

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

<p>1. AUSTIN BOND, AS THE</p> <p>ADMINISTRATOR OF THE ESTATE</p> <p>OF TERENCE CRUTCHER, SR.,</p> <p style="text-align: center;">Plaintiff,</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>v.</p> <p>1. CITY OF TULSA, AND</p> <p>2. BETTY JO SHELBY,</p> <p style="text-align: center;">Defendants.</p>
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Case No. 17-CV-336-TCK-FHM

COMPLAINT

Plaintiff, Austin Bond, as the Administrator of the Estate of Terence T. Crutcher, Sr., Deceased, brings this action pursuant to 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments to the U.S. Constitution. For the two causes of action herein, Plaintiff alleges and states as follows:

STATEMENT OF THE CASE

Unarmed, non-violent, and non-threatening Terence Tafford Crutcher, Sr. (“Terence”) was shot and killed while his hands were up by Tulsa police officer Betty Jo Shelby (“Officer Shelby”).

NATURE OF THE CASE

The Fourth Amendment to the United States Constitution prohibits unreasonable seizures. In this case, Terence was unjustly seized when he was unnecessarily shot and killed without probable cause by Tulsa Police Department (“TPD”) Officer Shelby. According to the sworn testimony of Officer Shelby, her decision to use deadly force, which was excessive and unnecessary, resulted solely and exclusively from the training provided to her by the City of Tulsa (“City”). For years, the City’s training of TPD officers and its customs, patterns,

and practices of TPD are known to be deliberately indifferent to ensuring that the constitutional rights of City residents are properly respected and protected by TPD officers. This deliberate indifference is particularly true for the City's African-American population, which primarily resides in North Tulsa. As a result, it was the training, customs, and pattern and practices of TPD that directly caused the death of Terence.

Plaintiff understands and acknowledges that every day police officers risk their lives to uphold the law and keep our communities safe. Investigatory stops, arrests, and force - including, at times, deadly force - are all necessary tools used by TPD officers to do their jobs and protect their own safety and the safety of others. However, the realities of police work in Tulsa, Oklahoma did not constitute cause for Officer Shelby to become Terence's "judge, jury, and executioner." The dangers police officers generally face also do not provide a license to police officers to "shoot first and ask questions later," without properly evaluating the need for such force.

As with his life, Terence's constitutional and federal statutory rights mattered. Consequently, Plaintiff is seeking redress, actual damages, compensatory damages and punitive damages for the excessive force used against Terence, as prohibited by the Fourth Amendment to the U.S. Constitution; and the deprivation of equal protection under the law in violation of the Fourteenth Amendment to the U.S. Constitution.

JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343, which confers original jurisdiction on this Court over any civil action arising under

the Constitution, and the deprivation of Plaintiff's rights and privileges as a citizen of the United States.

2. Venue is proper in the Northern District of Oklahoma, pursuant to 28 U.S.C. § 1391, as all events described in this Complaint took place in the Northern District of Oklahoma, and all parties reside or are located within the Northern District of Oklahoma.

PARTIES

3. Plaintiff, as the Administrator of the Estate of Terence T. Crutcher, Sr., Deceased ("Estate"), is the proper party to bring this action to obtain relief for claims for wrongful death and civil rights violations that inure to the benefit of Terence's four minor children, who are Terence's heirs-at-law, pursuant to 42 U.S.C. § 1983.

4. Defendant City is a municipal corporation situated primarily in Tulsa County, Oklahoma.

5. Defendant, Officer Shelby, is an employee of the City working within TPD. At all times relevant to this matter, Officer Shelby was acting under color and authority of state law and within the scope of her employment.

THE UNNECESSARY SHOOTING OF TERENCE

6. On September 16, 2016, at approximately 7:25 p.m., after engaging in a pleasant and uplifting meeting with TCC Professors Michelle Ogan and Dr. Sharolyn Wallace, Terence left the Northeast Campus of Tulsa Community College, where he was enrolled as a student pursuing a degree in music. Only minutes later, at approximately 7:30 p.m., Terence's SUV was found running in the middle of 36th Street North, just east of North Lewis in Tulsa, by Officer Shelby.

