

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

J. BART LEONARDI,
ADMINISTRATOR OF THE
ESTATE OF DAVID L. WARD, JR.
24700 Center Ridge Road, Suite 250
Westlake, Ohio 44145

Plaintiff,

vs.

CITY OF ASHTABULA
c/o Cecilia Cooper, City Solicitor
City of Ashtabula
110 West 44th Street
Ashtabula, Ohio 44004

and

ROBERT STELL
in his official capacity as
Ashtabula Chief of Police,
110 W 44th Street #1
Ashtabula, Ohio 44004

and

DANIEL GILLESPIE
in his official and personal capacity,
c/o Ashtabula Police Department
110 W 44th Street #1
Ashtabula, Ohio 44004

Defendants.

)
) Case No. 1:23-cv-738

)
) JUDGE PATRICIA A. GAUGHAN

)
) Amended complaint

)
) (Jury demand endorsed hereon)

Introduction

1. In the early hours of April 13, 2022, Ashtabula police sniper Daniel Gillespie shot and killed a 23-year-old man he knew to be intoxicated and suicidal, from a distance of 482 feet—more than a football-field-and-a-half away.
2. When Gillespie shot him, the man was standing all alone in the middle of a 1,000-foot-long bridge high above the Ashtabula River. In Gillespie’s words, the man had “the whole bridge to himself.”
3. Although the man had a shotgun, Gillespie admits he never fired it or pointed it at anyone. In fact, he wasn’t even in a position to fire it when Gillespie shot him: the man was holding a cell phone in his right hand and his left was not near the trigger.
4. Nevertheless, from a prone position hidden from view, and with near-total cover, Gillespie shot the man with a .308 caliber sniper rifle at a distance so far away that Gillespie had his rifle’s scope at 16x magnification. Indeed, Gillespie was far outside of what he later wrote was the shotgun’s “effective range out to 100 yards” when he fired. Neither of the other two officers who had the man in their rifle sights fired.
5. By then, Gillespie already had a reputation within the Ashtabula police department for being prone to use deadly force. Just before 1:24 a.m. on the night of the shooting, an Ashtabula officer on scene remarked that by walking toward the end of the bridge where Gillespie was, the man was “walking the wrong way.” The officer then chuckled, adding “*Dan’s not the*

person you want to be walking to.” Sure enough, about one minute and thirty-eight seconds later, Gillespie did indeed shoot the man.

6. The man Gillespie killed was David L. Ward, Jr. His Estate brings this case to redress his rights and those of his Estate’s beneficiaries under Ohio and federal law.

Parties

7. At all times relevant to this lawsuit, David L. Ward Jr. was a United States citizen and resident of the State of Ohio.
8. Robert Stell is the Chief of Police for the City of Ashtabula.
9. At all times relevant to this lawsuit, the Chief of Police was a policymaking official for the City of Ashtabula police department with respect to, among other things, practices, policies, customs, training, administration, and certain disciplinary decisions.
10. Daniel Gillespie is a police officer with the City of Ashtabula police department.
11. The City of Ashtabula, Chief of Police, and Gillespie are each a “person” within the meaning of 42 U.S.C. § 1983.
12. At all times relevant to this lawsuit, for purposes of federal law, the City of Ashtabula, Chief of Police, Gillespie, and the other Ashtabula officers addressed below were “state actors,” acting under color of state law.
13. At all times relevant to this lawsuit, the Chief of Police, Gillespie, and the other Ashtabula officers addressed below were each an employee, agent,

and/or servant of the City of Ashtabula, acting in the course and scope of their employment, agency, and/or service.

Jurisdiction and venue

14. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331 because the claims involved arise under the Constitution and laws of the United States, and pursuant to 28 U.S.C. § 1343(a)(3). The Court has supplemental jurisdiction over the state-law claims under 28 U.S.C. § 1367(a).
15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the events giving rise to this lawsuit occurred in this District.

Factual allegations

Sobbing, David Ward calls 911 to report his own suicide and begs the police to “just kill me please.”

16. Shortly after midnight on April 13, 2022, 23-year-old David Ward Jr. called 911 in Ashtabula.
17. Through sobs, he told the dispatcher “there’s been a suicide.” He paused for a second before adding “it’s me.”
18. Ward told the dispatcher what he was wearing and that he was approaching the Spring Street bridge in Ashtabula.
19. Ward also told the dispatcher he had a shotgun and planned on committing suicide, either by shooting himself or jumping off the bridge.
20. Ward unmistakably cried throughout the eight-minute call, telling the dispatcher through his continued sobs that “everything” was wrong, he just “lost my job,” was an alcoholic, and was “drunk.”

