

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

ATLANTA DIVISION

MARK A.C. ROBINSON, as Permanent
Administrator of the estate of Marando
Salmon, and JASMINE M. BROWN, as
parent and next friend of J.M.S., a minor,

Plaintiffs,

v.

JORDAN M. VANCE, RUSSELL
MATHIS, and DEKALB COUNTY,
GEORGIA,

Defendants.

*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*

Civil Action No.:

Jury Trial Demanded

COMPLAINT FOR DAMAGES

MARK A.C. ROBINSON, as Permanent Administrator of the estate of Marando Salmon, and JASMINE M. BROWN, as parent and next friend of J.M.S., a minor (collectively “Plaintiffs”), file this Complaint for Damages against Defendants JORDAN M. VANCE, RUSSELL MATHIS, and DEKALB COUNTY, GEORGIA (collectively “Defendants”), showing this Honorable Court the following:

INTRODUCTION

1.

The Fourth Amendment’s warrant requirement is a bedrock constitutional safeguard that protects fundamental rights of personal privacy and security in the home. Exceptions to the warrant requirement are “jealously and carefully drawn” and cannot be broadly construed. *Jones v. United States*, 357 U.S. 493, 499 (1958).

It follows that a police department must not adopt an official policy that defines those exceptions more broadly than the Constitution does. To do so is to authorize warrantless searches and seizures that the Constitution forbids.

Defendant DeKalb County did just that. The Supreme Court has recognized an exception to the warrant requirement for “exigent circumstances,” which requires police to “demonstrate a compelling need for official action and no time to secure a warrant.” *Mitchell v. Wisconsin*, 139 S. Ct. 2525, 2547 (2019) (cleaned up). But DeKalb’s policy goes well beyond that. Defining “exigent circumstances” in vague, expansive terms, it affirmatively provides that “warrantless searches are permitted . . . where speed is essential to the accomplishment of lawful police action.”

This language does not come from the Constitution, or from any court decision. And the exception it creates is anything but “jealously and carefully drawn.” *Jones*, 357 U.S. at 499. The Constitution requires a warrant unless the need for official action is “compelling” and there is “no time to secure a warrant.” In contrast, DeKalb’s policy merely asks the officer to determine whether “speed is essential” to police action that is “lawful.” If the officer finds that this low bar is cleared, then, under DeKalb’s policy, “warrantless searches are permitted.” This policy affirmatively authorizes warrantless searches that violate the Constitution, specifically, those searches where the officer is engaged in lawful police activity and deems speed essential, but has time to get a warrant.

On the night of November 4, 2022, Defendants Vance and Mathis were acting within their employment as DeKalb County police officers while investigating a weeks-old allegation that someone had not returned a car to a dealer after a test drive. Upon discovering the car in a driveway, they entered the home of Marando Salmon without a warrant. They surprised Mr. Salmon in bed and shot him to death.

Both officers later told DeKalb's Internal Review Board that they believed exigent circumstances existed to justify entry of the home. Both officers contended that they complied with DeKalb's policy. Ultimately, the Internal Review Board recommended by a one-vote majority that both officers be disciplined for failing to understand the exigent-circumstances policy. But two of the five voting Board members found that the policy **authorized** the officers' entry.

The DeKalb County District Attorney found that the entry was unlawful, and a DeKalb County grand jury indicted both officers for Reckless Conduct in connection with the warrantless entry of Mr. Salmon's home.

Plaintiffs now bring this action pursuant to 42 U.S.C. § 1983, seeking compensatory and damages for Defendants' violations of Mr. Salmon's constitutional rights and for the full value of his life. Plaintiffs demand a jury trial and seek an award of economic, compensatory, and punitive damages, as well as an award of attorneys' fees and costs.

PARTIES, JURISDICTION AND VENUE

2.

Plaintiff Jasmine Brown is a resident of Clayton County, Georgia. She is the mother and next friend of J.M.S., the only child and sole heir of the late Marando Salmon.

3.

Plaintiff Mark A.C. Robinson is the County Administrator for DeKalb County, Georgia, and the Permanent Administrator of the Estate of Marando Salmon.

4.

