

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

REED COLLAR AND BONNIE COLLAR,
PARENTS OF GILBERT COLLAR,
A DECEASED MINOR,

Plaintiffs,

v.

UNIVERSITY OF SOUTH ALABAMA;
TREVIS AUSTIN; ZEKE AULL; FICTITIOUS PARTIES
A THROUGH L, WHOSE IDENTITIES ARE
PRESENTLY UNKNOWN; AND FICTITIOUS
PARTIES M THROUGH Z, WHOSE IDENTITIES
ARE PRESENTLY UNKNOWN,

Defendants.

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CIVIL ACTION NO. _____

PLAINTIFFS DEMAND
TRIAL BY STRUCK JURY

COMPLAINT

Parties

1. Plaintiffs Reed Collar and Bonnie Collar are residents of Elmore County, Alabama. They are husband and wife, and they are the parents of Gilbert Collar, deceased. At the time of his death, Gilbert Collar was a minor and was a freshman enrolled at the University of South Alabama in Mobile County, Alabama. The Plaintiffs bring this action pursuant to Code of Alabama § 6-5-391 (1975).

2. The University of South Alabama is a State Educational Institution, with its headquarters in Mobile County, Alabama. The University of South Alabama may be served at: Office of the President, University of South Alabama, 307 University Boulevard North, Room 130, Mobile, Alabama 36688. Additional service will be made upon the Attorney General of the State of Alabama, Honorable Luther Strange, 501 Washington Avenue, Montgomery, Alabama 36104.

3. Trevis Austin is a resident of Mobile County, Alabama. He is a police officer, employed by the University of South Alabama Police Department. Trevis Austin may be served through his attorney: Michael E. Upchurch, Frazer, Greene, Upchurch & Baker, LLC; 104 Saint Francis Street, Mobile, Alabama 36602. By agreement, the Complaint will be served upon counsel for Trevis Austin via certified mail. Pursuant to Rule 4(h), A.R.Civ.P., this Defendant, through counsel, has agreed to waive formal service of process.

4. Chief Aull is a resident of Mobile County, Alabama. He is the police chief for the University of South Alabama Police Department. Chief Aull may be served through his attorney: Michael E. Upchurch, Frazer, Greene, Upchurch & Baker, LLC; 104 Saint Francis Street, Mobile, Alabama 36602. By agreement, the Complaint will be served upon counsel for Chief Aull via certified mail. Pursuant to Rule 4(h), A.R.Civ.P., this Defendant, through counsel, has agreed to waive formal service of process.

5. Fictitious Parties A through L are those persons, entities or parties who were responsible for providing appropriate training to the University of South Alabama, were responsible for procuring, purchasing and supplying appropriate gear and weapons to the police officers at the University of South Alabama, and/or were responsible for ensuring that the police officers employed by the University of South Alabama understood the appropriate force to use in effectuating an arrest. The identities of Fictitious Parties A through L are currently unknown to the Plaintiffs.

6. Fictitious Parties M through Z are those persons are those persons, entities or parties who participated in causing injury and death to Gilbert Collar. The identities of Fictitious Parties M through Z are currently unknown to the Plaintiffs.

Statement of Facts

7. During the summer of 2012, Reed Collar and Bonnie Collar enrolled their minor son, Gilbert Collar, as a student at the University of South Alabama. During the enrollment process, Chief Aull assured the Collars and other parents of incoming freshmen that the University of South Alabama was a safe campus and assured the parents and students that the police were there to assist the students and to protect them.

8. Gilbert Collar enrolled in classes at the University of South Alabama in August 2012 and became active in student life. He had many friends who were students and made many new friends after his enrollment at the University of South Alabama.

9. On the evening of October 5, 2012, Gilbert Collar and other students of University of South Alabama attended an off-campus event known as Bayfest. Following the events at Bayfest, Gilbert Collar and the other students returned to the campus of University of South Alabama.

10. During the early hours of October 6, 2012, at approximately 1 o'clock in the morning, Gilbert Collar and other students were standing around talking outside a dormitory at the University of South Alabama. At some point while they were talking, Gilbert Collar was given a substance that is believed to have included illegal drugs.

11. Gilbert Collar had a sudden and immediate reaction to the substance he ingested. The reaction caused him either to become extremely hot or to believe that he was very hot. Gilbert Collar lost the ability to fully understand his actions and to reason. As a result, Gilbert Collar took off his clothes and began running into and out of traffic on the campus of the University of South Alabama.

12. Gilbert Collar, likely in search of help, went to the University of South Alabama police station. Gilbert Collar, completely unclothed, began hitting on the window of the police station. Gilbert Collar began walking away from the building, but returned to the police station and began hitting on the door of the police station. Then Gilbert Collar walked away from the building a second time.