21. Ward repeatedly told the dispatcher that he was “tired of it” and wanted to die. He asked the dispatcher to “tell my family I’m sorry.”
22. Ward also apologized to the dispatcher and police, saying “I’m sorry. I didn’t mean to bug you guys but I’m tired of it.”
23. It would be clear to any reasonable listener that Ward was suicidal, having a behavioral- or mental-health crisis, and was suffering terrible emotional pain.
24. At one point Ward told the dispatcher he was next to the police station and if they arrived he would “pull” the gun on them. But it would be apparent to any reasonable listener from his sobbing tone that it was a plea for help and that he did not intend to hurt anyone besides himself.
25. Near the end of the call, Ward tearfully told the dispatcher he “can’t” put the gun down because “I want to die, I want to be out of here, I’m tired of it.”
26. Ward then pleaded with the dispatcher to “just kill me please.”

*Ashtabula police arrive and isolate Ward
in the middle of the 1000-foot-long Spring Street bridge.*

27. By the time Ward’s call with dispatch ended around 12:21 a.m., four Ashtabula police officers were already on scene at the Spring Street bridge, two on each end of the bridge.
28. On the east end were Ashtabula Police Officers Sheri Allen and Cody Caruso.
29. On the west end were Ashtabula Police Officer Branden Zukoski and Ashtabula Police Lieutenant Daniel Gillespie.

30. Between approximately 12:23 and 12:25 a.m., five deputies from the Ashtabula County Sheriff's Department also arrived on the east side of the bridge.
31. Approximately 1,000 feet long, the bridge spans a forested valley with the Ashtabula River flowing through. A redacted Google Earth image of the bridge excerpted by the Ohio Bureau of Criminal Investigations ("BCI") is below:



32. The officers on scene blocked off the bridge, isolating Ward in the middle of its 1000-foot-long span.
33. Near the time the officers arrived, dispatch advised them that Ward had a gun, but also that he was intoxicated and suicidal.

Gillespie takes a tactical sniper position where he can see Ward but Ward can't see him.

34. At 12:25 a.m., Gillespie took a tactical sniper position just beyond the west end of the bridge.

35. Lying prone, Gillespie set his rifle on a bipod on the sidewalk, with part of his body below that on the street itself.
36. Because Gillespie positioned himself at the point where the sidewalk begins to curve away into an intersection, most of his body was shielded by the bridge's concrete wall and steel railing in front of him. For illustration, a screenshot from Gillespie's body camera shows his position during the incident:



37. At approximately 12:29:57 a.m., Gillespie called his supervisor, Lieutenant William Parkomaki.
38. Parkomaki is Division Commander of the Ashtabula police patrol division, and according to Chief Stell, functions as a de facto Assistant Chief of Police with respect to patrol matters.

39. At the time of Gillespie's call, his and Zukoski's police vehicles were parked in plain sight at the west end of the bridge.
40. According to Ashtabula Sheriff's Department Sergeant Scott Daniels, he could see their patrol cars from his position on the east end of the bridge.
41. On the call, Gillespie falsely told Parkomaki that Ward "says he is going to shoot the first cop he sees." The dispatch audio recordings to that point show Gillespie's statement was untrue.
42. Referring to Ward, Gillespie also told Parkomaki "I've got him scoped with my .308 so I can see him."
43. But while Gillespie could see Ward, the converse was not true. Gillespie told Parkomaki, "I'm down low so he really can't see me."
44. Neither Gillespie nor Parkomaki called for the regional SWAT team, which upon information and belief had an armored vehicle that could have been used to deploy non-lethal means to defuse the situation if necessary.

*Gillespie knows Ward is intoxicated and "wanted suicide by cop,"
and has reason to believe Ward's shotgun is unloaded.*

45. Sometime around 12:30 a.m., Officer Allen began talking to Ward on his cell phone.
46. Over the next 50 minutes, Allen relayed multiple updates to Gillespie and Zukoski.
47. At least once, Allen told Gillespie and Zukoski that Ward was drunk and "wanted suicide by cop."

48. Gillespie received Allen's message and repeated it to Parkomaki, telling his supervisor that Ward said he was "highly intoxicated" and "wants to go suicide by cop."
49. Near Allen on the east side of the bridge was Officer Caruso.
50. At 12:55 a.m., Caruso's body camera recorded him telling someone off camera, believed to be Ashtabula County Sheriff Deputy Matthew McBride, "Oh, oh, I thought, he cocked it a co... like twice, *something tells me that thing ain't, is empty. I don't think it's going to be loaded.*"
51. Back at the west end of the bridge, Gillespie's body camera at that exact moment showed him in his sniper position where he could see Ward.
52. Caruso later explained to BCI that Ward racked the shotgun multiple times, and because no shells ejected, he believed it was unloaded.
53. Caruso was correct; the gun was unloaded.

When an Ashtabula sheriff's Sergeant on scene radios that he has an existing relationship with Ward, Gillespie orders the sheriff's department's communications cut off, and Allen refuses to let the Sergeant speak to Ward.