Defendant Jordan M. Vance is a resident of DeKalb County, Georgia and is subject to the personal jurisdiction of this Court. Defendant Vance may be personally served with Summons and a copy of the Complaint at his home address of 16101 Kensington Tr., Lithonia, Georgia 30038.

5.

At all times relevant to this action, Defendant Vance was acting under color of state law and within the scope of his functions as a duly sworn, certified law enforcement officer employed in the DeKalb Police Department (hereinafter “DKPD”) by Defendant DeKalb County, Georgia.

6.

Defendant Russell Mathis is a resident of DeKalb County and is subject to the personal jurisdiction of this Court. He may be personally served with Summons and a copy of the Complaint at his home address of 4173 Britt Road, Tucker, Georgia 30084.

7.

At all times relevant to this action, Defendant Mathis was acting under color of state law and within the scope of his functions as a duly sworn, certified law enforcement officer employed by DKPD.

8.

DeKalb County is a political subdivision of the State of Georgia and is subject to the jurisdiction of this Court. DeKalb County may be served by personal service on its Chief Executive Officer, Michael Thurmond, at his place of employment located at the Manuel J. Maloof Center, 1300 Commerce Drive, 6th Floor, Decatur, Georgia, 30030.

9.

DeKalb County, acting pursuant to its governmental authority and under color of State law, operates the DeKalb Police Department (hereinafter “DKPD”). The policies and practices of DKPD are imputable to DeKalb County.

10.

Venue is proper in this District.

FACTUAL ALLEGATIONS

11.

After 10:00 at night on November 4, 2022, Officers Mathis and Vance responded to 998 Autumn Crest Court, Tucker, DeKalb County, Georgia, on a call that an allegedly stolen vehicle had been located there.

12.

The allegation was that someone named Marc Manrando had taken the car on a test drive from a dealership on August 24, 2022, and had not returned it or paid for it.

13.

At most, this was a weeks-old property offense involving no violence or threat of violence.

14.

Officers Mathis and Vance located the car in the driveway, and then went and knocked on the front door of the residence.

15.

No one answered the knock.

16.

Officers Mathis and Vance opened the door and went into the house.

17.

Officers Mathis and Vance searched the downstairs of the house. They then went upstairs, failing to announce themselves before doing so.

18.

By this time it was about 11:00 at night.

19.

Officer Mathis opened the closed door of a bedroom without announcing himself.

20.

Mr. Salmon was sleeping in the bedroom.

21.

Mr. Salmon awoke and sat up.

22.

Officer Mathis fired six shots at Mr. Salmon, striking him four times and killing him.

23.

It took well over a year, but DeKalb County finally convened its Internal Review Board to review the incident. The Board found that Officer Mathis's use of force was not justified. The Board also found, by a 3-2 vote, that the two officers' warrantless entry violated DKPD policy.

24.

Both officers were ultimately disciplined as a result of the incident. DKPD terminated Mathis in December, 2023. In January, 2024, DKPD imposed a 16-hour suspension on Vance.

25.

A DeKalb County grand jury indicted both officers. Officer Mathis was charged with involuntary manslaughter and reckless conduct. Officer Vance was charged with reckless conduct in connection with the warrantless entry.

COUNT I: 42 U.S.C. § 1983 AGAINST DEFENDANTS VANCE AND MATHIS

26.

The factual allegations contained in Paragraphs 11-25 above are incorporated into this paragraph as if expressly set forth herein.

27.

Acting under color of state law, Defendants Vance and Mathis violated Salmon's federal constitutional rights by entering his home without a warrant, consent, or exigent circumstances.

28.

Vance and Mathis had time and opportunity to go through the process of obtaining a warrant, if they had chosen to do so.

29.

No reasonable officer who knew the law could have believed that the warrantless entry by Vance and Mathis was constitutional.

30.

Acting under color of state law, Defendants Vance and Mathis violated Salmon's federal constitutional rights by seizing his person without lawful justification.

31.

Defendant Mathis violated Mr. Salmon's rights under the Fourth Amendment when he unlawfully trespassed in Salmon's home with force of arms, assaulted him, and shot him.

32.

No reasonable officer could have believed that Mathis's use of deadly force against the unarmed Salmon was constitutional.

