

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT KANSAS CITY

CLAY GARDNER,

And

JULIA MORRISON,

And

AIDE NELSON, RAHEIM NELSON,  
DEVYON NELSON, NEHEMIAH  
NELSON,

And

JADEN THORNS

PLAINTIFFS,

v.

P.O. BLAYNE NEWTON

BADGE #5852

Please Serve at:

KCMO PD

1125 LOCUST

Kansas City, Mo. 65106

DEFENDANT.

CASE No.:

DIVISION:

JURY TRIAL DEMANDED

## PETITION FOR DAMAGES

**COMES NOW** Plaintiffs Clay Gardner, Julia Morrison, and Plaintiffs Aide Nelson, Raheim Nelson, Devyon Nelson, Nehemiah Nelson, and Plaintiff Jaden Thorns, by and through their attorney of record, John Anthony Picerno, and for their cause of action against Defendant, Blayne Newton, states as follows:

## JURISDICTION AND VENUE

1) These causes of action arise out of the shooting deaths of Kristen Fairchild and Marcel Nelson, and the shooting of Jaden Thorns at East 31<sup>st</sup> Street, in Kansas City, Jackson County, Missouri, on June 9, 2023,

without just cause, by Defendant Nelson who is a police officer of the Kansas City, Missouri Police Department.

2) This Court has jurisdiction over this case pursuant to §478.070 RSMo. Venue is proper in this Court pursuant to §508.010 and §478.461.1 RSMo., in that the allegations giving rise to Plaintiff's claims occurred in Kansas City, Jackson County, Missouri and the damages incurred by the Plaintiff are in excess of \$25,000.00.

## PARTIES

3) Plaintiff Gardner is a resident of the State of Kansas.

4) Plaintiff Morrison is a resident of the State of Missouri.

5) Plaintiff Aide Nelson is a resident of the State of Texas.

6) Plaintiff Raheim Nelson is a resident of the State of Texas.

7) Plaintiff Devyon Nelson is a resident of the State of Texas.

8) Plaintiff Nehemiah Nelson is a resident of State of Texas.

9) Defendant caused the death of Decedents Kristen Fairchild

(herein after “Decedent Fairchild”), and Marcel Nelson (hereinafter

“Decedent Nelson”); therefore, Plaintiffs Gardner and Morrison and

Nelson’s et al, bring their causes of action for wrongful death and

related claims pursuant to laws of the State of Missouri.

10) Plaintiff Gardner is the adult natural child of Decedent

Fairchild and Plaintiff Morrison is the surviving spouse of Decedent

Fairchild. Plaintiff Aide Nelson is the surviving spouse of Decedent

Nelson and Plaintiffs Raheim Nelson, Devyon Nelson and Nehemiah

Nelson are the adult natural children of Decedent Nelson. All the

aforementioned Plaintiffs are entitled to bring their causes of action for

wrongful death and related claims pursuant to laws of the State of

Missouri as Class 1 members under and pursuant to Mo. Rev. Stat.

537.080.1.

11) There are no other actions pending for the wrongful deaths of

Decedent Fairchild and Decedent Nelson.

13) Defendant caused injuries to Plaintiff Jaden Thorns; therefore,

Plaintiff Thorns brings his cause of action for battery and related

claims on his own behalf pursuant to the laws of the State of Missouri.

14) Defendant Newton is a Kansas City, Missouri Police Department

officer and at all relevant times was employed by the Kansas City, Missouri Police Department.

### FACTUAL ALLEGATIONS

10) On June 9, 2023, at approximately 10:04 p.m. Decedent

Fairchild, was the driver of a motor vehicle, specifically a minivan.

Decedent Nelson was the front seat passenger, and Plaintiff Thorns

was a rear seat passenger. The vehicle was stopped at a red light in

the left-hand lane of a four-lane road in the proper direction of travel

at the intersection of East 31 St. and Van Brunt Boulevard, in Kansas

City, Jackson County, Missouri.

11) By chance, Defendant Newton arrived at the intersection in his

patrol car. He was in the right-hand lane, whereupon he slowed for traffic

at the red light and came upon an “armed disturbance.”

12) Defendant Newton claimed to have seen a person in the truck

directly in front of him “hanging out the driver side of the vehicle...with a rifle.”

13) Defendant Newton informed dispatch to “hold all other radio

traffic”, while placing a clip of bullets into his handgun.