54. At around 12:57 a.m., Gillespie radioed for someone to see if any there were any "relatives or family members" available to "see what's going on with" Ward.
55. As it turns out, there was someone already there. Ashtabula sheriff's department Sergeant Scott Daniels' adopted children were related to Ward. As a result, Sergeant Daniels had an existing relationship with Ward.

56. At a few seconds after 12:58 a.m., Sergeant Daniels “informed everyone over the police radio that I had a rapport with [Ward].”
57. Almost immediately, Gillespie ordered that the Ashtabula sheriff’s department be cut off from further radio communication with the Ashtabula police department. According to Sergeant Daniels, “Lt. Gillespie advised his dispatch shortly after (0058) my radio traffic that they needed to unpatch our radio communication.”
58. After Gillespie had the sheriff’s department removed from the radio communications, Sergeant Daniels found Allen to explain “that my adopted kids were related to David Ward Jr. so maybe he would listen to me.”
59. Allen refused to let Daniels speak with Ward to try and defuse the situation or get him to surrender. Her response instead was to walk away from Sergeant Daniels.
60. As he later explained in his incident report, before Allen walked away, Sergeant Daniels “heard David Ward Jr. telling her over the telephone that he did not want to hurt any cops [sic] that he wanted US to shoot him.” (emphasis in original).

Ward repeatedly starts and stops walking and repeatedly puts the gun down.

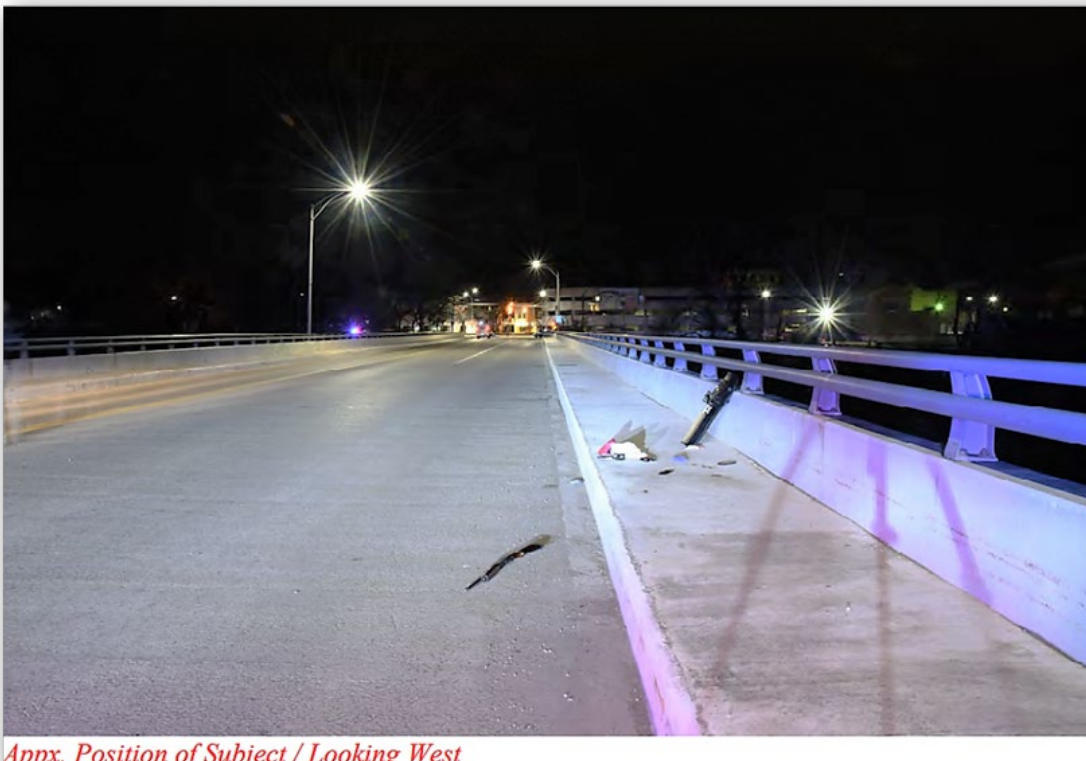
61. Still in his sniper position at 1:07 a.m., Gillespie radioed that Ward “is yelling something towards us. I don’t know what it is.”
62. Over the next several minutes, Ward repeatedly took a few steps west and then stopped, put the gun down, and sometimes smoked a cigarette.