7. According to Officer Shelby, she “cleared” the SUV by looking inside the driver’s side of the truck. Shortly afterwards, Terence and Officer Shelby engaged each other, but Officer Shelby did not know Terence’s name, background, or why he was on 36th Street North. As a result of Officer Shelby’s initial contact with Terence, she believed he was either “under the influence of something or he’s having a mental health issue.”

8. According to Officer Shelby, Terence was not able to communicate clearly to her, and refused her commands to get on his knees. As a result, Officer Shelby reported that she became concerned for her safety, radioed for backup, and pointed her service firearm at Terence. Officer Shelby did not inform dispatch and her backup officers that Terence was suffering from a diminished mental capacity and/or was inebriated as she simply stated, “I have a subject who is refusing to show me his hands.”

9. As the videos of the fatal encounter between Officer Shelby and Terence show, Terence had raised his hands above his head as instructed by Officer Shelby and began slowly walking towards his SUV.

10. Next, Terence slowly turned his back to Officer Shelby and with his hands in the air, he started walking towards his vehicle. For approximately the next twenty seconds, Terence slowly walked approximately thirty feet to his vehicle.

11. Officer Shelby had ample opportunity to take ballistic cover and wait for her backup that she knew was just seconds away. Officer Shelby knew that TPD’s Gilcrease Division was located a few blocks from where she and Terence were located, and she could hear her backing officer’s sirens. However, Officer Shelby followed closely behind Terence with her firearm aimed at him.

12. If Officer Shelby truly thought that “he [Terence] was going to kill me” while he was walking away with his hands up, she should have and could have executed a tactical retreat and taken ballistic cover, which is exactly what she did after she shot Terence!

13. Officer Shelby knew her backing officers were quickly arriving on the scene because she told TPD Homicide Detective Sargent Dave Walker, who interviewed her on September 19, 2016, “I can hear there’s a siren coming.” Therefore, had she taken the objectively reasonable steps outlined above, she would have quickly had three other TPD officers help her ascertain safely whether Terence’s actions were because he was “either under the influence of something or he’s having a mental health issue.” Instead, because of Officer’s Shelby deficient training and the “you hesitate you die” culture created and/or condoned by the City, Terence, who was unarmed, non-violent, and with his hands up, was shot and killed by Officer Shelby.

14. While slowly walking towards his SUV, Terence’s hands were held high and he made no furtive, sudden, rapid, or aggressive movements, and did nothing that would have required Officer Shelby to make any split-second decision to use or not use lethal force.

15. Shortly before Terence reached his SUV, Officer Tyler Turnbough (“Officer Turnbough”) arrived on the scene, jumped out of his vehicle, and pulled out his taser. As Terence was walking toward his vehicle with his hands up, Officer Turnbough arrived and joined Officer Shelby in following closely behind Terence.

16. According to Officer Turnbough, he told Officer Shelby that he was next to her and had his taser ready to deploy against Terence. Officer Shelby affirmatively and verbally acknowledged Officer Turnbough’s presence and taser deployment.

17. Once Terence got to the side of his SUV, he began to slowly turn towards his door. At the moment when Terence faced the driver's side door of his SUV, without warning or justification, Officer Shelby shot Terence from close range while his hands were still up in the air.

18. The bullet Officer Shelby shot Terence with entered under Terence's right armpit, broke multiple ribs, remained lodged in the left side of his body, and caused him to bleed out and die. As a result of Officer Shelby's gunshot, Terence fell straight back onto the pavement which caused his head to split open.

19. According Officer Turnbough, it was only after Terence fell that he realized that Officer Shelby had shot Terence. Inexplicably, Officer Turnbough immediately told Officer Shelby, "put your gun away," but pulled out his own gun and together they executed a slow tactical retreat.