33.

Defendant Vance conspired in, participated in, and contributed to the constitutional violations committed by Mathis.

34.

Vance knowingly failed to intervene to prevent Mathis from unlawfully entering Salmon's home, assaulting him by pointing a gun at him, and shooting him dead.

35.

Vance had ample time and opportunity to intervene to prevent Mathis from committing these unlawful acts.

36.

The wrongful acts and omissions of Defendants Vance and Mathis described herein proximately caused Marando Salmon to suffer grievous personal injury.

37.

As a result of that injury, Mr. Salmon experienced pain and suffering, including but not limited to the physical pain of his injuries and the terror of his impending death.

38.

The Estate of Marando Salmon is entitled to an award of compensatory damages for the injuries wrongfully inflicted upon Salmon by Defendants.

39.

The unlawful acts of Defendants Vance and Mathis as described herein proximately caused the wrongful death of Marando Salmon.

40.

Salmon's minor child, through her mother and next friend, is entitled to recover the full value of Salmon's life in an amount to be determined by a jury.

COUNT II: 42 U.S.C. § 1983 AGAINST DEFENDANT DEKALB COUNTY

41.

Plaintiff realleges and incorporates Paragraphs 1 and 11-25 as if fully set forth herein.

42.

The Fourth Amendment's warrant requirement is such a fundamental constitutional limit on police power that a major metropolitan police department like DKPD obviously needs to have a legally accurate policy about it.

43.

At the time of the incident, it was the official written policy of DKPD that “[a] warrantless search is permitted when there is both probable cause and exigent circumstances.” The policy defined “exigent circumstances” as “situations where speed is essential to the accomplishment of lawful police action.”

44.

Under the heading, “Justification,” DeKalb’s policy stated that “[t]he ultimate test is whether there is such a compelling necessity for immediate action that proceeding without a warrant is justified.”

45.

This supposed “ultimate test” adds nothing of substance, because it circularly purports to “test” whether an officer is justified in proceeding without a warrant by asking whether proceeding without a warrant is justified.

46.

Contrary to DeKalb’s written policy, the Fourth Amendment does not permit officers to enter a home to perform a search or seizure, without a warrant and without consent, just because “speed is essential to the accomplishment of lawful police action.”

47.

Instead, the test is whether the circumstances constitute a “law enforcement emergency,” or “now or never situation,” in which the delay required to secure a warrant would produce “real immediate and serious consequences.” *Lange v. California*, 141 S. Ct. 2011 (2021).

48.

The mere fact that “speed is essential to the accomplishment of lawful police action” does not mean that officers are faced with exigent circumstances and may dispense with a warrant.

49.

For example, investigating whether a driver is impaired by alcohol is “lawful police action,” and speed is essential to that action, because the body metabolizes alcohol over time. *See Bircoll v. Miami-Dade Cnty.*, 480 F.3d 1072, 1086 (11th Cir. 2007) (noting that “time is of the essence” in a DUI stop). But the Supreme Court has held that this fact, without more, does not constitute an exigent circumstance to support a warrantless blood test without consent. *Missouri v. McNeely*, 569 U.S. 141, 152, 133 S. Ct. 1552, 1561 (2013).

50.

By categorically instructing officers that “warrantless searches are permitted” if “speed is essential to the accomplishment of lawful police action,” the plain language of DeKalb’s policy affirmatively authorized police to conduct warrantless searches in a broader set of circumstances than the Constitution permits.

51.

DeKalb's policy did not mitigate this broad affirmative authorization by informing officers of the constitutional limits on the exigent circumstances exception to the warrant requirement.

52.

For example, DeKalb's policy did not instruct officers that, if they have time to get a warrant, they must do so, even if they believe speed is essential to the accomplishment of lawful police action.

53.

In addition, the constitutional test provides that officers may not base a determination of exigent circumstances on mere speculation or reasonable suspicion. They "must have probable cause to believe that exigent circumstances exist." *Smith v. LePage*, 834 F.3d 1285, 1293 (11th Cir. 2016).

54.

DeKalb's policy did not instruct officers that they must have probable cause to believe exigent circumstances exist before making a warrantless entry of a home without consent.

