

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

ESTATE OF DE'VON BAILEY, by and through its personal representatives Delisha Searcy and Greg Bailey,
R.B., a minor, by and through their legal guardian Laquana Gardner.

Plaintiffs,

v.

CITY OF COLORADO SPRINGS, COLORADO, a municipality;
SERGEANT ALAN VAN'T LAND, in his individual and official capacity; and
OFFICER BLAKE EVENSON, in his individual and official capacity,

Defendants.

COMPLAINT AND JURY DEMAND

INTRODUCTION

He was running down the street
When they shot him in his tracks
About the only thing agreed upon
Is he ain't coming back
There won't be any trial
So the air it won't be cleared
There's just two sides calling names
Out of anger out of fear
If you say it wasn't racial
When they shot him in his tracks
Well I guess that means that you ain't black
It means that you ain't black¹

1. On August 3, 2019, Colorado Springs Police Department Sergeant Alan Van't Land and Officer Blake Evenson shot Mr. De'Von Bailey in the back as he ran away from them, killing him.

¹ Patterson Hood, "What It Means," Drive-By Truckers, *American Band*, 2016. The song and its lyrics can be found here: <https://youtu.be/mY0qOCUy27Q>.

2. The officers contacted Mr. Bailey after receiving a false report that Mr. Bailey had been involved in an armed robbery. They killed him before the Colorado Springs Police Department conducted even the most basic of investigations into the robbery claim—and when the department did investigate, it discovered that no robbery had occurred at all.

3. Mr. Bailey did not threaten any police officer or citizen in any way prior to Sergeant Van't Land and Officer Evenson's decision to shoot him. He simply ran away, fast.

4. Nearly thirty-five years before Defendants Van't Land and Evenson killed Mr. Bailey, the United States Supreme Court made clear:

The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. It is no doubt unfortunate when a suspect who is in sight escapes, but the fact that the police arrive a little late or are a little slower afoot does not always justify killing the suspect.

Tennessee v. Garner, 471 U.S. 1, 11 (1985).

5. The officers killed De'Von Bailey at the age of 19. His community lost yet another young black man to police violence. His parents were forced to bury their son just as he bloomed into adulthood. His child, born only months after his death, will never meet their father.

JURISDICTION AND VENUE

6. This action arises under the Constitution and laws of the United States and is brought pursuant to Title 42 U.S.C. § 1983. It is also brought under Colorado state law, including the wrongful death act, C.R.S. § 13-21-201 *et seq.* Jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1331. Jurisdiction supporting Plaintiffs' claim for attorney fees and costs is conferred by 42 U.S.C. § 1988.

7. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All

the events alleged herein occurred within the State of Colorado.

8. Timely Notice of Claim under the Colorado Governmental Immunity Act was given by Plaintiffs to Defendants regarding Defendant Van't Land's and Evenson's willful and wanton wrongful killing of De'Von Bailey, in violation of Colorado's wrongful death statute.

PARTIES

9. At all times pertinent to the subject matter of this litigation, the decedent De'Von Bailey was a citizen of the United States of America and a resident of and domiciled in the State of Colorado. Delisha Searcy and Greg Bailey are his parents and serve as the co-personal representatives of the Estate of De'Von Bailey.

10. Plaintiff R.B. is a minor child of Mr. Bailey. R.B. brings this action by and through their legal guardian and mother, Laquana Gardner. R.B. is a citizen and resident of Colorado.

11. Defendant City of Colorado Springs, Colorado, is a municipality organized under the laws of the State of Colorado and is a "person" subject to suit under 42 U.S.C. § 1983. The Colorado Springs Police Department ("CSPD") is a law enforcement agency that is part of the City of Colorado Springs. Defendant City of Colorado Springs is responsible for the oversight, supervision, discipline, and training of CSPD officers including Defendants Alan Van't Land and Blake Evenson.

12. At all relevant times, Defendant Alan Van't Land was a citizen of the United States and a resident of and domiciled in Colorado. At all times pertinent, Defendant Van't Land was acting within the scope of his official duties and employment and under color of state law in his capacity as a law enforcement officer and Sergeant employed by the Colorado Springs Police Department.

13. At all relevant times, Defendant Blake Evenson was a citizen of the United States and a resident of and domiciled in Colorado. At all times pertinent, Defendant Evenson was acting within the scope of his official duties and employment and under color of state law in his capacity as a law enforcement officer employed by the Colorado Springs Police Department.

FACTUAL ALLEGATIONS

Anthony Love falsely reported an assault and armed robbery to CSPD.

14. De’Von Bailey spent the afternoon of August 3, 2019 hanging out with his girlfriend, Laquana Gardner, his cousin and close friend, Lawrence Stoker, and a gaggle of other teenaged friends and relatives. It was a relaxed late-summer gathering in Colorado Springs, in the neighborhood where Mr. Bailey and Mr. Stoker had grown up. Mr. Bailey and Mr. Stoker discussed their excitement about how each of them would soon become a father—both Mr. Bailey’s and Mr. Stoker’s girlfriends were expecting.

15. At some point during the afternoon, 19-year-old Anthony Love, who had known Mr. Bailey and Mr. Stoker from when they had attended the same school years earlier, approached Mr. Bailey, Mr. Stoker, Ms. Gardner, and a couple of other friends who were standing and talking in the parking lot outside the Rosewood Apartments, where Mr. Bailey lived.

16. Mr. Love initially approached the group in a heavily intoxicated state, and he continued to drink alcohol and smoke marijuana while he spoke with them.

17. At some point in the conversation, Mr. Love began to make inappropriate comments towards Ms. Gardner, which she repeatedly rebuffed. Though Ms. Gardner asked Mr. Love to back away from her and to leave her alone, Mr. Love refused to stop.