20. While Terence laid on his back, with his arms sprawled out to each side, and bleeding profusely on the pavement, neither Officer Shelby (who is a certified EMT and has received specialized training in providing aid during Officer-Involved shootings), Officer Turnbough, nor the other two TPD officers on the scene provided medical assistance to Terence for over two minutes after the shooting. In fact, Officer Turnbough specifically instructed Officer Shelby not to provide medical assistance to Terence after the shooting.

21. Terence bled profusely at the scene and was pronounced dead at St. John Medical Center at 8:19 p.m. According to Dr. Andrea L. Wiens, the Oklahoma Medical Examiner working Terence's death, the cause of death was penetrating gunshot wound of chest, and the manner of death was homicide.

22. The video of this unwarranted display of excessive force shows that prior to being shot, Terence made no threatening gestures, and he did nothing that required Officer Shelby or any other officer to make a split-second life or death decision. Terence made no sudden or aggressive movements, and he made no threatening statements. Terence did not brandish any object or point a weapon at officers or any citizen. Terence had no weapon whatsoever. In fact, the totality of Terence's actions, as seen on video, appear to be consistent with Terence's effort to peacefully submit to Officer Shelby's command.

23. Further, Terence had not committed and was not suspected of committing any serious crime; he did not pose an immediate threat of great bodily harm or death to Officer Shelby, any other officers on the scene (who were there in sufficient numbers to control the situation), or the general public. Terence was never told he was under arrest or warned he would be shot by Officer Shelby.

24. Terence was clearly outmanned and virtually surrounded, and appeared to be in the process of peacefully submitting when he was shot and killed. All of these factors further demonstrate the absence of exigency. Terence did nothing to warrant being shot and killed by Officer Shelby.

25. TPD, immediately knowing that Terence's shooting was a "bad shot" and to protect Officer Shelby and TPD, intentionally deviated from their standard procedures relating to investigating homicides and officer-involved shootings, including but not limited to the following ways:

- a. Instead of trying to immediately find out from Officer Shelby why she shot Terence, TPD shooting scene supervisor, Corporal Wyatt Poth ("Corporal Poth") immediately upon arriving at to the scene specifically instructed Officer Shelby to

“use her rights” and “not to say a word” until she had an attorney because he “knew there was going to be a group of people that didn’t like what happened simply because of the color of somebody’s skin.”

b. Instead of ordering Officer Shelby to go directly to the TPD’s downtown division per TPD policy, Corporal Poth allowed Officer Shelby to go back to her Gilcrease Division and confer with Officer Turnbough, and the other officers on the scene (Officers Dunn and Roy) at the time of the shooting before she went to the Detective Division.

c. Instead of interviewing Officer Shelby as soon as possible per TPD policy, Sargent Dave Walker voluntarily allowed Officer Shelby three days before questioning her about why she shot Terence.

d. Instead of waiting to show Officer Shelby the videos of the shootings after he interviewed her, Sgt. Dave Walker voluntarily allowed her and her attorney to review the videos of the shooting before questioning her.

26. The video reveals that Terence did nothing to escalate the situation, and Officer Shelby’s use of deadly force was objectively unreasonable and excessive in light of the facts and circumstances she encountered on September 16, 2016.

27. The video shows the situation became deadly because of Officer Shelby’s own deliberate conduct, which she has testified was a result of the training she received from the City. In fact, the training she received from the City and TPD’s culture taught Officer Shelby, “If I wait to find out if he [Terence] had a gun or not, I could very well be dead [because as] we always say I’d rather be tried by 12 than carried by six,” and TPD is at “war” with the community.

28. Terence had not committed and was not in the act of committing a serious and/or violent crime, and was not a “dangerous fleeing felon.”