55.

Instead, DeKalb's policy left it up to officers to determine subjectively whether "speed is essential to the accomplishment of lawful police action."

56.

The Supreme Court of the United States has never held that exigent circumstances exist to justify a warrantless search of a home without consent whenever "speed is essential to the accomplishment of lawful police action."

57.

The United States Court of Appeals for the Eleventh Circuit has never held that exigent circumstances exist to justify a warrantless search of a home without consent whenever “speed is essential to the accomplishment of lawful police action.”

58.

The Supreme Court of Georgia has never held that exigent circumstances exist to justify a warrantless search of a home without consent whenever “speed is essential to the accomplishment of lawful police action.”

59.

To the contrary, the law is that, if an officer has time to obtain a warrant, he must do so before entering a residence without consent to effect a search or seizure.

60.

By telling officers that exigent circumstances exist whenever speed is essential to the accomplishment of lawful police action, and omitting important constitutional limitations from its definition of exigent circumstances, DeKalb’s policy affirmatively authorized the warrantless entry of residences in circumstances where the Fourth Amendment forbids such entry.

61.

As an example of “situations where speed is essential to the accomplishment of lawful police action,” DeKalb’s policy listed “a fleeing suspect.”

62.

DeKalb’s definition made no distinction between a fleeing felony suspect and a fleeing misdemeanor suspect.

63.

The Supreme Court has held that officers cannot enter a home without a warrant or consent merely to capture a misdemeanor suspect who flees into the home. *Lange v. California*, 141 S. Ct. 2011, 2024 (2021).

64.

DeKalb's definition also did not inform officers that a warrantless entry cannot be based on the exigency of flight unless there is probable cause to believe that the suspect's impending escape leaves no time to obtain a warrant.

65.

DeKalb's definition did not distinguish between a suspect who flees from officers in the moment, and one who may have fled hours, days, or weeks earlier.

66.

DeKalb retained this unconstitutional policy language, unchanged, for at least twenty years, and never revised it, even after the Supreme Court and the Eleventh Circuit issued binding decisions that clarified and developed the law of exigent circumstances.

67.

During that time, DKPD policymakers were aware of numerous citizen complaints demonstrating that DKPD officers had unlawfully entered citizens' homes because they did not understand the law of exigent circumstances.

68.

For example, on February 28, 2021, Officer L.A. Webb responded to a report that there was a stolen car in the driveway of a home in South DeKalb County. Officer Webb knocked on the door and questioned a resident, Ms. Katherine West, regarding the car. While questioning Ms.

West, Officer Webb opened her screen door, grabbed her by the wrist, entered her home, and handcuffed her.

69.

Officer Webb used DKPD's exigent circumstances policy to defend his actions.

70.

Ms. West's complaint of unlawful entry went through DKPD Internal Affairs, all the way to Chief Mirtha Ramos, and was sustained.

71.

This incident, and others, put DeKalb policymakers on notice that DKPD's exigent circumstances policy was inadequate and needed to be revised. But DeKalb did nothing to revise the policy.

72.

As a result of DeKalb's affirmatively misleading and unconstitutional policy, Vance and Mathis unlawfully entered Salmon's home without a warrant and without exigent circumstances.

73.

Vance and Mathis told DeKalb County's Internal Review Board that they did not believe they violated any DKPD policies in making their warrantless entry into Salmon's home.

74.

Just like Officer Webb in the Katherine West incident, Officers Vance and Mathis told DeKalb County's Internal Review Board that they believed their warrantless entry was justified by exigent circumstances.

75.

Vance and Mathis told DeKalb County's Internal Review Board that they believed their warrantless entry was justified by the alleged need to make a welfare check because another crime could have occurred at the location.

76.

Vance and Mathis did not have probable cause to believe another crime had occurred at the location.

77.

Vance and Mathis certainly did not have probable cause to believe the house had been the site of a crime that required immediate police intervention.

78.

Vance and Mathis did not have probable cause to believe that any suspect was likely to escape before a warrant could be obtained.

79.

When they entered, Vance and Mathis did not even know whether anyone was in the house.

80.

Vance and Mathis lacked probable cause to believe that anyone would suffer any injury if they waited to get a warrant.

