

**IN THE EASTERN DISTRICT OF TENNESSEE
CHATTANOOGA DIVISION**

MELISSA E. GEORGE,)	
Surviving mother and next of kin to)	
Johnny A. Baldwin, deceased)	
)	
Plaintiff,)	
)	Case No. 4:20-cv-26
v.)	
)	JURY DEMAND
CITY OF WINCHESTER,)	
SERGEANT JAMES CODY BISHOP)	
(in his individual and official capacities))	
)	
)	
Defendants)	

FIRST AMENDED COMPLAINT

Melissa E. George, as the personal representative of the Estate of Johnny A. Baldwin; and as the surviving mother and next of kin to Johnny A. Baldwin, brings this lawsuit following the preventable drowning death of her son, who died as government officials stood by, watching, despite Mr. Baldwin’s repeated, audible cries of: “help me.” Defendant Sergeant James Cody Bishop prevented another officer from rescuing Mr. Baldwin. The City failed to train its officers in basic water safety techniques and failed to provide officers with essential life-saving equipment. Plaintiff brings suit pursuant to 42 USC § 1983.

PARTIES

1. Melissa E. George is a citizen and resident of DuPage County, Illinois. She is the surviving mother of decedent Johnny A. Baldwin, who died without children. Melissa E. George is the named administratrix of Mr. Baldwin's estate.
2. Defendant City of Winchester is a municipal city government entity operating pursuant to the laws of the State of Tennessee.
3. Defendant Sergeant James Cody Bishop is a resident of Franklin County, Tennessee and was, at all times relevant, an employee of the City of Winchester.

JURISDICTION

4. This action arises under the United States Constitution and under the laws of the United States of America, particularly under the provisions of the Fourth and Fourteenth Amendments of the United States Constitution, and particularly under the Civil Rights Act, codified at 42 U.S.C. § 1983 et seq.
5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1343.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because all the events giving rise to Plaintiffs' claims occurred in this District.

FACTUAL BACKGROUND

7. On June 4, 2020, decedent Johnny A. Baldwin was driving on Decherd Blvd. in Decherd, Tennessee, near the boundary with Winchester, Tennessee.

8. Officers with the Decherd Police Department attempted to stop Mr. Baldwin.

9. The alleged probable cause for this stop was that the vehicle Mr. Baldwin was driving had a broken taillight.

10. In fact, the vehicle Mr. Baldwin was driving did not have a broken taillight.

11. There was no suspicion that Mr. Baldwin was engaged in a violent crime or felony.

12. There was no suspicion that Mr. Baldwin was a threat to the safety of others.

13. There was no allegation that Mr. Baldwin was driving at a high rate of speed.

14. In fact, the Incident Report prepared by Decherd Police Officer Tyler Womack records that Mr. Baldwin's vehicle was "dropping speed a good way before a speed limit change." (Incident Report, attached as **Exhibit A**. This Amended Complaint incorporates those exhibits previously filed, ECF 1-1, 1-2, 8.)
15. In any event, Officer Womack radioed Winchester Police Sergeant Greg King for assistance in stopping Mr. Baldwin's vehicle.
16. Decherd officers initiated a police pursuit.
17. Mr. Baldwin's vehicle did not stop. Upon information belief, Mr. Baldwin was driving without a license and was in violation of the terms of his parole in the State of Illinois, stemming from drug-related charges. He was not a violent criminal. He was not engaged in a violent felony at the time the officers initiated pursuit.
 - a. The continuation of the police pursuit by Winchester officers violated the Winchester Police Department's "Emergency Operation and Pursuit Policy" officially promulgated by the Chief of Police. (**Exhibit D**, Police Pursuit Policy.)

- b. The stated basis for pursuing Mr. Baldwin was the false assertion that his vehicle had a broken taillight. Even if that were true, which it was not, Mr. Baldwin would be guilty of a traffic offense.
- c. According to the police pursuit policy, “Traffic Offenses will constitute an automatic termination of the pursuit.” (Exhibit D, page 7).
- d. Further, “A suspect’s actions to evade pursuit, such as erratic driving, speeding, or unwillingness to stop, shall be considered minor offenses in evaluating whether to continue or terminate a pursuit. The felony crime of evading arrest is not to be considered a violent felony.” (*Id.* at 12.)
- e. The policy also requires that an “authorizing supervisor” “Terminate the pursuit when the authorizing supervisor concludes that any condition listed in the termination section of this general order exists.” (*Id.*) One such listed condition is that listed above, for traffic offenses, which are supposed to trigger an automatic termination of the pursuit.