18. Seeing that Mr. Love was not going to respect Ms. Gardner’s requests to leave her

alone, Mr. Stoker also asked Mr. Love to step away. After a brief argument, Mr. Love angrily threw a punch at him. Mr. Stoker defended himself, and a brief fight broke out where Mr. Stoker hit Mr. Love in the right eye, they both fell down and rolled around for a very short period of time before the fight was broken up.

19. Mr. Bailey was the one who broke up the “fight”. Mr. Bailey took no violent action of any kind, simply pulling the combatants apart.

20. Furious, embarrassed, humiliated, and still heavily intoxicated, Mr. Love eventually left the gathering, shouting violent threats at Mr. Stoker and Mr. Bailey. He went to the nearby home of Anthony Rivera, another attendee of the gathering whom he had visited earlier, to pick up his backpack. He was quickly asked to leave that residence as well, due to his excessive drunkenness and belligerence.

21. Seeking revenge against Mr. Stoker and Mr. Bailey, Mr. Love called 9-1-1 from a nearby elder care facility and falsely reported that he had been the victim of an armed robbery with a gun in broad daylight.

22. Mr. Love falsely claimed in the 9-1-1 call that Mr. Bailey and Mr. Stoker had approached him on the street, beaten him, menaced him with a gun, and stolen his wallet. Though more than an hour had passed since Mr. Love had initiated and lost his fight with Mr. Stoker, he told the 9-1-1 operator that the robbery had only just occurred.

23. Such false reporting through the 9-1-1 system is known as “swatting.” Mr. Love is known in his community for settling personal grudges by contacting police and making false reports of crimes, thereby causing police officers to contact those people under the false impression that they are involved in criminal activity. Mr. Love’s August 3, 2019 9-1-1 call was an apparent effort to cause law enforcement to contact Mr. Bailey and Mr. Stoker under the false

impression that they had just committed a violent crime, and that one or both of them was armed. At the Stoker trial discussed below, it came to light Mr. Love has claimed to be a victim of at least 5 prior aggravated robberies.

24. Mr. Stoker was nevertheless prosecuted but was acquitted of all charges in the alleged assault, having in fact acted in self-defense after Mr. Love threw a punch at him. Mr. Stoker was never so much as charged with a robbery (as reported by Mr. Love in his swatting call), because Mr. Love's lie fell apart under the slightest police investigation after Mr. Stoker was arrested. The jury was out for approximately 10 minutes before acquitting him, and jurors later apologized to Mr. Stoker for having to go through with this charade.

25. Mr. Bailey, however, would never have the opportunity to have his name cleared of Mr. Love's outrageous lie; tragically, Defendant Colorado Springs Police Department (CSPD) officers shot and killed Mr. Bailey before conducting any substantive investigation into Mr. Love's false report.

Defendants Van't Land and Evenson shot Mr. Bailey in the back, killing him and violating his clearly established constitutional rights.

26. Sometime after the fight between Mr. Stoker and Mr. Love, Mr. Bailey and Mr. Stoker were walking on Preuss Road in the same quiet, residential area of Colorado Springs when Defendant Van't Land stopped his police SUV in the middle of the street and approached them. A few seconds later, Defendant Evenson and CSPD Officer Richard Gonzalez parked their own cruisers nearby.

27. Mr. Bailey and Mr. Stoker were both black men.

28. Defendant Van't Land exited his vehicle first, and Mr. Bailey and Mr. Stoker calmly walked toward him when he gestured for them to do so, wholly compliant with his commands. Mr. Bailey and Mr. Stoker stood a few feet apart, about ten feet from Defendant

Van't Land; Mr. Bailey stood to Mr. Stoker's right.

29. Defendant Van't Land asked for the two men's names, and Mr. Stoker asked Defendant Van't Land about the reason for the stop.

30. As Mr. Stoker spoke with Defendant Van't Land, Defendant Van't Land asked Mr. Bailey to keep his hands out of his pockets. Mr. Bailey immediately complied, apologizing to Defendant Van't Land and moving his arms and stretching them out perpendicular to his torso to demonstrate that he would not touch his pockets any further. He did not reach for his pockets again at any point through the rest of the interaction with the CSPD officers.

31. Defendant Van't Land again asked Mr. Bailey his name; he responded, "De'Von." Defendant Van't Land asked what name Mr. Bailey went by, and Mr. Bailey said that he just went by De'Von.

32. By this time, Officer Richard Gonzalez and Defendant Evenson had taken up positions a few feet away, to the right of Defendant Van't Land and to the left of Mr. Stoker.

33. Defendant Van't Land ordered Mr. Bailey and Mr. Stoker to put their hands in the air. Both Mr. Bailey and Mr. Stoker immediately complied.

34. Defendant Evenson later told investigators that Mr. Bailey and Mr. Stoker were cooperative with Defendant Van't Land and that the situation appeared to be calm; other witnesses described the interaction as a calm, civil conversation. Nonetheless, Defendant Van't Land threateningly rested his hand on his gun as he continued to converse with Mr. Bailey and Mr. Stoker.

35. The officers then began to close in on Mr. Stoker and Mr. Bailey. Officer Gonzalez approached Mr. Stoker from the side, and Defendant Evenson approached Mr. Bailey from behind.

36. As Defendant Evenson approached Mr. Bailey, Mr. Bailey turned and sprinted up the street, directly away from the officers and Mr. Stoker.

37. Mr. Bailey was running away as fast as possible to escape from the officers.

38. Defendant Van't Land immediately drew his weapon to shoot Mr. Bailey.

Likewise, Defendant Evenson drew his weapon to shoot Mr. Bailey.