14) Defendant Newton observed the Decedent’s/Plaintiff’s van in a

“cockeyed” position in the left-hand lane.

15) As the traffic light turned green Defendant Newton began to

pursue the truck in the right-hand lane containing the person with the

rifle.

16) As Defendant Newton pulls adjacent to the Decedent's/Plaintiff's van to his immediate left, he claims Decedent Nelson "pulls up a firearm out of the window and starts firing in front of him."

17) At this point Defendant Newton discharges his weapon at Decedent Nelson, killing him and the driver, Decedent Fairchild, and wounding rear seat passenger, Plaintiff Thorns in the forehead.

18) Decedents/Plaintiffs did not at any time point or fire a weapon at Defendant Newton.

19) There is no evidence suggesting that anyone in the van knew of Defendant Newton's presence at the scene.

20) Much of the incident is captured on video.

**COUNT I - WRONGFUL DEATH - DECEDENT FAIRCHILD**  
**(BATTERY)**

21) Plaintiffs Gardner and Morrison hereby incorporate by reference all foregoing paragraphs as if fully set out herein.

22) Without warning Defendant Newton recklessly, maliciously, purposefully and intentionally shot Decedent Fairchild multiple times.

23) Defendant Newton used more force than was necessary, and thus, used an unreasonable amount of force because using deadly force was not necessary under the circumstances.

24) Defendant Newton's conduct in shooting the Decedent was

intentional, malicious and reckless, demonstrating a deliberate indifference to the Decedent's safety and wellbeing.

25) Defendant Newton's conduct was willfully wrong in that Defendant used deadly force upon Decedent at a time when the Decedent presented no threat of death or serious injury to Defendant.

26) Decedent did not cause Defendant Newton to reasonably believe that shooting Decedent was necessary to protect himself or others against death, serious injury or a forcible felony.

27) Decedent Fairchild died as a result of her injuries.

28) As a direct and proximate result of Defendant Newton's conduct, Decedent Fairchild endured pain and suffering between the time she was struck by his gunfire and the time he died.

29) As a direct and proximate result of Defendant Newton's conduct, Plaintiffs Morrison and Gardner suffered the loss of consortium, services, companionship, comfort, instruction, guidance, and counsel of Decedent Fairchild.

30) The Defendant's conduct demonstrated recklessness and a conscious disregard for the safety of the Decedent Fairchild.

31) Defendant Newton recklessly and maliciously and deliberately shot the Decedent when Decedent Fairchild presented no danger to Defendant Newton. Thus, Plaintiffs Gardner and Morrison are entitled to an award of punitive damages in an amount which will serve to

punish the Defendant and deter this Defendant and others from like conduct.

**WHEREFORE**, Plaintiffs Gardner and Morrison pray for judgment against Defendant Newton for their actual damages in such sum as would be fair, reasonable, and just with his costs expended and incurred herein.

**COUNT II – IN THE ALTERNATIVE – WRONGFUL DEATH –  
DECEDENT FAIRCHILD (NEGLIGENCE)**

32) Plaintiffs Gardner and Morrison hereby incorporate by reference all foregoing paragraphs as if fully set out herein.

33) Defendant was aware that the van driven by Decedent Fairchild was occupied by at least one other person than the front seat passenger at all times relevant to the events of June 9, 2023, which are the subject of this Petition.

34) Decedent Fairchild is and was in the position of an innocent bystander as to any actions or interactions of Defendant and Decedent Nelson. Decedent Fairchild was the driver of the vehicle and was not engaged in any activity other than lawfully driving a vehicle when Defendant shot and killed her.

35) It is in violation of Defendant's training and experience as a certified peace officer to fire a weapon into a vehicle occupied by unknown persons.

36) Defendant was trained to observe and assess the actions of the occupants of Decedent's vehicle prior to opening fire on any occupant of said vehicle.

37) Decedent was negligent in at least the following respects:

- a) Failing to observe and assess the number and nature of the occupants in Decedent's vehicle.
- b) Using deadly force by firing his weapon into an occupied vehicle without determining the number and nature of the occupants of the vehicle.
- c) Approaching a vehicle that Defendant suspected may be occupied by a passenger with a firearm without assessing whether the passenger was acting unlawfully.

38) Defendant acted intentionally in shooting at the car Decedent Fairchild was occupying.