63. According to Gillespie, Ward did that “multiple times” and “would generally sit down and rest the shotgun against the guardrail on the bridge.”
64. Based on audio from the officer body cameras, between 1:14 a.m. and 1:20 a.m., Ward put the gun down and stopped walking west no less than twice. The body cameras reflect that Ward did the same thing at least one other time shortly before 1 a.m.
65. At 1:18 a.m., Lieutenant Parkomaki arrived on the west end of the bridge and positioned himself next to Gillespie.
66. Parkomaki was then the highest-ranking Ashtabula Police Department officer on scene.
67. At that point, there were at least 11 members of law enforcement on scene, isolating Ward on the bridge.
68. About one minute later, Zukoski (apparently relaying a message from Allen) told Gillespie and Parkomaki that Ward “says he sees us and the [Ohio State Highway Patrol] trooper.”
69. Parkomaki then told Gillespie to get the “bean bag [shot]gun” from Gillespie’s trunk, adding “That way, if he comes this way [unintelligible].”
70. As Gillespie went to get his bean bag shotgun, he told Parkomaki that his Fitbit already “bitched at me. My heart rate’s over 120.” According to Gillespie, his heart was racing so fast that his watch sent an alert asking if it should call 911 for him.

71. At 1:21 a.m., Gillespie was back in his prone sniper position. At 1:21:45 a.m., Zukoski said “He’s looking at us” and Gillespie responded, “Yeah, he’s been doing that off and on.”
72. At 1:22:47, Gillespie said to Zukoski “he’s walking back toward us,” but at 1:23:13 a.m. Zukoski told Gillespie that Ward is “still leaning up against the... Ok, he set the gun down for now but he stopped.”
73. That was at least the fourth time in the past minutes that Ward had put down the gun and stopped walking west.
74. At 1:23:39 a.m., Gillespie radioed that Ward picked the gun back up and was “walking toward us some more.”
75. Gillespie then yelled for Ward to drop the gun.
76. Because Gillespie could not hear Ward yelling minutes earlier, and because Gillespie was lying on the ground, it is unclear whether Ward could have heard him.
77. At 1:24:39 a.m., Gillespie’s body camera recorded him speaking at Ward in a volume louder than a conversational tone but softer than a yell. He told Ward not to drop the gun, but to “walk away from the gun,” suggesting Ward was not holding the gun at that time.
78. There is no video or other objective evidence showing that Ward ever picked up the gun again.

Although he admits Ward never pointed a gun at anyone, Gillespie shoots him from 482 feet away while Ward is holding his cell phone in one hand. Nobody else fires.

79. At a few seconds before 1:24 a.m., Caruso’s body camera recorded him saying that by walking west, Ward was “walking the wrong way.” He then chuckled, adding “Dan’s not the person you want to be walking to.”¹
80. At 1:25:27 a.m., from his prone position, Gillespie fired his .308 sniper rifle and hit Ward in the middle of the chest.
81. According to measurements taken by the Ohio Bureau of Criminal Investigations, Ward was approximately 482 feet away when Gillespie shot him:



Appx. Position of Subject / Looking West

-
1. The time stamp on Caruso’s body camera is about five seconds behind the time stamp on Gillespie’s.

82. According to Gillespie, he could see Ward through his rifle scope—which he set at 16x magnification—when he fired.
83. When he finally completed an incident report more than six months later, Gillespie admitted that the shotgun’s “effective range” was only “out to 100 yards”—far less than the distance from which Gillespie chose to fire.
84. Gillespie also admitted to BCI that Ward was not pointing the shotgun at the officers when he shot Ward.
85. Ward was not trying to point the shotgun either.
86. When Gillespie fired, Ward was not holding the shotgun in both hands.
87. If he was holding the gun at all, it was only in one hand, which was away from the trigger.
88. When he fired, Gillespie claims he saw Ward holding the shotgun with his “left hand on the barrel.”
89. But when Gillespie shot him, Ward’s right hand held his cell phone.
90. Indeed, Allen later told BCI that she was talking to Ward on his cell phone when Gillespie shot him.
91. Ward could not have fired the shotgun while holding it with only one hand, which was on the barrel.
92. At the time Gillespie fired, Zukoski was also in a prone sniper position at the west end of the bridge, approximately 15 feet south of Gillespie. He too had Ward in his rifle scope.
93. Zukoski did not fire his rifle.

94. At the time Gillespie fired, Ohio State Trooper Zackery Metz was also in position near the west end of the bridge with his service rifle.
95. According to Trooper Metz, he had Ward in his rifle sights at the time Gillespie fired.
96. Nevertheless, Trooper Metz told BCI he did not see Ward holding a gun when Gillespie shot him.
97. Like Zukoski, Trooper Metz did not fire his rifle.
98. Neither Gillespie nor any other officer warned Ward they would use deadly force before Gillespie fired.
99. Upon information and belief, Lieutenant Parkomaki—the commanding officer on scene—did not give an order to fire.
100. A little less than two minutes after Gillespie shot Ward, his body camera caught him calling Ward a “fucking asshole.”

Officers find Ward’s cell phone under his face. Although he is still alive when EMS puts him into the ambulance, he is pronounced dead at the hospital.

101. Several minutes after the shooting, Parkomaki, Caruso, and Allen approached the mortally wounded Ward lying face-down in the middle of the bridge. He was not moving.
102. When Allen handcuffed Ward and the officers rolled him over, Ward appeared to be conscious. He groaned and Parkomaki told him to hang on.
103. As the officers rolled him over, Allen’s and Caruso’s body camera footage reveal that Ward’s cell phone was right under his face.