39. Defendant Van't Land shouted three times in rapid succession: "Hands up, hands up, hands up!" He gave **no other commands, and no warnings** that he was going to shoot his gun at the back of the fleeing De'Von Bailey.

40. Defendant Van't Land began issuing his first "hands up" command approximately one second after Mr. Bailey began running. Defendant Van't Land issued all three "hands up" commands within the space of approximately two seconds.

41. Defendant Van't Land did not wait to see if Mr. Bailey would obey his commands to put his hands up; he had already decided to shoot Mr. Bailey in the back. Before he had even finished saying the word "up" for the final time, Defendant Van't Land fired his gun at Mr. Bailey.

42. Neither Defendant Van't Land nor Defendant Evenson ever, at any point, warned Mr. Bailey that they would use deadly force if Mr. Bailey continued to run.

43. Immediately after Van't Land began shooting at the fleeing Bailey, Defendant Evenson began firing his gun at Mr. Bailey's back, as well.

44. Defendant Van't Land and Defendant Evenson fired their guns a total of eight times over the course of less than two seconds. Defendant Van't Land fired six times, while Defendant Evenson accounted for the remaining two shots.

45. Three bullets struck Mr. Bailey in the back as he was desperately trying to run

away, and one additional bullet grazed his elbow. He collapsed in the street, bleeding profusely from his wounds.

46. Apparently, the other four shots the officers fired were wild, and missed Bailey entirely.

47. As Defendant Van't Land and Defendant Evenson approached the fallen Mr. Bailey, they again ordered him to put his hands up. Given the last opportunity to comply with the command, Mr. Bailey summoned the energy to put his right hand in the air, even as he lay dying with three CSPD bullets lodged in his back. This signal of compliance would be Mr. Bailey's final conscious act.

48. At that point, the officers searched Mr. Bailey and handcuffed him, and found a gun deep within the pockets of his shorts. The gun was so deep within his shorts that the officers were required to cut Mr. Bailey's shorts to remove the gun because it was so difficult to retrieve out of his shorts pocket.

49. At no time did Mr. Bailey display (or even touch) the gun when in the presence of the officers.

50. An ambulance arrived on scene minutes later and rushed Mr. Bailey to Memorial Central Hospital in Colorado Springs, but he could not be saved. He was pronounced dead shortly after arriving at the hospital.

51. Multiple witnesses to the shooting of Mr. Bailey reported that Defendants Van't Land and Evenson made little effort to pursue Mr. Bailey at all, and stopped running after they saw that Mr. Bailey was getting away, to take up shooting stances after taking only a few steps in pursuit.

52. Defendant police officers determined that the only way to prevent Mr. Bailey

from getting away was to shoot him in the back. So they did.

53. Multiple witnesses to the shooting confirm that Mr. Bailey never looked back towards the officers as he ran, and never made any threatening gesture or motion that suggested he was going to turn towards them. It was clear that Mr. Bailey was simply running away, to escape from the police.

54. At no point before Defendants Van't Land and Evenson searched Mr. Bailey did they see that Mr. Bailey possessed a gun. Before they shot Mr. Bailey multiple times in the back, Defendants Van't Land and Evenson never saw that Mr. Bailey had a gun, Mr. Bailey made no statements indicating he had a gun, and Mr. Bailey never displayed the gun.

55. Defendants' unconstitutional killing of Mr. Bailey has deprived his parents of a son, his girlfriend of a partner, and his child of a father.

Defendant Colorado Springs is municipally liable for the Individual Defendants' actions and has a custom and practice of using excessive force.

56. It has long been the custom and actual practice of CSPD to engage in, encourage, and condone the use of excessive force by CSPD officers, particularly against African Americans.

57. Colorado Springs did not terminate or discipline either Defendant Van't Land or Evenson ("the Individual Defendants") or even counsel them for their actions. Further, CSPD provided no additional training to either Individual Defendant, or other CSPD officers, related to the killing of Mr. Bailey.

58. Colorado Springs' and the CSPD's official position on the events regarding the shooting death of De'Von Bailey is that the officers' conduct was appropriate, consistent with and engaged in pursuant to all approved police policies, practices and training of the City of Colorado Springs and the CSPD.

59. This ratification of the conduct that caused Mr. Bailey's death is not alleged as proof that this ratification itself "caused" his death. Rather, it evidences that the conduct was engaged in pursuant to policy, custom, and practice of the Colorado Springs; had it been *outside* of policy, disciplinary or remedial action would have been taken.

60. Defendants Van't Land and Evenson acted intentionally, knowingly, willfully, wantonly, maliciously and/or recklessly in disregard to Mr. Bailey's federally protected rights, and acted under the preexisting and ongoing deliberately indifferent custom, policy, practice, training, and supervision of Defendant Colorado Springs acting under color of state law.

61. The custom and practice of excessive force is evidenced by a considerable number of other events, as detailed in at least the following examples:

Corey Barnes

62. On May 15, 2018, CSPD officers illegally detained, handcuffed, and searched by Corey Barnes after unjustifiably and inexplicably misidentifying him as a passenger in a stolen vehicle for whom CSPD had been searching. CSPD repeatedly made clear through radio communications that officers were looking for an African American male who was around 15-years-old, had a long light brown afro haircut, was wearing a zippered hoodie and blue jeans, and had run into a specific apartment in a specific building of a building complex. CSPD officers stopped and handcuffed Mr. Barnes in a parking lot even though Mr. Barnes had very short hair, not a long afro; he was almost double the age of the suspect (he was 29, not 15); and he was wearing a t-shirt and shorts, rather than a zippered hoodie and jeans. In fact, another officer on the scene immediately told the three officers involved in detaining Mr. Barnes was not the suspect, yet they continued to detain Mr. Barnes without justification. The officers then illegally searched Mr. Barnes' pockets and wallet without his consent. Then, when another officer radioed

that Mr. Barnes came out of a different building than the suspect had entered, and when the officers were told for a second time, by dispatch, that Mr. Barnes was not the suspect, they still did not immediately release him. Instead, an officer twice asked Mr. Barnes if he knew the suspect, to which Mr. Barnes did not respond. One of the officers instructed the other officers to take a picture of Mr. Barnes's ID so that she could "add him to the call screen," which they did by removing his ID, again, from his wallet. Only then did they remove the handcuffs.