13. During this time, Officer Austin, who was on duty, and a dispatcher, whose name and identity is currently unknown, were inside the police station. Other officers were in the vicinity of the station in their police cars.

14. At the time, Gilbert Collar's actions were being captured by a video camera outside the police station and were being broadcast to a monitor inside the station. Windows beside the door and on the side of the police station provided a clear view for those inside the building about any events that were occurring outside the building as well.

15. Officer Austin, who had been a police officer with the University of South Alabama for four years, with full knowledge that an unarmed and unclothed teenage boy was outside the police station, exited the police station from the same door that had been hit by Gilbert Collar. Officer Austin exited the police station with his weapon drawn, prepared to use the most extreme form of force available, which would potentially include shooting and killing an unarmed teenager.

16. Upon exiting the building, Officer Austin called after Gilbert Collar. The youngster returned toward the police station, and immediately began acting in an erratic manner.

17. Officer Austin began backing up and Gilbert Collar continued to move toward him, crouching down, jumping up and bounding around. Officer Austin, knew, or reasonably should have known, that Gilbert Collar was irrational for some reason, and was acting in an emotionally unstable manner.

18. Officer Austin had to know at the time that Gilbert Collar, who weighed about 140 pounds, was unarmed.

19. Officer Austin had on his person during these events less lethal means to control the situation and to effectuate an arrest, including a baton and pepper spray. He also was five inches taller than Gilbert Collar and weighed about 50 pounds more than the youngster.

20. At no point during the ensuing moments did Gilbert Collar ever touch Officer Austin. On one or more occasions, Gilbert Collar went to the ground and put distance between himself and Officer Austin.

21. Officer Austin had ample opportunity to obtain his baton and pepper spray, to holster his weapon and to use his own physical abilities, if necessary, or to prolong the situation and wait for back up to arrive.

22. During the unfolding events, the dispatcher, who was larger in stature than either Officer Austin or Gilbert Collar, exited the building. Rather than attempting to assist Officer Austin, the dispatcher returned to the building.

23. When Gilbert Collar was a few feet from Officer Austin, and for unexplainable reasons, Officer Austin shot Gilbert Collar. After being shot, Gilbert Collar rose to his feet and walked a short distance before he fell to the ground for the last time and died.

24. Literally seconds after Officer Austin fired the fatal shot, other police officers arrived at the station and were prepared to assist to control the situation and arrest Gilbert Collar, if necessary.

25. Even though Officer Austin had at his disposal less lethal means of force, namely, his physical ability, a baton and pepper spray, he was not provided with the option of a taser, a weapon known to be effective for controlling subjects who are acting irrationally for some reason.

26. Defendants Chief Zeke Aull, the University of South Alabama, and others, including Fictitious Parties A through L, failed to provide a taser, a non-lethal weapon to its police officers, including Officer Austin.

COUNT ONE

REQUEST FOR INJUNCTIVE AND EQUITABLE RELIEF

27. Plaintiffs adopt and restate paragraphs 1 through 26 above as if fully set forth herein.

28. Police departments on university campuses throughout the State of Alabama require their police officers to attend an approved police academy and receive, at least, minimum standards training from an accredited peace officer training facility. After completion of an accredited police academy, the individual police departments are required to provide follow-up and continued training to its officers.

29. Parents who entrust their children to the universities throughout our state, including the University of South Alabama, are entitled to expect that police officers on campus

have adequate training and equipment to perform their jobs in a manner that reduces the risks of injury and death to the students and others.

30. The University of South Alabama is required by law to take all meaningful measures to ensure that its police officers have adequate training, including how to effectuate a lawful arrest or to restrain a person.

31. The University of South Alabama is also required by law to provide adequate equipment to its police officers to ensure that they can perform their jobs in a manner to effectuate lawful arrests.

32. Chief Aull, in his capacity as the chief of police of the University of South Alabama Police Department, is required to ensure that the campus police officers are adequately trained and equipped to carry out their duties as police officers.

33. The University of South Alabama and Chief Aull failed to provide adequate training to Officer Austin and also failed to provide him with a taser.

34. Pursuant to well-established Alabama law, it is essential that police officers employed by the University of South Alabama receive adequate training and are provided appropriate equipment in order to ensure that students and other persons are not seriously injured or killed by police officers employed by the University of South Alabama.

35. Injunctive relief is needed so that no others will be shot or killed on the campus of the University of South Alabama by officers using excessive force. Immediate and irreparable injury will occur without injunctive relief. The failure of the Court to issue injunctive relief could result in imminent and irreparable injury and harm to others. The benefit to the public greatly exceeds the burden to the State by issuance of the sought-after relief.

WHEREFORE, Plaintiffs request that this Court enter an Order for injunctive relief as follows:

A. Requiring all police officers at the University of South Alabama to receive additional training on the means and methods to adequately control subjects utilizing the least restrictive and harmful means; and

B. Requiring the University of South Alabama and Chief Aull to provide all necessary equipment, including tasers, to the police officers at the University and to provide concomitant training on the safe and appropriate use of tasers.