- f. The policy further provides: “A pursuit should generally be terminated when the subject’s actions appear to be motivated merely by a desire to evade apprehension absent some further facts justifying continuation of the pursuit.” (*Id.*)
- g. Mr. Baldwin’s behavior and actions fit squarely within this provision. He was not violent; was not traveling at a high rate of speed; was suspected, at least initially, of only a minor traffic offense; and desired solely to avoid apprehension.
- h. This constellation of factors should have resulted in a termination of the pursuit, according to the City’s own policy.
- i. In failing to follow its own police pursuit policy and continue the pursuit, the police effectively helped create the dangerous condition in which Mr. Baldwin ultimately found himself in. He had been chased to a dead end street near a body of water about which he had no knowledge. The actions of the police officers thus increased the danger facing Mr. Baldwin and played a significant role in the creation of those dangers.

18. The officers involved in stopping Mr. Baldwin, however, had no idea who he was. They had no knowledge of any potential parole violations.
19. Both Winchester and Decherd officers pursued Mr. Baldwin's vehicle to a dead-end street on Ross Lane in Winchester, Tennessee.
20. Ross Lane terminates near Boiling Fork Creek, part of the Tims Ford Lake.
21. Mr. Baldwin was unaware of this nearby body of water.
22. Mr. Baldwin exited his vehicle and fled on foot. He stumbled into the water. He struggled to swim.
23. Officers, including Defendant Bishop, instructed Mr. Baldwin to swim back towards the shore where the officers were. Mr. Baldwin complied.
24. When Mr. Baldwin willingly submitted to the authority of the officers on the scene, a Fourth Amendment seizure occurred.
25. At this point, Mr. Baldwin was "in custody" or alternatively had suffered a restraint on his liberty giving rise to a duty of care owed by the on-scene officers.

26. According to the Incident Report, Sgt. Greg King noted that Mr. Baldwin “was swimming back towards the bank and appeared to become distressed.”
27. Body camera video, attached as **Exhibit B**, shows Mr. Baldwin struggling to swim and calling audibly for help.
28. Mr. Baldwin called for help at least three times.
29. Defendant Sergeant James Cody Bishop can be viewed and heard on the video.
30. Upon information and belief, Defendant Cody Bishop is unable to swim.
31. Upon information and belief, the City of Winchester does not require that its police officers be able to swim, despite the City of Winchester’s prominent location on a large natural body of water.
32. As Mr. Baldwin audibly calls for help from the water, an officer may be heard saying: “Swim! Your dumb ass jumped in the river!”
33. Standing next to Defendant Bishop, Officer Tristan Delacruz of the Decherd Police Department attempted to enter the water to help save Mr. Baldwin.

34. Defendant Bishop specifically instructed Officer Delacruz not to help Mr. Baldwin.
35. Defendant Baldwin stated to Officer Delacruz: “don’t go in there with him,” referring to Mr. Baldwin.
36. When Officer Delacruz observed that Mr. Baldwin had gone under water, Defendant Bishop replied: “he’s doing it on purpose.”
37. Had Defendant Bishop not called off Officer’s Delacruz rescue, Mr. Baldwin’s life would have been saved.
38. Neither Defendant Bishop nor any other Winchester officer called water rescue until *after* Mr. Baldwin had gone under water.
39. A chronology of events on the body cam proceeds as follows:
- a. At 06:47:53, officers can be heard saying of Mr. Baldwin: “he’s in the water.”
 - b. Neither Defendant Bishop nor any other Winchester officer calls water rescue.
 - c. At 06:48:04, Defendant Bishop states: “he’s definitely in the water. I heard him.”
 - d. Despite this knowledge that Mr. Baldwin is “definitely in the water,” no officer, including Bishop, calls water rescue.