29. Terence did not pose an immediate threat to officers as he had no weapon, had his hands in the air, was calmly and slowly walking towards his SUV apparently to “assume the position.”

30. Terence did not display any confrontational, threatening, or belligerent movements towards the officers on the scene.

31. Terence did not have a weapon at the time he was shot and killed.

32. Terence’s hands were actually in the air when he was shot, as evidenced by the official audio and video recording of the incident.

33. Terence was at a substantial distance from Officer Shelby, and was actually creating more distance by walking away with his hands up. It was Officer Shelby who intentionally closed the distance between herself and Terence.

34. There is no evidence to suggest Terence intended to cause serious bodily harm or death to the officers on the scene or a member of the general public.

35. Officer Shelby had a duty to act in an “objectively reasonable manner,” while engaging with Terence who, according to her own sworn statements, was clearly a disoriented person and in need of help. Officer Shelby breached her duty by shooting Terence, who was unarmed, had his hands raised up, and did not pose an immediate threat to her or the other officers on the scene. Officer Shelby’s actions were a textbook violation of Terence’s right to be free from excessive force when she shot him because she thought, “Terence might have a gun,” and “if you hesitate you die.”

36. The unjustified actions of Officer Shelby were a direct result of TPD's culture and/or patterns or practices of conduct that violate the U.S. Constitution. These unconstitutional patterns and practices occur because of significant systemic deficiencies in policies, training, and/or management at TPD, which amount to deliberate indifference to the constitutional rights of those policed by TPD. Specifically, TPD fails to provide officers with sufficient policy guidance and training; fails to properly collect and analyze data regarding officers' activities; fails to hold officers accountable for misconduct; and fails to properly supervise TPD officers.

37. The failures of the City include, but are not limited to, the following areas:

a. How to properly de-escalate encounters, with an emphasis on a policy that brandishing and/or using deadly force must be the last option;

b. How to properly engage and interact with individuals suffering from diminished capacity as a result of a mental or emotional breakdown and/or due to the influence of alcohol or drugs;

c. The use of less lethal weapons in situations involving individuals suffering from diminished capacity as a result of a mental or emotional breakdown and/or due to the influence of alcohol or drugs; and

d. How to properly communicate to other TPD officers that an individual is suffering from diminished capacity as a result of a mental or emotional breakdown and/or due to the influence of alcohol or drugs.

38. The City also fails to provide TPD officers with the necessary training and resources they need to police safely, constitutionally, and effectively. Systemic deficiencies contributed to the constitutional violations that resulted in the tragic and unnecessary shooting and killing of Terence including, but not limited to the following:

- a. Inadequate and constitutionally deficient tactical training;
- b. Complete lack of or constitutionally deficient implicit biases training;
- c. Inadequate and constitutionally deficient de-escalation training;
- d. Lack of CPR and first aid training;
- e. Lack of mental health training; and
- f. Lack of accountability for excessive force and discrimination complaints.

39. There is no reasonable justification why Officer Shelby and other TPD officers have not been well trained on the points above because:

- a. It is well-known that Officer Shelby and other TPD officers are authorized and expected to approach and apprehend citizens on a daily basis;
- b. It is well-known that almost daily Officer Shelby and other TPD officers encounter individuals suffering from diminished capacity as a result of a mental breakdown and/or the influence of alcohol or drugs;
- c. It is well-known that TPD officers need better training and resources to deal with mentally ill and/or inebriated individuals safely and effectively; and
- d. It is well-known TPD officers too often resort to physical force when perceiving that an African-American does not immediately respond to verbal commands, even where the subject poses no imminent threat to the officer or others. These illegal tactics are the direct result of TPD's deficient training, guidance, and policies and are "so widespread as to have the force of law."

40. As a direct and proximate cause of the acts and omissions detailed above, Officer Shelby unnecessarily shot Terence, who was unarmed and had his hands in the air.