Throughout the entire interaction, Mr. Barnes did not physically resist the officers, nor make any threatening statements or movements. The CSPD officers lacked probable cause, reasonable suspicion, or any other legal basis to believe that Mr. Barnes had engaged in any criminal activity or posed any threat to them or anyone else. Instead, the detention, handcuffing, and search of Mr. Barnes was illegally motivated wholly or in part by racial bias.

63. Mr. Barnes filed a complaint with CSPD Internal Affairs ("IA") department, which determined that the vast majority of the officers' conduct—the detention and search—was consistent with CSPD policy, with the only exception being the retrieval of Mr. Barnes' wallet from his pocket. The finding that this action violated policy resulted in unspecified "appropriate administrative action." The ratification and endorsement of the majority of the officers' actions were part and parcel of, and consistent with, the Colorado Springs' customs, practices, and policies of engaging in and tolerating racially-biased policing and failing to discipline CSPD officers for misconduct. A lawsuit based on the officers' unlawful conduct against Mr. Barnes was filed in May 2020 and remains pending.

Jeffrey Melvin

64. On April 26, 2018, CSPD officers responded to a noise violation at an apartment complex in Colorado Springs. After the officers had determined that no crime had been

committed, there was no ongoing crime, and those present did not have outstanding warrants, they encountered Jeffrey Melvin, Jr., a young black man arriving at the apartment. The officers had no reason to believe that Mr. Melvin had been or was about to be engaged in any criminal activity. The two officers nevertheless attempted to arrest Mr. Melvin. While attempting to unlawfully arrest Mr. Melvin—without probable cause to believe that he had committed any crime—these officers used overwhelming force against him. The officers aggressively manhandled Mr. Melvin, threw him to the ground, and repeatedly tased him. Mr. Melvin briefly escaped the officers’ wholly unconstitutional assault, only to collapse from the extreme trauma the officers had inflicted on him. He was rushed to the hospital, where he was immediately declared a full trauma. Mr. Melvin never regained consciousness and died from his injuries days later, at the age of 27. This excessive force is the subject of the federal civil rights action captioned *Estate of Jeffrey Melvin, Jr. v. Colorado Springs, et al.*, Case no. 20-cv-00991-CMA-KMT (D.Colo. 2020).

Ryan and Joey Brown

65. On March 25, 2015, brothers Ryan and Joey Brown were pulled over by CSPD officers. The brothers were young black men who were driving to their home, which was in a predominantly white neighborhood. CSPD officers had no grounds on which to pull them over, and officers would not tell the Brown brothers why they had been pulled over. Instead, the officers held them at taser- and gunpoint. Though the brothers had done nothing wrong, the officers ordered them out of their car at gunpoint, frisked them, threw Ryan to the ground and threw his phone away to stop him from recording the interaction. The officers wrongfully arrested both brothers, and CSPD responded to the brothers’ complaint about their mistreatment

by determining that the officers conduct was within official policy and justified. Colorado Springs paid \$212,000 and made substantial policy changes to settle the Brown brothers' claims.

Grant Bloomquist

66. In 2013, CSPD officers arrested Grant Bloomquist without probable cause after he verbally protested two CSPD officers' beating of another man outside of a nightclub. Mr. Bloomquist was outside Cowboys Night Club in Colorado Springs and saw officers brutally beating an African American man, so he stepped to about 7 feet away and said, "get the fuck off him." At that point, he was blindsided and struck by an officer, who hit him in the face. Multiple CSPD officers struck Mr. Bloomquist repeatedly in the groin area with knee strikes and pinned him against a police vehicle. The officers then threw him in the police car and arrested him. Colorado Springs settled a lawsuit based on CSPD officers' conduct against Mr. Bloomquist in 2016.

John Sturgis

67. On January 26, 2012, CSPD officers arrested John Sturgis, an African American man, without probable cause and subjected him to excessive force while investigating Mr. Sturgis as a homicide suspect. Mr. Sturgis was not the perpetrator of any crime. A witness had allegedly told CSPD officers he had seen a man at a gas station—Mr. Sturgis—who he claimed resembled a homicide suspect. Mr. Sturgis in fact was twice the age of the suspect (40 vs 20), was bald when the suspect had hair, and exhibited many other physical dissimilarities with the suspect. Despite these obvious differences, officers followed Mr. Sturgis and arrested him. Mr. Sturgis surrendered peacefully and asked the officers not to handcuff him behind his back because he had recently had surgery on his shoulder; he even offered to show the officers MRI images of his injured shoulder that were sitting on the front seat of his car as proof. The officers

ignored Mr. Sturgis's pleas, and excessively forcefully handcuffed him behind the back despite his pleas not to do so, causing Mr. Sturgis to significantly reinjure his shoulder and require further surgery. Several officers falsified their reports about the incident to invent probable cause to arrest Mr. Sturgis. Colorado Springs determined that the officers' conduct was within policy, but paid \$300,000 to settle Mr. Sturgis's claims.