- e. At 06:48:31, Defendant Bishop tells Mr. Baldwin “get over here, dude.” Mr. Baldwin, obviously in distress, attempts to respond, saying “help me, I’m drowning.” (06:48:36.)
- f. Mr. Baldwin attempts to swim back toward the shore, following officers’ instructions and yielding to their authority.
- g. At 06:48:39, Officer Delacruz tells Mr. Baldwin: “come toward me or I’m gonna come in and get your ass.”
- h. Defendant Bishop responds: “no, you ain’t.” (06:48:41.)
- i. Mr. Baldwin audibly responds: “I’m drowning.” (06:48:43.)
- j. At 06:48:45, Officer Delacruz calls Mr. Baldwin a “dumbass.”
- k. Again, neither Defendant Bishop nor any other Winchester officers calls water rescue.
- l. At 06:48:52, an officer yells toward Mr. Baldwin: “you better doggy paddle.”
- m. Mr. Baldwin responds: “help me.” (06:48:53.)
- n. At 06:48:56, Officer Delacruz tells Mr. Baldwin: “dude, come here.”
- o. Yet again, neither Defendant Bishop nor any other Winchester officer calls water rescue.

- p. At 06:49:33, Officer Delacruz tells Mr. Baldwin: “hey puddin’ cup, keep comin’.”
- q. Again, Mr. Baldwin responds: “help me.” (06:49:33-36.)
- r. And yet again, neither Defendant Bishop nor any other Winchester officer calls water rescue or provides other rescue aid.
- s. Over a minute later, at 06:50:37, Officer Delacruz, observing Mr. Baldwin struggle for his life, says: “I think he’s getting too fucking tired.”
- t. Officer Bishop responds: “don’t let him fool you.” (06:50:39.)
- u. Officer Delacruz prepares to enter the water, telling Defendant Bishop: “hold my radio.” (06:50:44.)
- v. Officer Bishop responds: “nah, don’t get in.” (06:50:45.)
- w. Officer Bishop repeats this instruction not to save Mr. Baldwin’s life, again saying “don’t get in there.” (06:50:50.)
- x. At 6:51:04, Officer Delacruz observes of Mr. Baldwin: “he’s going under.” He prepares to enter the water, telling Mr. Bishop “hold my light,” referring to his flashlight.

- y. Again, now for the third time, Defendant Bishop tells Officer Delacruz not to save Mr. Baldwin, saying: “nah don’t go in there with him. He’s gonna pull you down.” (06:51:05.)
 - z. Officer Delacruz begins to move toward the water, but yet again Defendant Bishop tells him: “Tristan, no.” (06:51:11.)
 - aa. Again Officer Delacruz repeats: “he’s going under water.” (06:51:13.)
 - bb. Officer Bishop responds: “he’s going under water— acting like he’s drowning.” (06:51:16.)
 - cc. Officer Delacruz responds to Defendant Bishop: “he’s under, Cody.”
 - dd. At 06:51:54, nearly four minutes after Officers were aware Mr. Baldwin was in the water, Officer Delacruz says: “get them to get the boat out here.”
 - ee. An officer can be heard radioing: “we’re gonna need rescue squad. Subject’s gone under the water.” (06:52:00.)
40. Officer Bishop’s actions cut off all avenues of rescue available to Mr. Baldwin and left him without any alternative.

41. In his Summary Report, attached as **Exhibit C**, Defendant Bishop stated that: “No Winchester Officers entered the water **due to not having the proper training, equipment**, and fear of the unknown.” (Emphasis added.)
42. The City does not equip its officers with water flotation devices; life jackets; inflatable rafts; ropes; or any other potentially life-saving equipment that could be utilized in a foreseeable water rescue scenario.
43. Johnny Baldwin drowned to death.
44. Defendant Bishop stood mere feet away, watching.

**PRIOR DROWNING AND WATER-RELATED INCIDENTS IN AND
AROUND WINCHESTER, TN**

45. The City of Winchester, the County Seat of Franklin County, Tennessee, sits on the Tims Ford Lake.

46. On its official website, <https://www.winchester-tn.com/>, the City promotes itself as a “lakeshore” destination known for its bass fishing.

47. Given its location on the water and the various water-related attraction it offers, drowning deaths, boating accidents, and other water-related injuries frequently occur in the City and surrounding county. The following is a list of news reports on drowning incidents in Tims Ford Lake.

- a. On June 1, 2019, a 17-year-old boy drowned in Tims Ford Lake. The location of the drowning was reported to be an address in the City of Winchester. (HERALD CHRONICLE, *Teenage boy drowns in Tims Ford Lake*, June 4, 2019, available at:

https://www.heraldchronicle.com/news/local/teenage-boy-drowns-in-tims-ford-lake/article_1bbc3b48-8476-11e9-a9bb-8b04cb9f1037.html, last visited September 14, 2020.)