104. Ward was still alive when EMS medics from the Ashtabula Fire Department loaded him into an ambulance at 1:32 a.m.
105. EMS did not leave for the hospital until 1:37 a.m., five minutes after it put Ward into the ambulance.
106. EMS arrived at Ashtabula County Medical Center with Ward approximately sixteen minutes after putting him into the ambulance.
107. At 1:48 a.m., the emergency room doctor pronounced Ward dead.
108. Back at the bridge, Allen's body camera at 1:59 a.m. showed her speaking to Ward's father, David Ward Sr., who was sitting in a car with two other passengers near the end of the bridge.
109. Allen did not tell him that Ward had been shot. She instead casually spoke with him for approximately three minutes before the car drove off for the hospital.

Two officers tell BCI that Ward was not running when Gillespie shot him.

110. Within a few hours after the shooting, BCI arrived at the Spring Street bridge and began investigating.
111. BCI Special Agent Soroka took photographs and measurements of the scene, including the distance from which Gillespie shot Ward.
112. Special Agent Soroka also determined that Ashtabula police "cruisers at the west end of the bridge were identifiable" as police vehicles from the approximate spot where Ward was when Gillespie shot him.

113. Indeed, BCI photos of the scene show Gillespie's and Zukoski's vehicles in the same position they were in when Gillespie shot Ward. Both are plainly visible in the road at the west end of the bridge.
114. In the following weeks and months, BCI interviewed Gillespie, Zukoski, Allen, and Trooper Metz.
115. On May 5, 2022, BCI interviewed Gillespie.
116. Gillespie admitted to BCI that Ward had "the whole bridge to himself."
117. Zukoski admitted to BCI that Ward was not running when Gillespie shot him.
118. Ohio State Highway Patrol Trooper Metz told BCI that Ward was walking.
119. When BCI asked Gillespie whether he thought he had other options besides shooting Ward, he said "everyone's been griping about de-escalation."
120. Gillespie also suggested that he felt he had waited long enough before shooting, telling BCI "we were laying on the bridge for an hour, seems like almost an hour and a half."
121. Near the end of his interview with BCI, Gillespie repeated the sentiment he expressed on the night of the shooting about the man he killed, again calling Ward a "fucking asshole."
- Gillespie previously shot someone who was not pointing a gun at him, and the Police Department didn't discipline him for it.*
122. David Ward Jr. is not the first person that Lieutenant Gillespie has shot who was not pointing a gun at him.

123. On June 2, 2017, Brendan Hester was inside his family home in Ashtabula holding a burglar at bay with a handgun when Gillespie shot him.
124. Responding to an intruder call, Gillespie and another officer came into the house and saw Hester with the gun.
125. Gillespie then shot Hester three times with an AR-15, permanently paralyzing him.
126. As with Ward, Gillespie admitted Hester never pointed a gun at him.
127. As with Ward, Gillespie did not warn Hester of his intent to use deadly force.
128. And as with Ward, Gillespie was the only officer to fire; the officer right next to him did not.
129. In Spring 2019, the City of Ashtabula settled Hester's subsequent civil rights lawsuit against the City and Gillespie.
130. Defendants did not discipline Gillespie for shooting and paralyzing an innocent man or send him to remedial training for it.
131. The report of BCI's interview with Gillespie into his shooting of Ward references Gillespie's prior shooting, but falsely describes Hester as an "armed burglar."
132. Upon information and belief, the Ashtabula Police Department or one of its employees directly or indirectly caused that false statement to be represented to the BCI's investigator.

The Ashtabula police department's custom of tolerating, permitting, acquiescing in, or encouraging excessive force.

133. The Ashtabula police department has a history of officers engaging in excessive force, including by shooting people preemptively who are not pointing a gun at anyone.
134. Robert Stell became Ashtabula Chief of Police in 2007.
135. During his tenure there have been multiple lawsuits and other allegations of excessive force brought against Ashtabula officers.
136. Nevertheless, Chief Stell previously testified under oath that he could not recall ever finding that an Ashtabula officer used excessive force.
137. Upon information and belief, since he became Chief in 2007, Stell has never made a finding that an Ashtabula police officer used excessive force.
138. Upon information and belief, since he became Chief in 2007, Stell has never disciplined an Ashtabula police officer for excessive force.
139. That includes former Ashtabula police officer William Felt, who had been sued for excessive force at least three times and upon information and belief had at least one other allegation of excessive force made against him by the time Gillespie shot Ward.
140. Lieutenant Parkomaki previously testified under oath that he believed Felt did use excessive force in one of those instances.
141. Still, the Chief did not discipline Felt. In fact, the City and Chief later promoted Felt to detective.