39) Defendant did not have just cause or excuse for his wrongful conduct.

40) Decedent Fairchild died as a result of being shot by Defendant.

41) Defendant acted with malice in that he wantonly shot a firearm into a motor vehicle where there was an uninvolved party present in the motor vehicle. This act of shooting into an automobile without knowing whether or not there was an innocent bystander in the vehicle constituted a departure from what a law enforcement officer of reasonable intelligence would recognize as a law enforcement officer's duty. Further, Defendant disregarded the presence of Decedent Fairchild in the vehicle, and thus intended his actions to be prejudicial to Decedent Fairchild and thus acted with malice.

Finally, the Defendant's conduct demonstrated a conscious disregard for the

safety of the Decedent. The Defendant deliberately shot Decedent Fairchild when she presented no danger to the Defendant.

**WHEREFORE**, Plaintiffs Gardner and Morrison pray for judgment against Defendant Nelson for Decedent's actual damages in such sum as would be fair, reasonable and just in amount, for their costs incurred and for all other relief the Court deems just and proper.

### **COUNT III – WRONGFUL DEATH – DECEDENT NELSON**

42) Plaintiffs Nelson, et al, hereby incorporate by reference foregoing paragraphs as if fully set out herein.

43) While Decedent Nelson was exercising his right to lawful self-defense, from a person wielding a rifle in another vehicle, Defendant Newton, without warning, recklessly, maliciously, purposefully, and intentionally shot Decedent Nelson multiple times.

44) By acting without warning, in shooting Decedent Nelson, Defendant Newton used more force than was necessary, and thus, used an unreasonable amount of force because using deadly force was not necessary under the circumstances.

45) Defendant Newton's conduct in shooting Decedent Nelson was intentional, malicious and reckless, demonstrating a deliberate indifference to the Decedent's safety and wellbeing.

46) Defendant Newton's conduct was willfully wrong in that Defendant used deadly force upon Decedent at a time when the

Decedent presented no threat of death or serious injury to him or others.

47) While he was acting in reasonable and lawful self-defense

Decedent Nelson did not act in a way to cause Defendant Newton to reasonably believe that shooting Decedent was necessary to protect himself or others against death, serious injury or a forcible felony.

48) Decedent Nelson died as a result of his injuries.

49) As a direct and proximate result of Defendant Newton's conduct, Decedent Newton endured pain and suffering between the time he was struck by his gunfire and the time he died.

50) As a direct and proximate result of Defendant Newton's conduct, Plaintiffs Nelson, et al, suffered the loss of consortium, services, companionship, comfort, instruction, guidance, and counsel of Decedent Newton.

51) Defendant Newton's conduct demonstrated recklessness and a conscious disregard for the safety of Decedent Nelson.

52) Defendant Newton recklessly, maliciously and deliberately shot Decedent Nelson when Decedent Nelson was acting in lawful self-defense and presented no danger to Defendant Newton, or others at the time he was shot. Thus, Plaintiff's Nelson, et al, are entitled to an award of punitive damages in an amount which will serve to punish the Defendant and deter this Defendant and others from like conduct.

**WHEREFORE**, Plaintiffs Nelson, et al, pray for a judgment against Defendant Newton for their actual damages in such sum as would be fair, reasonable, and just, with his costs expended and incurred herein.

**COUNT IV – BATTERY – PLAINTIFF THORNS**

53) Plaintiff Thorns, hereby incorporates by reference all foregoing paragraphs as if fully set out herein.

54) Defendant Newton, recklessly, maliciously, purposefully, and intentionally shot Plaintiff Thorns in the head.

55) Defendant Newton used more force than was necessary, and thus, used an unreasonable application of force because using deadly force was not necessary under the circumstances.

56) Defendant Newton's conduct in shooting Plaintiff Thorns was reckless, malicious, and intentional, and demonstrated a deliberate indifference to the Plaintiff Thorn's safety and wellbeing.

57) Defendant Newton's conduct was willfully wrong in that Defendant used an unreasonable amount of force upon Plaintiff Thorns, at a time when he presented no threat of death or serious physical injury to anyone.

58) Plaintiff Thorns did not cause Defendant Newton to reasonably believe that shooting Plaintiff Thorns was necessary to protect himself or others against death, serious injury or a forcible felony.