- b. The very next day, another teenage boy drowned, also in Franklin County. (FOX17 NASHVILLE, *Second teenager drowns in Franklin County during two-day span*, June 2, 2019, available at <https://fox17.com/news/local/second-teenager-drowns-in-franklin-during-two-day-span>, last visited September 14, 2020.)
- c. In June 2015, a Winchester man was found drowned in the Tims Ford Lake. (HERALD CHRONICLE, *Winchester man drowns in Tims Ford Lake*, available at https://www.heraldchronicle.com/news/local/winchester-man-drowns-in-tims-ford-lake/article_86e1efd7-1e13-5aee-950f-aca8425e17ea.html, last visited September 14, 2020.)
- d. In June 2013, a man drowned in Tims Ford Lake. (TULLAHOMA NEWS, *Man drowns saving stepmother in lake*, available at https://www.tullahomanews.com/news/local/man-drowns-saving-stepmother-in-lake/article_aae4b17a-9d81-5462-9190-701fac83466e.html, last visited September 14, 2020.)

- e. In July 2020, a 48-year-old man drowned in Tims Ford Lake. (FOX 17 NASHVILLE, *TWRA: 2 dead, 1 injured in 'tragic day on Middle Tennessee waters'*, available at <https://fox17.com/news/local/twra-2-dead-1-injured-in-tragic-day-on-middle-tennessee-waters>, last visited September 14, 2020.)
- f. In October 2000, two University of Tennessee seniors drowned in Tims Ford lake near Winchester. There was a live electrical line in the water near a boat dock where the men jumped. ASSOCIATED PRESS, *Investigators: UT students apparently drowned after electrical shock*, October 3, 2000.

Annual Reports of Boating Accidents in Franklin County

48. Each year, the Tennessee Wildlife Resources Agency (“TWRA”) compiles a report of boating accidents and injuries occurring on Tennessee waterways.
49. The Tims Ford Lake in Franklin County routinely appears in these yearly reports.
50. In 2018, Tims Ford Lake was the deadliest body of water in the state as measured by the number of fatal incidents. (Source: 2018 Tennessee Boating Incident Statistical Report, Summary of Reportable Boating Incidents, p. 22. Available at https://www.tn.gov/content/dam/tn/twra/documents/boating/Tennessee_Boating_Incident_Statistical_Report.pdf, last visited September 8, 2020.)
51. Franklin County, Tennessee, in which the Defendant City is located, was similarly one of the deadliest counties in the state, recording two boating fatalities in the same year. (*Id.*)
52. Similarly, in 2019, Franklin County, Tennessee was the site of five reportable boating accidents in 2019, one of which was a “serious injury incident.” (Source: 2019 Tennessee Boating

Incident Statistical Report, Summary of Reportable Boating Incidents, p. 15, 27. Available at <https://www.tn.gov/content/dam/tn/twra/documents/boating/Tennessee-Boating-Incident-Statistical-Report-2019.pdf>, last visited September 8, 2020.)

53. In 2017, Franklin County, Tennessee recorded more reportable boating incidents (8), than any other county in the state. (Source: 2017 Tennessee Boating Incident Statistical Report, Summary of Reportable Boating Incidents, p. 15. Available at <https://www.tn.gov/content/dam/tn/twra/documents/boating/2017-Tennessee-Boating-Accident-Report.pdf>, last visited September 8, 2020.)

54. Death by drowning is the overwhelming cause of death for reportable boating incidents resulting in fatality. In 2017, 75% of all boating deaths were caused by drowning. (*Id.*, p. 23.)

55. In 2017, the Tims Ford Lake was the site of the second most “serious injury incidents” (5), of any body of water in the state. (*Id.*, p. 27.)

Generalized Reports of Police Water Rescues

56. Reports of police involved in water rescues, including of police pursuit suspects, are widespread.

- a. On August 5, 2020, a police chase in Oklahoma City, Oklahoma, resulted in a water rescue after the fleeing suspect crashed into a ditch full of water.

(KFOR NEWS, *One suspect in custody and one in the hospital after a short police chase ends with a water rescue*, available at <https://kfor.com/news/local/one-suspect-in-custody-and-one-in-the-hospital-after-a-short-police-chase-ends-with-a-water-rescue/>, last visited September 8, 2020.)