Douglas Sellier

68. On June 2, 2009, CSPD officers, including Defendant Van't Land, came to Douglas Sellier's home to retrieve Mr. Sellier's grandson. When Mr. Sellier insisted that the man to whom the officers were bringing the child was a sex offender, the officers told Mr. Sellier he was under arrest. Defendant Van't Land and another officer grabbed Mr. Sellier. He lost consciousness and came to while pinned on the ground by Defendant Van't Land and another officer. While Mr. Sellier was pinned to the ground, Defendant Van't Land punched him three times in the shoulder and another officer deployed his taser on Mr. Sellier twice. Mr. Sellier filed suit, arguing that Van't Land and the other officers had used excessive force against him. After a federal judge denied the Defendants' motion for summary judgment, Colorado Springs settled Mr. Sellier's claims for \$50,000. Colorado Springs argued that the police officers conduct was within police department policy and appropriate. Colorado Springs never disciplined or counseled Defendant Van't Land for his unlawful conduct toward Mr. Sellier, nor did CSPD institute additional training requirements for Defendant Van't Land based on the incident.

69. Several of these representative cases resulted in Colorado Springs paying substantial monetary sums to settle police misconduct claims, yet the facts surrounding Mr. Bailey's case make clear that the Colorado Springs Police Department has yet to adequately train

and supervise its officers regarding the appropriate and legal use of force or otherwise ensure that the clear ongoing custom and practice of police misconduct as occurred here ceases.

70. Defendant Colorado Springs knew, based on its long history and widespread practice of its officers using excessive force and taking racially biased actions against African Americans and its condoning of those actions, that its officers would likely be influenced by racial bias when contacting African Americans, and that such bias could cause the CSPD officers to use excessive and unnecessary force against African Americans like Mr. Bailey.

71. Knowing this, Defendant Colorado Springs could have and should have pursued reasonable methods for training and supervising CSPD officers, including the individual Defendants, in recognizing and guarding against implicit or explicit racial bias in interacting with African Americans and not using excessive force against African Americans, but it failed to do so.

72. Defendant Colorado Springs has a policy that trains and tolerates its officers who use deadly force based upon the officer's belief that the officer has probable cause to believe that the subject of an officer's shooting previously used a gun in the commission of a felony, even under circumstances where the officer or a third party is not at the time of the officer shooting in imminent risk of death or serious bodily injury.

73. In fact, Defendant Van't Land, in 2012, previously shot and killed another individual while on duty on December 4, 2012, Robert Kresky. CSPD determined that Defendant Van't Land had acted within CSPD policy and training in killing Mr. Kresky; however, CSPD did not perform an independent investigation into whether any internal policies had been violated, but rather solely relied on the DA's investigation and exoneration (from criminal charges) decision, reasoning that if Defendant Van't Land had not violated criminal laws, he

must not have violated any CSPD policies either. CSPD's appears to apply this procedure for all officer-involved shootings: instead of performing its own internal and independent investigation after the DA's investigation concludes, CSPD merely relies on the DA's decisions.

74. Because Defendant Colorado Springs created and tolerated a custom of deliberate indifference and failed to adequately train and supervise CSPD officers in the constitutional use of deadly force, individuals, especially African Americans like Mr. Bailey, have repeatedly been subjected to violations of their constitutional rights.

75. Defendant Colorado Springs fostered "a policy of inaction" in the face of knowledge that CSPD officers were frequently violating specific constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution, which is the functional equivalent of a decision by Colorado Springs itself to violate the Constitution.

76. Defendant Colorado Springs's "policy of inaction" and policies, customs, or practices in failing to properly train and supervise its employees were a moving force and proximate cause of Individual Defendants' violation of Mr. Bailey's constitutional rights.

77. CSPD has persistently failed to investigate and counsel or discipline CSPD officers for their similar uses of excessive force against African Americans. Colorado Springs's failure to find wrongdoing and failure to counsel or discipline officers in this case, the cases described above, and others reflects a custom, policy, or practice of encouraging, tolerating and ratifying blatantly illegal conduct. These encouragements, toleration of, and ratifications show that CSPD officers carry out such police misconduct under the policies of and regimen of training provided by Colorado Springs, and that such conduct is customary within CSPD.

78. Indeed, CSPD's Use of Force analyses from 2014-2017 show racially biased uses of force. Colorado Springs' population is approximately 6.5% African American. Even so, in

2014 and 2015, approximately 20% of the people against whom CSPD used force were African American. In 2016 and 2017, that figure jumped to 26% and 25%, respectively.

79. In 2017, CSPD officers used force against 21% of the total number of African American males who were arrested. In the same year, CSPD officers used force against only 12% of the total number of White males who were arrested.

80. Similarly, statistical data shows that CSPD has a history of racially disparate traffic stops and arrests, and a history of consistently treating African American individuals worse than white individuals. For instance, in October 2016, CSPD data showed that CSPD stopped African American males while driving by 97% more often than would be expected based on their proportion in the population in Colorado Springs as of the 2010 census. When looking at driving age population in Colorado Springs, CSPD stopped African American males 120% more often than would be expected. Caucasian males, on the other hand, were consistently stopped by CSPD at rates consistent with the relative size of their population in the City,

81. Additional data shows that CSPD officers disproportionately arrest African Americans. African Americans comprise only 6.2% of the city's population. Nevertheless, in 2017, they made up 17.6% of the persons CSPD arrested for what the agency's annual report refers to as "arrests at the highest charge." In 2018, 18.1% of individuals that the CSPD arrested for "arrest at the highest charge" were African American.

82. These figures make clear that CSPD officers are disproportionately more likely to use force against African American men, like Mr. Bailey, than against similarly situated white suspects.