59) Plaintiff Thorns sustained injuries to his forehead and has

undergone significant medical care and treatment. Additionally,

Plaintiff Thorns incurred medical expenses and has permanent injuries. Further, Plaintiff Thorns continues to suffer from nightmares and flashbacks about this incident.

60) Plaintiff Thorns is entitled to an award of damages in such sum as would be fair, reasonable, and just.

61) Defendant Newtons conduct demonstrated a conscious disregard for the safety of Plaintiff Thorns. Defendant Newton recklessly, maliciously, purposely, and deliberately shot Plaintiff Thorns when he presented no danger to Defendant Newton. Thus, Plaintiff Thorns is entitled to an award of punitive damages in an amount which will serve to punish this Defendant and deter this Defendant and others from like conduct.

**WHEREFORE**, Plaintiff Thorns prays judgment against these Defendants for his actual damages in such sum as would be fair, reasonable, and just with his costs expended and incurred herein.

**COUNT V – IN THE ALTERNATIVE – NEGLIGENCE – PLAINTIFF THORNS**

62) Plaintiff Thorns hereby incorporates by reference all foregoing paragraphs as if fully set out herein.

63) Defendant was aware that the van driven by Decedent Fairchild was occupied by at least one other person than the front seat passenger at all times relevant to the events of June 9, 2023, which are the subject of this

Petition.

64) Plaintiff Thorns is and was in the position of an innocent bystander as to any actions or interactions of Defendant and Decedent Nelson. Plaintiff Thorns was a backseat passenger in the vehicle and was not engaged in any activity other than lawfully riding in a vehicle when Defendant shot and injured him.

65) It is in violation of Defendant's training and experience as a certified peace officer to fire a weapon into a vehicle occupied by unknown persons.

66) Defendant was trained to observe and assess the actions of the occupants of Decedent's vehicle prior to opening fire on any occupant of said vehicle.

67) Decedent was negligent in at least the following respects:

- a) Failing to observe and assess the number and nature of the occupants in Decedent Fairchild's vehicle.
- b) Using deadly force by firing his weapon into an occupied vehicle without determining the number and nature of the occupants of the vehicle.
- c) Approaching a vehicle that Defendant suspected may be occupied by a front seat passenger with a firearm without assessing whether the passenger was acting unlawfully.

68) Defendant acted intentionally in shooting at the car Plaintiff Thorns was occupying.

69) Defendant did not have just cause or excuse for his wrongful conduct.

70) Plaintiff Thorns sustained injuries to his forehead and has undergone significant medical care and treatment. Additionally, Plaintiff Thorns incurred medical expenses and has permanent injuries. Further, Plaintiff Thorns continues to suffer from nightmares and flashbacks about this incident.

71) Defendant acted with malice in that he wantonly shot a firearm into a motor vehicle where there was an uninvolved party present in the motor vehicle. This act of shooting into an automobile without knowing whether or not there was an innocent bystander in the vehicle constituted a departure from what a law enforcement officer of reasonable intelligence would recognize as a law enforcement officer's duty. Further, Defendant disregarded the presence of Plaintiff Thorns in the vehicle, and thus intended his actions to be prejudicial to Plaintiff Thorns and thus acted with malice.

Finally, the Defendant's conduct demonstrated a conscious disregard for the safety of the Plaintiff. The Defendant deliberately shot Plaintiff Thorns when he presented no danger to the Defendant.

**WHEREFORE**, Plaintiff Thorns prays for judgment against Defendant Nelson for Plaintiff's actual damages in such sum as would be fair, reasonable and just in amount, for their costs incurred and for all other relief the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Demand is hereby made for trial by jury.

**WHEREFORE**, Plaintiffs pray that the Court enter judgment against Defendant individually, and in favor of Plaintiffs, and award damages to fairly and adequately compensate them for the fair and reasonable, actual, and compensatory damages and losses they have sustained, as a direct and proximate cause of the defendant's separate acts described in this petition, the plaintiffs have suffered or will continue to suffer the following reasonably foreseeable past, present, and future injuries that include, but are not limited to: physical injury, physical pain, diminished enjoyment of life; emotional pain; including the reasonable cost of past and future medical care and their costs incurred and expended herein, for the reasonable attorneys' fees, and for such further relief as the Court deems fair, proper and just.

Respectfully submitted,

/s/ John Anthony Picerno

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**ATTORNEY FOR PLAINTIFFS**