- b. On December 24, 2019, police in Sacramento, California, were able to save the life of a fleeing suspect who jumped from a freeway into a river. “Officers were able to throw a life jacket down to the suspect in the water as a boat headed to pick him up.” (KCRA NEWS, *Suspect rescued from American River after Sacramento police chase*, available at <https://www.kcra.com/article/suspect-rescued-from-american->

[river-after-sacramento-police-chase/30327118](#), last visited September 8, 2020.)

- c. On September 4, 2020, police in Mount Clemens, Michigan saved a fleeing suspect from drowning. “The sergeant noticed that the individual was having a hard time in the water. And again, without hesitation took off his shirt, his gun and other valuables and ended up jumping into the river and bringing the individual back to shore safely.” (WDIV NEWS, *Macomb County deputies rescue suspect from drowning after chase*, available at <https://www.clickondetroit.com/news/local/2020/09/04/macomb-county-deputies-rescue-suspect-from-drowning-after-chase/>, last visited September 8, 2020.)

- d. On February 19, 2020, police in Chicago, Illinois, saved a man from drowning in icy conditions. The officers improvised, forming a kind of human chain: “The officers took off their vests and laid on the icy ground along the path. Coleman reached down and grabbed the man by his belt while Jonas held onto Coleman. With a Fire Department rescuer who had

arrived, they were able to lift the man out of the water.”

(CHICAGO TRIBUNE, *Video shows two Chicago police officers rescue man from frigid Lake Michigan: ‘It was less thinking and more doing’*, available at

[https://www.chicagotribune.com/news/ct-swat-lake-rescue-](https://www.chicagotribune.com/news/ct-swat-lake-rescue-20200219-ilynrwv6fvce3iqcfzfs7ghy4u-story.html)

[20200219-ilynrwv6fvce3iqcfzfs7ghy4u-story.html](https://www.chicagotribune.com/news/ct-swat-lake-rescue-20200219-ilynrwv6fvce3iqcfzfs7ghy4u-story.html), last visited

September 8, 2020.)

- e. On May 16, 2014, police officers in Janesville, Wisconsin, saved the life of a suspect who, while evading capture, jumped into a river. Officers provided a rescue rope, which the suspect held on to until the Fire Department could complete the rescue. (FOX6 MILWAUKEE, *River rescue: Janesville police pull suspect from icy waters*, available at <https://www.fox6now.com/news/river-rescue-janesville-police-pull-suspect-from-icy-waters>, last visited September 8, 2020.)
- f. Similarly, on June 24, 2020, police officers in Connecticut rescued a man who fell into the water. The officers “tied a rope to the victim to help pull him to safety.” (NBC CT, *Video*

Shows Police Rescue Man From Swift Current in Guilford,

available at

<https://www.nbcconnecticut.com/news/local/video-shows-police-rescue-man-from-swift-current-in-guilford/2293144/>,

last visited September 8, 2020.)

- g. On December 22, 2015, police at Notre Dame University pursued a fleeing suspect to a lake, where he jumped. “The suspect was rescued from the frigid water after about 30 minutes. Officers from NDSP, [St. Joseph] County Police and [the South Bend Police Department], using a [Notre Dame Fire Department] rescue boat, pulled the suspect to safety.”

(THE OBSERVER, *Man pulled from St. Mary’s Lake, arrested after lengthy police chase*, available at

<https://ndsmcobserver.com/2015/01/robbery-suspect-pulled-st-marys-lake/>, last visited September 14, 2020.)

- h. On April 1, 2018, police in Dayton, Ohio pursued a violent suspect. The suspect’s vehicle went off an embankment and into the Great Miami River. “Officers assisted in helping the suspect out of his vehicle in the river. No officers were

injured.” DAYTON DAILY NEWS, April 1, 2018, *Police: Man fires shots at officers during traffic stop prompting a pursuit and rescue in Great Miami River in Dayton.*

Duty to Train Police Officers in Aquatic Environments

57. The duty and obligation of law enforcement agencies to train police officers in aquatic environments in water safety is well-known and clearly established. (A constitutional duty to rescue may arise under certain circumstances. “State officials may violate the Due Process Clause when their affirmative actions directly increase the vulnerability of citizens to danger or otherwise place citizens in harm’s way.” *Ewolski v. City of Brunswick*, 287 F.3d 492, 509 (6th Cir. 2002); *see also DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 198 (1989) (noting that in some “circumstances the Constitution imposes upon the State affirmative duties of care and protection with respect to particular individuals.”); *see also City of Canton, Ohio v. Harris*, 489 U.S. 378, 390 (1989) (“it may happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need.”))