83. Despite being on notice from prior lawsuits, press, settlements, and statistical data that continued tolerance of racially-biased policing and violations of constitutional rights was

substantially certain to result in a constitutional injury like that suffered here, Colorado Springs has consciously chosen not to remedy its deficient customs and to instead ignore the risk of harm caused by the customs.

84. CSPD's approval and defense of the use of racially-biased policing and excessive force by CSPD employees sends a clear and unequivocal message to those employees—such approval and failure to appropriately respond actually *trains* CSPD law enforcement officers—that such use of excessive force is acceptable, consistent with policy, and is approved practice, causing the use of such excessive force to be likely or even inevitable in the future.

85. Colorado Springs is responsible for training its officers to ensure they perform their duties consistent with the law and to discipline their improper conduct, so officers can learn from their experiences and be deterred from engaging in future misconduct that violates the constitutional rights of people with whom the police interact. Colorado Springs's failure to do so has communicated to, and trained, CSPD officers, including Defendants Van't Land and Evenson, that excessive force against African Americans is authorized and tacitly (or explicitly) encouraged. The failure to counsel or discipline misconduct constitutes training which causes future similar unconstitutional conduct.

86. Colorado Springs' past ratification and toleration of similar unconstitutional conduct thus caused and was the moving force behind the Individual Defendants' use of excessive force against Mr. Bailey, and Colorado Springs' failure to discipline the Individual Defendants for this illegal use of force will lead to more unconstitutional conduct.

87. Defendant Colorado Springs' acts or omissions caused Mr. Bailey damages because he suffered physical and mental pain, humiliation, fear, anxiety, loss of enjoyment of

life, loss of liberty, privacy, and sense of security and individual dignity, and death, among other injuries, damages, and losses.

88. Defendant Colorado Springs' actions, as described, deprived Mr. Bailey of the rights, privileges, liberties, and immunities secured by the Constitution of the United States of America and caused him other damages.

STATEMENT OF CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

42 U.S.C. § 1983

**Fourth Amendment Violation--Excessive Force
(The Estate of De'Von Bailey Against All Defendants)**

89. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

90. Defendants Van't Land and Evenson acted under color of state law, and within the course and scope of their employment, in their capacities as officers of the Colorado Springs Police Department at all times relevant to the allegations in this Complaint.

91. Defendants are "persons" within the meaning of Title 42 U.S.C. § 1983.

92. Under the Fourth Amendment, as incorporated against the states by the Fourteenth Amendment, Decedent De'Von Bailey had a constitutionally protected right to be secure in his person against unreasonable seizures through the use of excessive force. It is clearly established that excessive force violates the Constitution. Specifically, it has been clearly established since 1985 that it is unconstitutional to use deadly force to stop a fleeing felon when the officer does not have probable cause to believe the suspect posed a significant threat to a police officer or any other person if not immediately apprehended.

93. Under the application of the specific facts and totality of circumstances as described herein, Defendants Van't Land and Evenson violated the clearly established

constitutional rights of Mr. Bailey.

94. Any reasonable law enforcement officer knew or should have known of this clearly established right at the time of Mr. Bailey's death.

95. Defendants Van't Land and Evenson did not have a legally valid basis to seize Mr. Bailey in the manner and with the level of force used under the circumstances present.

96. Defendants Van't Land and Evenson seized Mr. Bailey by means of objectively unreasonable and excessive deadly force when they shot him to death without having even a reasonable belief Mr. Bailey posed a significant threat to any officer or any other person if not immediately apprehended.

97. Defendants had no basis to believe that they or any other person was at imminent risk of death or serious bodily injury such as to justify deploying deadly force rather than other measures to apprehend Mr. Bailey as a suspect to an earlier crime.

98. The decision to employ deadly force by shooting Mr. Bailey in the back multiple times and killing him, when other less-than-lethal force was readily available, was excessive under the circumstances.

99. Defendants Van't Land's and Evenson's actions, as described herein, were objectively unreasonable in light of the facts and circumstances confronting them. Any reasonable officer in their position would have known that it was unreasonable to use deadly force under the totality of the circumstances and that to do so would violate Mr. Bailey's clearly established constitutional rights.

100. Defendants Van't Land's and Evenson's actions, as described herein, were motivated by malice and/or involved reckless or callous indifference to Mr. Bailey's federally protected rights, and they engaged in these actions and omissions intentionally, willfully, and/or

wantonly, demonstrating deliberate indifference to, and a reckless disregard for, Mr. Bailey's constitutionally protected rights.

101. Defendants Van't Land and Evenson acted as they did pursuant to and because of the customs, policies, training, and/or practices of Defendant Colorado Springs.

102. The Individual Defendants' actions were the direct result of Defendant Colorado Springs's (1) promulgation, creation, implementation, or enforcement of policies, customs, or practices that failed to provide that CSPD officers, including the Individual Defendants, could use deadly force against fleeing felons only when constitutional requirements for such force was met and/or (2) deliberate choice to follow a course of action from among various alternatives available to these Defendants of not adequately training or supervising CSPD officers including the Individual Defendants regarding the constitutional use of deadly force, given that the need for such training and supervision was so obvious, and the inadequacy of training and/or supervision was so likely to result in the violation of constitutional rights such as those described herein.

103. Defendant Colorado Springs knew to a moral certainty that CSPD officers would be required to arrest fleeing felons in the execution of their official law enforcement duties. The City armed its officers with firearms, in part to allow them to accomplish this task. Thus, in light of the duties and responsibilities of CSPD officers who are inevitably called on to arrest fleeing suspected felons, the need to train CSPD officers in the constitutional limitations on the use of deadly force was so obvious that Defendant Colorado Springs's failure to do so constituted deliberate indifference to Mr. Bailey's constitutional rights.