142. Stell's failure to investigate or discipline employees for excessive force extends to Gillespie specifically. As noted above, he did not discipline Gillespie for shooting Brendan Hester.
143. Consistent with this pattern and practice, Defendants did not discipline Gillespie for shooting Ward.
144. As noted above, by the time he shot Ward, Gillespie had a reputation within the force for being prone to using deadly force.
145. Besides not investigating or disciplining officers for excessive force, upon information and belief, neither the City nor Chief formally track allegations of excessive force by officers.
146. Upon information and belief, neither the City nor Chief even evaluate officer performance on whether they are appropriately using force.
147. The Ashtabula police department has a written policy requiring semi-annual performance evaluations.
148. According to the policy, evaluations "shall be used as a primary resource in determining actions taken by management" regarding officers, including but not limited to "training needs," "effectiveness" and "suitability" for their assigned roles, and "continued employment."
149. One measure on the required performance evaluations concerns a given officer's use of force and asks whether "unnecessary force is used."

150. The Chief and Ashtabula police department ignore that written policy and chose not to conduct the required performance evaluations of its officers, including on whether Ashtabula officers are using unnecessary force.
151. The Chief's and City's actions and inactions outlined above have created a culture within the Ashtabula police department where officers can use excessive force without fear of consequences.
152. Based on the foregoing, the City of Ashtabula and its police department have a policy or custom of tolerating, permitting, acquiescing in, encouraging, or engaging in excessive force in violation of the Constitution.
153. This policy or custom is evidenced in part by: the failure to train officers; the failure to implement effective use-of-force policies; refusing to appropriately investigate use of force by its officers; refusing to discipline or take action against officers for using excessive force; refusing to appropriately track allegations of excessive force; ignoring written policies requiring the department to evaluate officer performance based on whether they appropriately use force; and, ongoing behavior by officers, among other things.
154. These policies or customs amount to deliberate indifference to the rights of persons with whom the police come into contact and were closely related to or actually caused Ward's injuries and death.

The Ashtabula police department's ongoing failure to adequately train officers.

155. Based in part on multiple prior allegations of excessive force used by Ashtabula officers, the City and Chief knew or should have known that the police department's training on officer use of force, including deadly force, was inadequate.
156. The City and Chief have not adequately trained officers in the appropriate use of deadly force.
157. As noted, neither the City nor Chief required Gillespie to take remedial training after he shot Brendan Hester.
158. Upon information and belief, the Ashtabula police department does not annually test officers on appropriate standards for the use of deadly force.
159. Upon information and belief, the Ashtabula police department has no policy on, and does not train officers on, the constitutional requirement to warn of the intent to use deadly force where feasible before using such force.
160. Upon information and belief, the Ashtabula police department has no policy on, and at the relevant times did not train officers on, dealing with suicidal individuals and/or how to handle attempted suicide-by-cop incidents.
161. Upon information and belief, the Ashtabula police department does not adequately train officers on dealing with individuals during mental-health crises.
162. Among other things, the Ashtabula police department intentionally refused to let an Ashtabula Sheriff's Sergeant on scene speak with Ward to try and defuse the situation or get Ward to surrender, despite knowing that the

Sergeant had an existing relationship with Ward, and was in fact related to Ward through his adopted children.

163. Upon information and belief, the Ashtabula police department does not adequately train officers on proper communication between officers during crisis situations.
164. On the night Gillespie shot Ward, Ashtabula officers failed to properly communicate with each other, evidenced in part by dispatch not adequately relaying complete and accurate information to officers about Ward's mental state and intentions, and by Caruso not ensuring that all officers knew Ward's gun was likely unloaded.
165. The need for adequate training in these areas is obvious, and the likelihood of injury to citizens is a highly predictable consequence of the failure to do so.
166. Based on the foregoing, the City of Ashtabula and its police department have a policy or custom of failing to adequately train officers in various critical areas, including but not limited to: the use of force; intervention with individuals suffering from mental health crises; dealing with suicidal individuals; de-escalation; and, crisis communication. Such failures amount to deliberate indifference to the rights of persons with whom the police come into contact and the rights of fellow officers themselves.
167. Those policies or customs were closely related to or actually caused Ward's injuries and death.

The Ashtabula police department's unconstitutional policies regarding use of force.

168. The Ashtabula police department's use-of-force policy permits officers to use deadly force without giving a constitutionally appropriate warning of the intent to use deadly force where feasible.
169. Ashtabula police officers, including Gillespie, have repeatedly used deadly force without giving a constitutionally appropriate warning.
170. In addition to the incidents outlined above, upon information and belief, Lieutenant Parkomaki also previously shot an individual without giving a constitutionally appropriate warning.
171. The Ashtabula police department's use-of-force policy permits officers to use deadly force without consideration of whether de-escalation or non-lethal means can safely be employed.
172. In fact, upon information and belief, the Ashtabula police department has no written policy on de-escalation.
173. The Ashtabula police department's use-of-force policy permits officers to use deadly force without considering whether noncompliance with officer orders might be due to factors other than intent to cause harm, including but not limited to mental-health issues and the influence of medication, other drugs, or alcohol.
174. The Ashtabula police department's policy on dealing with individuals experiencing mental-health emergencies also fails to require officers to

consider whether noncompliance with officer orders might be due to factors other than intent to cause harm.