58. A 1992 article in *Law Enforcement Technology*, titled “Water Safety Training,” observes “Police officers are often the first to respond to a drowning accident, so all departments with aquatic environments must provide their police personnel with some water rescue training.” LAW ENFORCEMENT TECHNOLOGY, Volume:19 Issue:10 Dated: (October 1992).

59. Police in Annapolis, Maryland, for example, are trained in swimming, water safety, and water rescue. One of the supervisors of the training program, a Sergeant, observed: “at some point in their career, almost every officer has some involvement’ with the water, whether by taking part in a rescue or while in pursuit of someone who has jumped into a river or creek in an attempt to evade arrest.” CAPITAL GAZETTE, *Police recruits learning swimming, rescue skills*, March 23, 2009. The article also mentions that: “while the county Fire Department handles most water rescue calls, the police are often the first to get to the scene.” Further, the article quotes the same supervising Sergeant as saying: “A lot of times, [officers] don’t have the time to wait for the

Fire Department to get there ... they need to take some kind of action.”

60. Recognizing the near certainty of encountering water rescue scenarios—whether in a rescue or pursuit context—other police departments around the country provide some level of water safety training for police officers.

a. Recruits in Corpus Christi, Texas are required to undergo a two-day water safety survival training before they can join the police force. CALLER TIMES, *Staying afloat: Cadets undergo intensive water safety survival training*, September 28, 2017, available at

<https://www.caller.com/story/news/local/2017/09/28/staying-afloat-cadets-undergo-intensive-water-safety-survival-training/705820001/>, last visited September 15, 2020.

b. Recruits in the State of Michigan are required to undergo water rescue training: “In the state of Michigan you're never more than six minutes from a body of water. There's more than 11,000 lakes, ponds and 36,000 miles of streams and rivers so the likelihood of being involved in a water rescue is

extremely high.” The article notes: “Troopers have to handle whatever comes their way. That includes water rescues.” NBC25 NEWS, *Michigan State Police train recruits for water rescues*, March 5, 2018, available at <https://nbc25news.com/news/local/michigan-state-police-train-recruits-for-water-rescues>, last visited September 14, 2020.

- c. Similarly, recruits in the State of Washington are also trained in “how to use their weapons in a water environment and the proper techniques for suspect apprehension in and around the water.” WASHINGTON STATE PATROL, *WSP Academy*, available at <https://www.wsp.wa.gov/wsp-academy/>, last visited September 14, 2020.
- d. Police in Fort Myers, Florida, undergo training “designed for officers to improve their skills if they must rescue, pursue or even arrest individuals in our area waterways.” FOX4 News, *FMPD conducts water safety training for officers*, November 9, 2018, available at <https://www.fox4now.com/news/local->

[news/fmpd-conducts-water-safety-training-for-officers](#), last visited September 14, 2020.

- e. As an alternative to “swimming rescue” training, some police departments have explored “basic non-swimming rescues.” Following the drowning in June 1999 of a man in DeKalb County, Georgia, authorities in the Atlanta, Georgia area, publicly discussed the need to equip police and fire vehicles with flotation devices. “Chris Hughes, a water safety product manager for the metro Atlanta chapter of the American Red Cross, said, while it may not be feasible to staff police and fire departments with top-flight swimmers trained in water rescues, it might be more realistic for all officers to be trained in ‘basic non-swimming rescues.’” ATLANTA JOURNAL CONSTITUTION, *DeKalb drowning causes rethinking on rescues Some metro public safety departments consider adding equipment to vehicles, more training*, published June 3, 1999.

61. In Mr. Baldwin’s case, the Defendant City of Winchester failed to equip its police officers or their vehicles with any flotation devices

whatsoever. Examples of such devices include a rescue throw-rope, self-inflating personal floatation device, life jacket, or general “throw bag” safety device.

62. Had any of these items been included in a single Winchester squad car, officers on the scene could have thrown them to Mr. Baldwin and saved his life.

63. Had the City provided any training whatsoever in water safety, water rescue, or pursuit of subjects near water, Mr. Baldwin’s life would have been spared. Officers would not have stood by watching, taunting, and heckling Mr. Baldwin as he drowned to death.