81.

Vance and Mathis lacked probable cause to believe that any evidence of crime would be destroyed if they waited to get a warrant.

82.

Vance and Mathis told DeKalb County's Internal Review Board that they believed their warrantless entry was justified by the need to act quickly due to a high rate of crime in the area.

83.

A high rate of crime in the area is not a law-enforcement emergency that could lawfully justify a warrantless entry of Salmon's home without consent.

84.

DeKalb's Internal Review Board found that Vance and Mathis violated their duty to read and understand DeKalb's written policy, because they did not have exigent circumstances to justify their warrantless entry.

85.

Two of the five voting members of DeKalb's Internal Review Board, both of whom have the rank of Major within DKPD, found that Vance and Mathis did **not** violate the policy. In other words, these two members agreed with Vance and Mathis that DKPD's exigent circumstances policy **authorized** the warrantless entry of Salmon's home.

86.

DeKalb's Internal Review Board, in its written report, did not point to any express language in the written policy that Vance and Mathis allegedly violated, because there is no express language in the policy that proscribes what Vance and Mathis did.

87.

Instead, DeKalb's written policy affirmatively authorized Vance and Mathis to make a warrantless entry if they felt that it was sufficiently important to act quickly, regardless of whether

they faced a “now or never situation” in which the delay needed to secure a warrant would produce “real immediate and serious consequences.”

88.

DeKalb’s facially unconstitutional and affirmatively misleading policy was the moving force behind the warrantless entry by Vance and Mathis.

89.

A DeKalb County grand jury returned a true bill indicting Vance and Mathis for the crime of reckless conduct for their warrantless entry into Salmon’s home.

90.

Because Vance and Mathis violated Salmon’s constitutional rights pursuant to DeKalb County’s facially unconstitutional policy, Plaintiffs are entitled to an award of damages against DeKalb County pursuant to 42 U.S.C. § 1983.

91.

Because DeKalb County’s affirmatively misleading and unconstitutional policy was the moving cause of Vance’s and Mathis’s violations of Salmon’s constitutional rights, Plaintiffs are entitled to an award of damages against DeKalb County pursuant to 42 U.S.C. § 1983.

COUNT III: ATTORNEY FEES AND EXPENSES OF LITIGATION

92.

Plaintiffs reallege and incorporate Paragraphs 1 through 91 as if fully set forth herein.

93.

Because of each Defendant’s violations of Salmon’s civil rights, Plaintiffs are entitled to an award of costs, including but not limited to reasonable attorneys’ fees, pursuant to 42 U.S.C. § 1988.

WHEREFORE, Plaintiffs respectfully request the following relief:

- (a) That the Court award Plaintiffs compensatory, punitive, and/or nominal damages against Defendants in an amount to be determined by the enlightened conscience of an impartial jury;
- (b) That the Court grant Plaintiffs their reasonable costs and attorney's fees in bringing this action in an amount to be determined at trial;
- (d) That Plaintiffs be granted a trial by jury on all issues so triable; and
- (e) That Plaintiffs be granted such other and further relief as this Court deems just and proper.

Respectfully submitted, this 19th day of September, 2024.

s/ Michael L. Neff
MICHAEL L. NEFF
Georgia Bar No. 537180
D. DWAYNE ADAMS
Georgia Bar No. 140406
Neff Injury Law
3975 Roswell Road NE
Atlanta, Georgia 30342
p: (404) 531-9700
f: (404) 531-9727
michael@neffinjurylaw.com
dwayne@neffinjurylaw.com

s/ Salu Kunnatha
SALU KUNNATHA
Georgia Bar No. 430321
Kunnatha Injury Lawyers
1800 Century Blvd., Suite 1750
Atlanta, GA 30345
p: (404) 633-4200 Ext. 101
f: (404) 320-9200
salu@kunnathalaw.com

s/ Leighton Moore
LEIGHTON MOORE
Georgia Bar No. 520701
The Moore Law Firm, PC
1819 Peachtree Street NE
Suite 403
Atlanta, Georgia 30309
(404) 285-5724
leighton@moorefirmpc.com

Attorneys for Plaintiffs