C. Granting such other relief as may be necessary and appropriate.

COUNT TWO

36. Plaintiffs adopt and restate paragraphs 1 through 26 above as if fully set forth herein.

37. Police officers in the State of Alabama are empowered to enforce the laws of this State. In carrying out this responsibility, police officers are required to use the least means of force necessary to effectuate an arrest or to restrain a person. Police officers have a duty to ensure that they do not utilize any force greater than, or in excess of, the force required to arrest a subject they encounter who may be breaking the law or to restrain a person.

38. The policy of the University of South Alabama, in place during October 2012, required that the University's officers, including Officer Trevis Austin, "use force only in a lawful and justifiable manner." Further, the University's own policies provide that an officer may not employ "the unnecessary use of force" or "force in an excessive or unreasonable amount." Any

use of force in this manner is deemed to be “an unjustified use of force and violates [departmental] policy at the University of South Alabama.”

39. The policy of the University of South Alabama further requires the use of force to be measured from the standpoint of “resistance and control.” The policy directs that “resistance and control can be in the form of verbal directives or physical action.” The “level of physical force used by the officer” must be “‘necessary’ and not excessive when considering the type of resistance offered” by the person the officer encounters.

40. The University’s policy makes clear that levels of control should match the level of resistance, then move up or down as the resistance changes.

41. The levels of control for the officer should begin with verbal direction; then move to handcuffs and restraints; next move to empty hand control; followed by hard hand control (such as strikes and kicks); followed next by intermediate weapons (such as pepper spray and baton); and ending only when necessary with deadly force.

42. Deadly force should be used, pursuant to the University’s own policy, only when the amount of force demonstrated towards the officer or others “is likely to cause serious physical injury or death.”

43. Specifically, “It is the policy of the University of South Alabama Police Department to use deadly force only when:

- a. The officer reasonably believes that his life is in jeopardy and that deadly force is immediately necessary to preserve the officer’s life, or prevent serious bodily injury.
- b. The officer reasonably believes that the life of another is in jeopardy and that deadly force is immediately necessary to preserve that life, or prevent serious bodily injury.”

44. In order for deadly force to be used, pursuant to the University's own policy, the following elements must exist:

- a. The person intends to seriously injure or kill the officer or another person.
- b. The person is in range to seriously injure or kill the officer or another person.
- c. The person has the means to seriously injure or kill the officer or another person.

45. Each of the three conditions set out above must be present before the use of deadly force by an officer can be considered.

46. None of these conditions existed at any time on the date in question relating to any encounter referred to herein.

47. Pursuant to the University's own policy, officers are authorized to utilize "non-lethal weapons in a manner consistent with [the University policy] in the following instances:

- a. To defend against violent attack when the use of firearms would not be appropriate or advisable.
- b. To overcome the violent resistance of a suspect when making an arrest.
- c. To restrain a combative suspect who is already in custody.

48. Departmental policy at the University further requires that "only that force necessary to control or restrain a suspect or prisoner to defend against an assault may be used."

49. The means of force to be employed include the use of the following weapons:

- a. Police baton.
- b. Chemical Irritant, which is pepper spray.

50. Excessive force is clearly prohibited by the University's own policy, which provides that the use of excessive force by an officer can result in a criminal violation.

51. Excessive force is defined by Code of Alabama § 13A-3-23 (1975), and provides, in material respect:

“(a) A person is justified in using physical force upon another person in order to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he or she may use a degree of force which he or she reasonably believes to be necessary for the purpose. A person may use deadly physical force ... if the person reasonably believes that another person is:

(1) Using or about to use unlawful deadly physical force....”

52. As is abundantly clear from these policies and laws, where a subject is unarmed, and known to be unarmed, a police officer is required by law to use non-lethal force to effectuate an arrest of that person or to restrain him. That force should include non-lethal force such as verbal directives, physical strength, a baton, pepper spray or, where available, a taser.

53. On October 6, 2012, Officer Austin was armed with a 9 mm semi-automatic handgun, a baton, and pepper spray. He was not provided with a taser by the University of South Alabama or Chief Aull.

54. As stated above, Officer Austin exited the police station to confront the unarmed Gilbert Collar with his 9 mm weapon drawn and he immediately, without justification, pointed his weapon at Gilbert Collar.

55. Officer Austin knew, or reasonably should have known, prior to exiting the building that he was dealing with an unarmed teenager.

56. By exiting the building with his 9 mm weapon drawn, Officer Austin breached his duty to the general public, including Gilbert Collar, by failing to follow the standards established by his department's policy and by Alabama law.

57. Officer Austin used excessive force under the circumstances in dealing with Gilbert Collar on the date and time referred to herein.