64. Because the City is located in an aquatic environment with a well-documented history of drowning incidents, the need for such training was or should have been obvious.

65. Police officers were certain to encounter a potentially fatal drowning scenario, whether in a rescue or pursuit context at some point. That occasion manifested in the incident at the heart of this lawsuit.

CAUSE OF ACTION:

I. Deprivation of Life by Defendant Bishop

66. Plaintiff incorporates all above paragraphs.
67. Defendant Bishop, at all times relevant to this Complaint, acted in his official capacity as an employee of the City of Winchester in his role as police officer.
68. At all times, Bishop acted under color of law, in his official role as an on-duty police officer for the City of Winchester, utilizing the uniform, vehicle, and authority vested in him by the City.
69. Bishop violated Plaintiff's decedent's constitutional rights when, under color of law, he called off life-saving rescue aid and made Johnny Baldwin more vulnerable than he would have otherwise been without Defendant Bishop's actions.
70. Defendant Bishop was fully aware of the imminent, serious, life-threatening risk of death to Johnny Baldwin.
71. Defendant Bishop nevertheless consciously disregarded that risk when he instructed Officer Delacruz not to rescue Mr. Baldwin.

II. Unreasonable Search and Seizure Under the Fourth Amendment.

72. Plaintiff incorporates all above paragraphs.
73. The Fourth Amendment's requirement that a seizure be reasonable prohibits more than the unnecessary strike of a nightstick, sting of a bullet, and thud of a boot.
74. When Johnny Baldwin submitted to the show of authority by police officers and yielded to that authority, he was seized within the meaning of the Fourth Amendment.
75. Johnny Baldwin's action in swimming towards the shore and repeatedly yelling "help me" and "I'm drowning" are evidence of his submission to the official authority of the officers.
76. When Defendant Bishop failed to provide any life-saving assistance at all to the drowning and helpless Mr. Baldwin, who was seized within the meaning of the Fourth Amendment, he violated Mr. Baldwin's constitutional rights.
77. When Defendant Bishop took the further affirmative steps of repeatedly cutting off rescue aid from Officer Delacruz, he further violated Mr. Baldwin's constitutional rights.

78. At all times, Bishop acted under color of law, in his official role as an on-duty police officer for the City of Winchester, utilizing the uniform, vehicle, and authority vested in him by the City.

III. Municipal Liability.

79. Plaintiff realleges all above paragraphs.

80. The City of Winchester is liable for these actions because of its official policy of failing to train officers in water rescue scenarios.

81. This failure to train is apparent from Defendant Bishop's inability to swim and from Defendant Bishop's written statement that he did not enter the water because he lacked the proper "training and equipment."

82. The need for police officers, especially those in Winchester, (which abuts a large body of water and where water-related activities are a major facet of life) to have training in water rescue situations—or, at a minimum, to be able to swim themselves, was obvious.

83. In addition or in the alternative, the need for life-saving water rescue equipment in police vehicles (rescue throw-ropes, self-

inflating personal floatation devices, life jacket, or general “throw bag” safety devices) was also obvious. Had any such equipment been provided to the officers on scene, Mr. Baldwin’s death could have been avoided.

84. Nevertheless, the City disregarded the obvious risks of 1) employing officers who cannot swim; 2) failing to train officers in water rescue situations; and 3) failing to provide basic life-saving equipment, such as vests or ropes to its officers.

85. The City’s failure to train was a causal link and moving force behind Mr. Baldwin’s death. Officers, including Defendant Bishop, were manifestly unaware of how to handle the situation and lacked basic equipment to rescue Mr. Baldwin. (*See* ¶ 41, *supra*, Defendant Bishop stated that: “No Winchester Officers entered the water due to not having the proper training, equipment, and fear of the unknown.”)

86. The City’s maintenance of such a reckless policy manifests deliberate indifference in the face of a known and obvious risk.

87. Had the City properly staffed its police force with able officers, capable of effecting a water rescue; or had the City trained Officer

Bishop in water rescue situations; or had the city provided basic life-saving flotation devices, the need for which was obvious; Mr. Baldwin would still be alive.

PRAYER FOR RELIEF

88. Plaintiff respectfully demands judgment against Defendant for compensatory damages as determined by the jury and for costs in bringing this action.
89. Plaintiff specifically reserves the right to amend this Complaint to conform to the evidence.

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