104. Defendant Colorado Springs adheres to a policy and practice of permitting the use of deadly force on a felony suspect where there is probable cause to believe the suspect had

earlier committed a crime with a gun, even when there is no immediate risk of death or serious bodily injury later when the officer uses deadly force. Adherence to such a policy makes permissible under official city policy the unconstitutional use of deadly force.

105. Defendant Colorado Springs knew or should have known that its acts or omissions were substantially certain to cause CSPD officers including the Individual Defendants to violate individuals' constitutional rights to be free from excessive deadly force, and they consciously or deliberately chose to disregard this risk of harm in adhering to their policy, custody, or practice of failing to provide that CSPD officers use deadly force against fleeing felons only within constitutional limits, and/or in deliberately choosing not to provide adequate training to CSPD officers in this area.

106. Therefore, Defendant Colorado Springs set in motion a series of events that it knew would cause an individual in a similar situation as Mr. Bailey to be deprived of the constitutional right to be free from excessive force at the hands of law enforcement. But for the above acts or omissions of Defendant Colorado Springs, Mr. Bailey would not have been subjected to a violation of his Fourth Amendment rights, and such a deprivation was a proximate cause and a natural and foreseeable consequence of these acts and omissions.

107. As a direct and proximate cause and consequence of Defendants' unconstitutional acts and omissions, described above, Plaintiff Estate suffered injuries, damages, and losses.

108. The herein described acts or omissions of Defendants are the moving force and the legal, direct, and proximate cause of Plaintiff Estate's injuries and losses, including but not limited to Mr. Bailey's death, the physical and mental pain and anguish Mr. Bailey suffered before and during his shooting death, the loss of Mr. Bailey's relationships with his family, girlfriend, and child, life, and other compensatory and special damages including but not limited

to permanent lost earnings and earnings capacity of Mr. Bailey.

109. The intentional actions or inactions of Defendants as described herein intentionally deprived Mr. Bailey of due process and of rights, privileges, liberties, and immunities secured by the Constitution of the United States of America.

SECOND CLAIM FOR RELIEF
42 U.S.C. § 1983 - Fourteenth Amendment
Denial of Equal Protection – Racially Biased Policing
(Against All Defendants)

110. Plaintiffs incorporate all other paragraphs of this Complaint as if set forth herein.

111. Defendants Van't Land and Evenson were acting under color of state law in their actions and inactions at all times relevant to this action.

112. At the time of the complained of events, Mr. Bailey had the clearly established constitutional right to be free from racial discrimination in law enforcement by police officers and to enjoy the equal protection of the laws.

113. Mr. Bailey's race was a motivating factor in the Defendants Van't Land's and Evenson's decision to use excessive deadly force against him under the circumstances. Defendants Van't Land and Evenson acted with the purpose of depriving Mr. Bailey of the equal protection and benefits of the law, and equal privileges and immunities under the law, in violation of the Fourteenth Amendment.

114. Defendants Van't Land and Evenson's reactions to the circumstances confronting them as described herein were adversely influenced by assumptions and stereotypes arising out of Mr. Bailey's and Mr. Stoker's race. These assumptions and stereotypes caused, wholly or in part, the immediate escalation of the situation to the use of deadly force to apprehend a fleeing suspect, a decision that more probably than not would not have been made with a non-African American suspect.

115. Defendants racially profiled Mr. Bailey and assumed at least partly because of his race that he presented an enhanced threat to their safety. Their conduct in their interactions with Mr. Bailey, including their decision to shoot him in the back while he was fleeing, were infected by and motivated by implicit or explicit bias leading them to believe that he was more dangerous than he would have been had he been a white suspect under the same circumstances.

116. Defendants Van't Land and Evenson treated Mr. Bailey less favorably—and with much more unreasonable force—than his similarly situated White counterparts, wholly or in part because of his race.

117. Race is a suspect class, and differential treatment wholly or in part based upon a person's race is presumptively unconstitutional. There was no compelling state interest justifying the use of deadly force on Mr. Bailey when such force more probably than not would not have been employed on a similarly situated white suspect.

118. There was not even a rational basis for Defendants Van't Land's and Evenson's discriminatory actions, let alone a purpose narrowly tailored to serve a compelling governmental interest.

119. Defendants Van't Land and Evenson used excessive force against Mr. Bailey without reasonable suspicion or probable cause to believe that Mr. Bailey posed a threat of harm to any other person that would legally justify the deadly force used.

120. Defendants Van't Land and Evenson intentionally, willfully, unreasonably and wantonly seized Mr. Bailey by using excessive force against him, wholly or in part because of his race.

121. Defendants Van't Land's and Evenson's actions were objectively unreasonable considering the facts and circumstances confronting them.

122. Defendants Van't Land and Evenson engaged in these actions intentionally, willfully, maliciously, and wantonly, showing deliberate indifference to and reckless disregard of Mr. Bailey's federally protected constitutional rights.

123. Defendant Colorado Springs failed to properly train, supervise, and/or discipline its employees regarding the constitutional requirement not to engage in racially biased policing, resulting in the Defendants Van't Land's and Evenson's unlawful racially biased use of excessive force.

124. Colorado Springs's inadequate training, supervision, and/or discipline resulted from a conscious or deliberate choice to follow a course of action from among various alternatives available to Defendant Colorado Springs.

125. Considering the duties and responsibilities of personnel of Defendant Colorado Springs—who must police and interact with African Americans regularly—and the frequency with which such law enforcement personnel will confront African Americans while discharging their duties as law enforcement officers as described herein, the need for specialized training, supervision and discipline regarding such decisions is so obvious, and the inadequacy of training and/or supervision is so likely to result in a violation of constitutional rights, such as those described herein, that Defendant Colorado Springs is liable for its failure to properly train, supervise, and/or discipline its subordinate employees and agents.