58. Officer Austin breached his duty as a police officer owed to the general public, including Gilbert Collar, on the occasion complained of as follows:

- a. By drawing his 9 mm handgun when less lethal means of force would have allowed him to effectuate an arrest;
- b. By failing to use verbal and physical force to calm Gilbert Collar or to arrest Gilbert Collar, if necessary;
- c. By failing to solicit the aide and assistance of the dispatcher, who, in addition to Officer Austin were much larger in size and stature than Gilbert Collar;
- d. By failing to wait for back-up to arrive so that two or more officers could seek to effectuate an arrest of Gilbert Collar, if necessary; and
- e. By failing to resort to less lethal weapons, including pepper spray and his baton, which he had on his person at the time of his encounter outside the police station.
- f. By using excessive force.

59. As a direct and proximate consequence of Officer Austin's negligent use of excessive force and his violation of both policy and law as described above, Gilbert Collar, an unarmed student, was shot and killed.

COUNT THREE

60. Plaintiffs adopt and restate paragraphs 1 through 26 and 37 through 59 above as if fully set forth herein.

61. The University of South Alabama, Chief Aull, and those persons identified as Fictitious Parties A through L, whose identity is presently unknown, had a duty to adequately train police officers employed by the University, to ensure the officers employed by the University were adequately trained either through the University or by an approved police academy, and to ensure the officers were adequately and appropriately equipped with tasers.

62. The Defendants referred to above had a duty to ensure that Trevis Austin and other officers of the University of South Alabama were adequately trained on department policy and on the requirements of the Code of Alabama.

63. The University of South Alabama and Chief Aull negligently breached their duties to the general public, including Gilbert Collar, as follows:

a. By failing to provide adequate training to Officer Austin and its other police officers, namely, training that he, as a sworn officer, is not to use force greater than that necessary to effectuate an arrest and/or to use the least damaging or deadly means of force as the situation presents;

b. By failing to provide adequate training to Officer Austin and its other police officers to use physical and verbal means to control a subject who is under the influence of alcohol or drugs or who is mentally unstable, or, only when appropriate, to use his baton or pepper spray to control a situation, such as the one at issue in this case;

c. By failing to provide adequate training to Officer Austin and its other police officers to call for and wait for assistance from other officers, employees of the University or citizens in order to effectuate an arrest without the use of deadly force; and

d. By failing to provide Officer Austin and its other officers with tasers and with adequate training in the use and implementation of tasers to assist with arresting subjects who are under the influence of drugs or alcohol or who are mentally unstable.

64. The University of South Alabama, Chief Aull and Trevis Austin, alone or in concert, and/or in concert with Fictitious Parties A through L and Fictitious Parties M through Z,

whose identities are currently unknown, negligently acted or negligently failed to act, thereby creating circumstances which proximately caused the death of Gilbert Collar.

65. As a proximate consequence of the negligent failure of the University of South Alabama, Chief Aull, and Fictitious Parties A through L to provide adequate training and equipment to Trevis Austin, Gilbert Collar was shot and killed.

WHEREFORE, Reed Collar and Bonnie Collar, for and on behalf of their minor son, Gilbert Collar, demand judgment against Defendants University of South Alabama, Chief Aull, and Fictitious Parties A through L in such an amount of damages as a jury may award, together with their costs of this action.

COUNT FOUR

66. Plaintiffs adopt and restate paragraphs 1 through 26 and 61 through 65 above as if fully set forth herein.

67. Officer Austin, with full knowledge that Gilbert Collar was unarmed, used excessive deadly force, and in so doing acted willfully, beyond his authority, and/or under a mistaken interpretation of the existing laws that applied to his encounter with Gilbert Collar.

68. Officer Austin acted beyond his authority as a sworn police officer by failing to discharge his duties, pursuant to the specific and detailed rules and regulations, including the policies and procedures of his own department and the policies and procedures established by State law.

69. As a proximate consequence of Officer Austin's unlawful actions, as stated above, Gilbert Collar was shot and killed.

WHEREFORE, Reed Collar and Bonnie Collar, for and on behalf of their minor son, Gilbert Collar, demand judgment against Defendant Trevis Austin in such an amount of damages as a jury may award, together with their costs of this action.

COUNT FIVE

70. Plaintiffs adopt and restate paragraphs 1 through 26, 61 through 65, and 67 through 69 above as if fully set forth herein.

71. Fictitious Parties M through Z, whose identities are currently unknown, negligently caused the death of Gilbert Collar.

72. As a proximate consequence of the negligence of Fictitious Parties M through Z, Gilbert Collar was shot and killed.

WHEREFORE, Reed Collar and Bonnie Collar, for and on behalf of their minor son, Gilbert Collar, demand judgment against Fictitious Parties M through Z in such an amount of damages as a jury may award, together with their costs of this action

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