41. Terence's gruesome and public death caused his children and parents great pain, suffering, humiliation, emotional and mental anguish, grief, loss of companionship, and pecuniary loss, medical and burial expenses to the Estate, and caused Terence immeasurable pain and suffering, and an opportunity for consortium with his four (4) minor children. Officer Shelby and the City are liable for the pain, injury, loss of consortium, and death that Terence suffered and redress is authorized by 42 U.S.C. § 1983.

FIRST CAUSE OF ACTION:
FOURTH AMENDMENT DEPRIVATION OF RIGHT
TO BE FREE FROM EXCESSIVE FORCE
42 U.S.C. § 1983

42. Plaintiff restates and incorporates paragraphs 1-41, as if set forth fully herein.

43. Individuals deprived of their Fourth Amendment rights may seek redress under 42 U.S.C. § 1983. Section 1983 provides a cause of action against any "person who deprives an individual of federally guaranteed rights "under color" of state law. *See* 42 U.S.C. § 1983.

44. Under the Fourth Amendment, Terence had a right to be free from the excessive force he experienced when Officer Shelby unnecessarily and unjustly shot and killed him while his hands were in the air, and it is clearly established that a police officer cannot shoot a non-combative, unarmed, individual who has his hands in the air.

SECOND CAUSE OF ACTION:
FOURTEENTH AMENDMENT VIOLATION OF RIGHT TO BE FREE
FROM RACIALLY BIASED LAW ENFORCEMENT ACTION
42 U.S.C. § 1983

45. Plaintiff restates and incorporates paragraphs 1-44, as if set forth fully herein.

46. Individuals deprived of their Fourteenth Amendment rights may seek redress under 42 U.S.C. § 1983. Section 1983 provides a cause of action against any “person” who deprives an individual of federally guaranteed rights “under color” of state law.

47. Terence had a right to Equal Protection under the law, and the City violated his rights by failing its duty to properly train and supervise Officer Shelby and other TPD officers, and by maintaining or tolerating a custom, policy, or culture that causes disparate enforcement and outcomes in police encounters with African-Americans. These failures by the City constitute a violation of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

PRAYER FOR RELIEF

Plaintiff prays this Court will grant the following:

1. Judgment in excess of seventy-five thousand dollars (\$75,000.00) in favor of Plaintiff, for all actual damages suffered by Terence and his heirs, including those emanating from physical pain, mental anguish and emotional distress, pecuniary loss, and loss of consortium.

2. Judgment in favor of Plaintiff as damages for violations of Terence’s constitutional rights.

3. Punitive damages to the extent permitted by law.

4. A declaration that that the shooting and killing of Terence, as described herein, were unconstitutional as a matter of law.

5. Injunctive relief requiring Defendant City to promulgate and implement policies and procedures to prevent such deprivations of constitutional rights in the future and/or ensure that allegations of deprivations of constitutional rights are properly investigated including:

- a. Independent investigations by the Oklahoma Bureau of Investigations.
 - b. Independent prosecutions of TPD officer-involved shootings by the Oklahoma Attorney General.
 - c. Mandatory annual implicit bias training program for TPD officers and City executives and elected officials.
 - d. Mandatory TPD officers' annual mental health screening program.
 - e. Specific policies and annual mandatory training program for encounters with mentally disabled individuals and/or intoxicated individuals.
 - f. Mandatory annual de-escalation training program.
 - g. Mandatory individual liability insurance policies for TPD officers.
 - h. Mandatory activation of dash cameras during every resident encounter.
 - i. Mandatory policies, training, and equipment for TPD officers to immediately provide first aid to citizens involved in officer-involved shootings.
 - j. Require non-police affiliated citizens of City to be members of TPD's Deadly Force Review Board.
6. An award of attorneys' fees pursuant to 42 U.S.C. § 1988(b) and any other applicable provisions of law.

7. Any and all further relief this Court deems just and equitable.

Respectfully submitted,
RIGGS, ABNEY, NEAL, TURPEN,
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