

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO: 12-1507-C

KEVIN MESSIER, Special Personal
Representative of the Estate of Joshua
MESSIER,

Plaintiff,

v.

Daniel KERR,
George BILLADEAU,
Timothy SOARES,
Clifford FOSTER,
James BAKER,
Derek HOWARD,
John RAPOSO,
Christopher REGO,
Raymond THIBAUT,
BRIDGEWATER STATE
HOSPITAL, and
THE COMMONWEALTH OF
MASSACHUSETTS
DEPARTMENT OF CORRECTION

Defendants.

MICHAEL JOSEPH DONOVAN
CLERK/MAGISTRATE

2012 APR 26 PM 3:51

INTRODUCTION

1. This is a civil rights action in which the plaintiff, Kevin Messier, Special Personal Representative of the Estate of Joshua Messier (hereinafter "Joshua"), seeks relief for the Defendants' violation of Joshua's rights secured by the laws of the United States and the Commonwealth of Massachusetts.
2. On or about May 4, 2009, officers transported Joshua, in restraints, from a

restrictive observation unit at Bridgewater State Hospital to the Intensive Treatment Unit ("ITU"). During transportation, Joshua, while in wrist restraints, was physically beaten by the defendants. The defendants then placed Joshua in four-point restraints and positioned him such that he was unable to breathe. His body eventually became lifeless. After his vital signs could not be detected, the defendants delayed alerting in-house medical staff. A "Code 99" was eventually called, CPR was started, and the Bridgewater Fire Department was called. Upon their arrival, Joshua had no pulse, no respiration, and no blood pressure. As a result of the defendants' physical beatings and the delay in calling for medical services, Joshua suffered conscious pain and suffering and a premature and preventable death on May 4, 2009. The Office of the Chief Medical Examiner certified Joshua's death a "homicide," caused by a "cardiopulmonary arrest during physical restraint, with blunt impact of head and compression of chest, while in agitated state."

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this complaint because the plaintiff's claims arise under the United States Constitution and 42 U.S.C. § 1983 that the plaintiff's constitutional rights were violated by the defendant correctional officers acting under color of Massachusetts law.
4. Venue is proper pursuant to M.G.L. c. 258 § 3.

PARTIES

5. Plaintiff, Kevin Messier, is the father of the deceased, and is the duly appointed

Special Personal Representative of the Estate of Joshua Messier per Court Order on April 13, 2012. He is a citizen of the Commonwealth of Massachusetts and resides at 917 Southbridge Street, Auburn, Massachusetts 01501.

6. Lisa Messier is the mother of the deceased. She is a citizen of the Commonwealth of Massachusetts and resides at 78 N. Sturbridge Road, Charlton, Massachusetts 01507.
7. Defendant Daniel Kerr, whose true address is unknown to the Plaintiff, was at all times relevant to this Complaint, a correctional officer at Bridgewater State Hospital. At all times material to this Complaint, Daniel Kerr was acting within the scope of his employment and under the color of state law. He is sued in his individual capacity and his official capacity as a correctional officer of Bridgewater State Hospital.
8. Defendant George Billadeau, whose true address is unknown to the Plaintiff, was at all times relevant to this Complaint, a correctional officer at Bridgewater State Hospital. At all times material to this Complaint, George Billadeau was acting within the scope of his employment and under the color of state law. He is sued in his individual capacity and his official capacity as a correctional officer of Bridgewater State Hospital.
9. Defendant Timothy Soares, whose true address is unknown to the Plaintiff, was at all times relevant to this Complaint, a correctional officer at Bridgewater State Hospital. At all times material to this Complaint, Timothy Soares was acting within the scope of his employment and under the color of state law. He is sued

in his individual capacity and his official capacity as a correctional officer of Bridgewater State Hospital.

