in compensatory damages, or such lesser amount as the jury deems just and proper, plus prejudgment and post-judgment interest thereon, as well as One Million Five Hundred Thousand Dollars in punitive damages (\$1,500,000.00), plus prejudgment and post-judgment interest thereon, plus her costs incurred herein. Plaintiff further prays that judgment be entered in her favor on Count V against Defendants Eagle, Huntsman, Clements, Davis, Mayberry, Lawton, Bradner, and John Does, jointly and severally, in the amount of Five Million Dollars (\$5,000,000.00) in compensatory damages, or such lesser amount as the jury deems just and proper, plus prejudgment and post-judgment interest thereon, as well as One Million Dollars

in punitive damages (\$1,000,000.00), plus prejudgment and post-judgment interest thereon, plus her costs incurred herein

TRIAL BY JURY IS DEMANDED.

MARY BEARD PETERSON
By Counsel



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