175. Upon information and belief, the Ashtabula police department has no written policy at all on how to deal with attempted suicide-by-cop incidents.
176. Based on the foregoing, the City of Ashtabula and its police department have unconstitutional policies regarding the use of deadly force, de-escalation, dealing with individuals experiencing mental-health emergencies, and handling attempted suicide-by-cop incidents. Such failures amount to deliberate indifference to the rights of persons with whom the police come into contact and the rights of fellow officers themselves.
177. Those policies were closely related to or actually caused Ward's injuries and death.

The Ashtabula police department's ratification of Gillespie's conduct.

178. The Chief of Police ratified Gillespie's shooting of Ward by failing to investigate it or discipline him for it, despite Gillespie's admissions outlined above and despite him giving misleading statements to BCI, and upon information and belief, by covering it up. Such conduct by the Chief equates to an official policy or custom.
179. The Chief of Police has a history of ratifying excessive force through a pattern of failing to investigate, by never disciplining any officer for the use of excessive force, and by even promoting one officer after repeated excessive-

force lawsuits against him, which conduct by the Chief equates to an official policy or custom.

180. To the extent the Chief caused or allowed a representation to BCI during the investigation into Ward's shooting that Brendan Hester was an armed burglar, such representation amounts to a cover up designed to insulate Gillespie from accountability for shooting Ward and would equate to an official policy or custom.
181. Upon information and belief, either the Chief or someone acting on his direction falsely told the media that Ward pointed a gun at the officers when Gillespie shot him.
182. To the extent the Chief caused or allowed that false representation, such representation amounts to a cover up designed to insulate Gillespie from accountability for shooting Ward and would equate to an official policy or custom.

**First claim for relief –
Excessive force under the Fourth Amendment**

183. Ward's Estate realleges each and every allegation set forth above as if fully rewritten.
184. By shooting Ward, Gillespie seized him within the meaning of the Fourth Amendment.
185. When Gillespie shot him, Ward did not pose an imminent threat of death or serious physical harm to Gillespie or any other officers.
186. Gillespie did not have probable cause to use deadly force against Ward.

187. Gillespie used deadly force against Ward without a constitutionally adequate warning.
188. Gillespie's use of deadly force against Ward was objectively unreasonable and excessive.
189. Gillespie's actions violated the Fourth Amendment of the U.S. Constitution.
190. For the reasons described above, Defendants' conduct reflects a policy or custom of the City of Ashtabula and its police department.
191. Defendants are therefore liable to Ward's Estate under 42 U.S.C. § 1983.
192. As a direct and proximate result of Defendants' conduct, Ward and/or his Estate: suffered economic loss; suffered physical and psychological injury; endured emotional distress and humiliation; incurred costs and expenses, such as attorneys' fees and costs of suit; and were otherwise injured. Some or all of these damages will continue to accrue in the future.
193. The conduct of Gillespie, as described above, was done maliciously and/or with reckless indifference to Ward's federally protected rights, for which Gillespie, in his individual capacity, is liable for punitive damages.

**Second claim for relief –
Wrongful death and survivorship under Ohio law**

194. Ward's Estate realleges each and every allegation set forth above as if fully rewritten.
195. This case is brought within two years of David L. Ward Jr.'s death.

196. Defendants' wrongful conduct as described above was the direct and proximate cause of Ward's death and would have entitled him to maintain an action for damages if he had not died.
197. Ward is survived by his parents.
198. Ward's parents have suffered damages as a direct and proximate result of his wrongful death, including but not limited to: loss of support; loss of services; loss of society; loss of prospective inheritance; other economic loss; and, mental anguish.
199. Defendants are therefore liable to Ward's Estate for wrongful death in violation of Ohio Revised Code Chapter 2125.
200. Defendants' wrongful conduct also directly and proximately caused Ward himself to suffer injury and damages before his death, including physical injury, and pain and suffering. Defendants are therefore liable to Ward's Estate for Ward's own pre-death injuries and damages.
201. The conduct of Gillespie, as described above, was done maliciously and/or with reckless indifference to Ward's protected rights, for which Gillespie, in his individual capacity, is liable for punitive damages.

**Third claim for relief –
Battery**

202. Ward's Estate realleges each and every allegation set forth above as if fully rewritten.
203. Through his conduct described above, Gillespie intentionally made harmful, offensive contact with Ward without consent or authority.