10. Defendant Clifford Foster, whose true address is unknown to the Plaintiff, was at all times relevant to this Complaint, a correctional officer at Bridgewater State Hospital. At all times material to this Complaint, Clifford Foster was acting within the scope of his employment and under the color of state law. He is sued in his individual capacity and his official capacity as a correctional officer of Bridgewater State Hospital.
11. Defendant James Baker, whose true address is unknown to the Plaintiff, was at all times relevant to this Complaint, a correctional officer at Bridgewater State Hospital. At all times material to this Complaint, James Baker was acting within the scope of his employment and under the color of state law. He is sued in his individual capacity and his official capacity as a correctional officer of Bridgewater State Hospital.
12. Defendant Derek Howard, whose true address is unknown to the Plaintiff, was at all times relevant to this Complaint, a correctional officer at Bridgewater State Hospital. At all times material to this Complaint, Derek Howard was acting within the scope of his employment and under the color of state law. He is sued in his individual capacity and his official capacity as a correctional officer of Bridgewater State Hospital.
13. Defendant John Raposo, whose true address is unknown to the Plaintiff, was at all times relevant to this Complaint, a correctional officer at Bridgewater State

Hospital. At all times material to this Complaint, John Raposo was acting within the scope of his employment and under the color of state law. He is sued in his individual capacity and his official capacity as a correctional officer of Bridgewater State Hospital.

14. Defendant Christopher Rego, whose true address is unknown to the Plaintiff, was at all times relevant to this Complaint, a correctional officer at Bridgewater State Hospital. At all times material to this Complaint, Christopher Rego was acting within the scope of his employment and under the color of state law. He is sued in his individual capacity and his official capacity as a correctional officer of Bridgewater State Hospital.

15. Defendant Raymond Thibault, whose true address is unknown to the Plaintiff, was at all times relevant to this Complaint, a correctional officer at Bridgewater State Hospital. At all times material to this Complaint, Raymond Thibault was acting within the scope of his employment and under the color of state law. He is sued in his individual capacity and his official capacity as a correctional officer of Bridgewater State Hospital.

16. Bridgewater State Hospital was at all times relevant to this Complaint, a facility under the direction and control of the Commonwealth of Massachusetts Department of Correction, and located at 20 Administration Road, Bridgewater, Massachusetts 02324. At all times material to this Complaint, Bridgewater State Hospital was the employer of defendants Daniel Kerr, George Billadeau, Timothy Soares, Clifford Foster, James Baker, Derek Howard, John Raposo,

Christopher Rego, and Raymond Thibault. Bridgewater State Hospital, acting under the color of state law, promulgated and otherwise adopted: rules, practices, procedures, policies, and other customs for use by its correctional officers.

FACTS

17. On or about April 1, 2009, Joshua Messier was admitted to Bridgewater State Hospital.
18. Around 7:55 P.M., on May 4, 2009, Joshua Messier visited his mother in the patient visiting room located in the B-building of Bridgewater State Hospital.
19. Around 9:09 P.M., on May 4, 2009, Joshua exited the visiting room and entered the staff break room, where a struggle ensued between Joshua and Correctional Officer Christopher Rego. Joshua was put in restraints and transferred from B-building to the ITU by the individually named defendants.
20. During Joshua's transfer, while in restraints, the individually named defendants pulled Joshua's shirt over his face and physically beat him.
21. Upon arrival at the ITU, while the individually named defendants placed him in four-point restraints, Joshua was positioned such that he was unable to breathe, causing his body to become lifeless.
22. The individually named defendants did not contact in-house medical staff for a significant amount of time.
23. Around 9:23 P.M., Bridgewater State Hospital staff finally attempted to check Joshua's vital signs; no heart rate or blood pressure could be found.
24. A "Code 99" was eventually called and CPR was started.