126. Such failure to properly train, supervise, and/or discipline was a moving force behind and proximate cause of Defendants Van't Land's and Evenson's racially biased treatment of Mr. Bailey, and makes up an unconstitutional policy, procedure, custom, and/or practice.

127. CSPD exonerated Defendants Van't Land and Evenson for their racially biased conduct under Colorado Springs's municipal customs, policies and/or actual practices described

herein. Such decision to exonerate racially discriminatory conduct was made deliberately and pursuant to Colorado Springs's longstanding customs and practices. The decision clearly evidences that Defendants Van't Land and Evenson acted pursuant to the customs, practices, and policies of Defendant Colorado Springs.

128. Defendant Colorado Springs's failure to train and/or supervise, as well as the failure to take appropriate disciplinary or remedial action on past instances of similar unconstitutional conduct, as described herein, was a legal and proximate cause of the Mr. Bailey's death.

129. As a direct and proximate result of Defendants' actions, Mr. Bailey's lost his life and his family has been and continues to be damaged by Defendants Van't Land's and Evenson's unreasonable use of excessive force.

130. Mr. Bailey endured physical and mental pain, humiliation, fear, anxiety, loss of enjoyment of life, loss of liberty, privacy, loss of consortium with his family and friends, and sense of security and individual dignity, and tragically the loss of his life at the age of 19.

THIRD CLAIM FOR RELIEF
Battery Causing Wrongful Death
Colo. Rev. Stat. § 13-21-201 *et seq.*
(Plaintiff R.B., through her mother and legal guardian Laquana Gardner, Against
Defendants Van't Land and Evenson)

131. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

132. Pursuant to Colo. Rev. Stat. §§ 24-10-105(1) and 24-10-118(2)(a), public employees like Defendants Van't Land and Evenson are not immune under the Colorado Governmental Immunity Act ("CGIA") for acts or omissions that are willful and wanton.

133. Pursuant to Colo. Rev. Stat. § 24-10-109, Plaintiffs provided Defendant Colorado

Springs with timely notice of claim on January 28, 2020.

134. Defendants Van't Land and Evenson intentionally shot Mr. Bailey in the back with the intent to inflict harmful contact on Mr. Bailey, and which such contact caused injury to Mr. Bailey, namely his death.

135. As described in detail in above, Defendants Van't Land's and Evenson's shooting of Mr. Bailey did not constitute the use of reasonable force because the shooting was in excess of the amount of force that an officer in their position would have reasonably believed necessary to arrest Mr. Bailey or prevent his escape.

136. Defendants Van't Land's and Evenson's intentional infliction of physical harm upon Mr. Bailey, causing his death, was without legal authorization, privilege, or consent.

137. In shooting Mr. Bailey, Defendants Van't Land and Evenson consciously disregarded a substantial and unjustifiable risk of danger of death or serious bodily injury to Mr. Bailey.

138. Defendants Van't Land's and Evenson's willful and wanton conduct caused Mr. Bailey's death and the Plaintiffs' damages.

139. Defendants Van't Land's and Evenson's conduct was attended by circumstances of malice, or willful and wanton conduct, which they must have realized was dangerous, or that was done heedlessly and recklessly, without regard to the consequences to Mr. Bailey or his family, his safety and life and their lives.

140. Defendants Van't Land's and Evenson's conduct also constituted a felonious killing under C.R.S. §§ 13-21-203 and 15-11-803, in that his conduct caused the death of Mr. Bailey and that Defendants Van't Land and Evenson (1) consciously disregarded (2) a substantial and (3) unjustifiable risk that they knew would (4) cause the death of another,

namely, Mr. Bailey.

141. Plaintiff R.B., as the child of Mr. Bailey, suffered and continues to suffer economic and non-economic damages due to Defendants Van't Land's and Evenson's conduct, including but not limited to extreme emotional stress, grief, loss of companionship, impairment of quality of life, inconvenience, pain and suffering, funeral expenses, and financial losses due to the financial benefits they may have reasonably expected to receive from their father had he lived, and all other damages as allowed under the Colorado Wrongful Death Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against each of the Defendants, and grant them all relief as allowed by law and equity, including, but not limited to:

- (a) Declaratory and injunctive relief, as appropriate;
- (b) Economic losses on all claims allowed by law in an amount to be determined at trial;
- (c) Compensatory and consequential damages, including, but not limited to, damages for emotional distress, humiliation, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount to be determined at trial;
- (d) Punitive damages on all claims allowed by law and in an amount to be determined at trial;
- (e) Attorneys' fees and the costs associated with this action, including expert witness fees, on all claims allowed by law;

- (f) Pre- and post-judgment interest at the lawful rate;
- (g) Any further relief that this court deems just and proper, and any other relief as allowed by law.

PLAINTIFFS DEMAND A TRIAL TO A JURY ON ALL ISSUES SO TRIABLE.

In some town in [Minnesota]
But it could be anywhere
It could be right here on [Preuss] Street
In fact it's happened here
And it happened where you're sitting
Wherever that might be
And it happened last weekend
And it will happen again next week²

Dated this 4th day of June 2020.

KILLMER, LANE & NEWMAN, LLP

s/ Darold W. Killmer

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² Patterson Hood, "What It Means," Drive-By Truckers, *American Band*, 2016 (modified lyric changing "Missouri" to "Minnesota" and "Ruth Street" to "Preuss Street," emphasizing the point of the lyric). *See also* footnote 1, *supra*.