204. Gillespie's intentional, harmful, offensive contact with Ward directly and proximately caused Ward's injuries and death.
205. Defendants are therefore liable to Ward's Estate for battery.
206. The conduct of Gillespie, as described above, was done maliciously and/or with reckless indifference to Ward's protected rights, for which Gillespie, in his individual capacity, is liable for punitive damages.

**Fourth claim for relief –
Breach of duty of care under Ohio law**

207. Ward's Estate realleges each and every allegation set forth above as if fully rewritten.
208. Gillespie owed a duty of care to Ward.
209. By his misconduct described above, Gillespie recklessly, willfully, wantonly, maliciously, and/or intentionally breached his duty of care to Ward.
210. Gillespie's acts and omissions were done with malicious purpose, in bad faith, or in a wanton or reckless manner.
211. Gillespie's breach of his duty to Ward directly and proximately caused Ward's injuries and death.
212. Defendants are therefore liable to Ward's Estate for Gillespie's breach of duty to Ward.
213. The conduct of Gillespie, as described above, was done maliciously and/or with reckless indifference to Ward's protected rights, for which Gillespie, in his individual capacity, is liable for punitive damages.

Fifth claim for relief –
The Americans with Disabilities Act

214. Ward's Estate realleges each and every allegation set forth above as if fully rewritten.
215. Ward was a qualified individual with a disability within the meaning of the Americans with Disabilities Act.
216. The City and Chief in his official capacity are public entities within the meaning of the Americans with Disabilities Act.
217. Ward's disability was known to Defendants as described above and would have been known to any reasonable person under the circumstances.
218. Through the conduct described above, Defendants discriminated against Ward on the basis of his disability by denying him full and equal access to, and enjoyment of, the programs, services, activities, facilities, privileges, advantages, or accommodations of a public entity.
219. Defendants also failed to reasonably accommodate Ward's disability in the course of communicating with and seizing Ward.
220. The need for such an accommodation was obvious and would have been known to any reasonable person under the circumstances.
221. Defendants acts and omissions described above caused Ward and his Estate damages.
222. The City and Chief are therefore liable to Ward's Estate under Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132, *et seq.*

Sixth claim for relief –
The Rehabilitation Act

223. Ward's Estate realleges each and every allegation set forth above as if fully rewritten.
224. Ward was a qualified individual with a disability within the meaning of the Rehabilitation Act of 1973.
225. Ward's disability was known to Defendants as described above and would have been known to any reasonable person under the circumstances.
226. Upon information and belief, the City and its police department receive federal funds and are a program or activity receiving federal financial assistance within the meaning of the Rehabilitation Act.
227. Through the conduct described above, Defendants excluded Ward from participation in, denied him the benefits of, or subjected him to discrimination under a program or activity receiving federal financial assistance because of his disability.
228. Defendants also failed to reasonably accommodate Ward's disability in the course of communicating with and seizing Ward.
229. The need for such an accommodation was obvious and would have been known to any reasonable person under the circumstances.
230. Defendants acts and omissions described above caused Ward and his Estate damages.
231. The City and Chief are therefore liable to Ward's Estate under Section 504 of the Rehabilitation Act of 1973.

Wherefore, Ward's Estate prays for judgment against Defendants for:

- a) Economic and compensatory damages, including but not limited to: loss of support; loss of services; loss of society; loss of prospective inheritance; other economic loss; and, mental anguish, pain, and suffering, all in amounts that will fully and fairly compensate Ward's Estate and Ward's next-of-kin for their injuries, damages, and losses;
- b) Compensatory damages for Ward's physical and psychological injuries before his death, in an amount that will fully and fairly compensate Ward's Estate for his injury, damage, and loss;
- c) Equitable and prospective injunctive relief: barring future unconstitutional uses of excessive force by the Ashtabula police department; requiring the City and Chief to remedy the unconstitutional written and unwritten policies, customs, and practices outlined above; requiring the City and Chief to properly train Ashtabula officers on the use of deadly force and other topics outlined above; and, requiring the City and Chief to retract and affirmatively correct any public communications they made, caused to be made, or allowed to be made, stating or implying that Ward pointed a gun at police officers;
- d) A declaratory judgment holding that Defendants have violated Ward's rights;
- e) Punitive damages against Gillespie in his individual capacity;
- f) Attorneys' fees and costs of suit under 42 U.S.C. § 1988, 42 U.S.C. §

- 2000cc-2(a), and other applicable federal or Ohio laws; and,
- g) Such other appropriate relief as the Court deems just.

Jury demand

A trial by jury is hereby demanded in the within matter in the maximum number of jurors allowed by law.

Respectfully submitted,

/s/ Matthew D. Besser
Cathleen M. Bolek (0059884)
Matthew D. Besser (0078071)
BOLEK BESSER GLESIUS LLC
Monarch Centre, Suite 302
5885 Landerbrook Drive
Cleveland, Ohio 44124
T 216.464.3004
F 866.542.0743
cbolek@bolekbesser.com
mbesser@bolekbesser.com

Counsel for Plaintiff