25. After a significant (approximately 5 minutes) delay, around 9:28 P.M., the individually named defendants finally called 911.
26. Around 9:37 P.M., Bridgewater Fire Department arrived.
27. By the time Bridgewater Fire Department arrived, Joshua had no pulse, no respirations, and no blood pressure.
28. At 9:59 P.M., Joshua was transferred to Brockton Hospital.
29. Around 10:26 P.M., Joshua was pronounced dead at the age of 23 years old.
30. On or about February 2, 2010, the Office of the Chief Medical Examiner determined Joshua's manner of death a "homicide," caused by "cardiopulmonary arrest during physical restraint, with blunt impact of head and compression of chest, while in agitated state."
31. In accordance with M.G.L. c. 258 § 4, presentment of the Plaintiff's claims was made to the Attorney General of the Commonwealth of Massachusetts by hand delivered letter dated February 9, 2010. At least six (6) months have passed without response.

FEDERAL CLAIMS

COUNT I:

42 U.S.C. § 1983

VIOLATION OF EIGHTH AND FOURTEENTH AMENDMENTS
BY DEFENDANT CORRECTIONAL OFFICERS

32. The Plaintiff incorporates by reference paragraphs 1 through 31 of this Complaint and states further as follows.
33. The Defendants, Daniel Kerr, George Billadeau, Timothy Soares, Clifford Foster, James Baker, Derek Howard, John Raposo, Christopher Rego, and

Raymond Thibault, directly and proximately caused the following by acting either alone or in concert with one another:

- a. Violation of Joshua's clearly established Eighth and Fourteenth Amendment right to be free from cruel and unusual punishment by:
 - i. using a degree of force that was unreasonable under the circumstances; and/or
 - ii. failing to provide timely and adequate medical services.
- b. Violation of Joshua's clearly established Fourteenth Amendment right to due process of law by a deprivation of life and liberty without fair procedure by:
 - i. using a degree of force that was unreasonable under the circumstances; and/or
 - ii. failing to intervene and/or ameliorate the physical attack upon Joshua when an opportunity to do so existed; and/or
 - iii. failing to provide timely and adequate medical services.
- c. Other tortious activity that rises to the level of constitutional violations.

COUNT II:
CONSPIRACY IN VIOLATION OF 42 U.S.C. § 1983
BY DEFENDANT CORRECTIONAL OFFICERS

34. The Plaintiff incorporates by reference paragraphs 1 through 33 of this Complaint and states further as follows.

35. By having engaged in the conduct described above, the Defendants, Daniel Kerr, George Billadeau, Timothy Soares, Clifford Foster, James Baker, Derek

Howard, John Raposo, Christopher Rego, and Raymond Thibault, conspired to deprive Joshua of the equal protection of the law or of the equal privileges and immunities under the law.

36. As a direct and proximate cause of the conspiracy Joshua suffered conscious pain and suffering and a premature and preventable death.

STATE CLAIMS

COUNT III:
VIOLATION OF MASSACHUSETTS CIVIL RIGHTS ACT BY
DEFENDANT CORRECTIONAL OFFICERS

37. The Plaintiff incorporates by reference paragraphs 1 through 36 of this Complaint and states further as follows.
38. For the purposes of this count only, Plaintiff sues the defendants, Daniel Kerr, George Billadeau, Timothy Soares, Clifford Foster, James Baker, Derek Howard, John Raposo, Christopher Rego, and Raymond Thibault, solely in their individual capacities.
39. As a direct and proximate result of engaging in the conduct described above, Defendants, Daniel Kerr, George Billadeau, Timothy Soares, Clifford Foster, James Baker, Derek Howard, John Raposo, Christopher Rego, and Raymond Thibault, violated M. G. L. c. 12 § 11I by interfering and depriving Joshua of his exercise and enjoyment of his civil rights secured under the laws of the Commonwealth of Massachusetts.

COUNT IV:
ASSAULT AGAINST DEFENDANT CORRECTIONAL OFFICERS

40. The Plaintiff incorporates by reference paragraphs 1 through 39 of this Complaint and states further as follows.

41. Defendants, Daniel Kerr, George Billadeau, Timothy Soares, Clifford Foster, James Baker, Derek Howard, John Raposo, Christopher Rego, and Raymond Thibault, attacked Joshua, as described above, and intentionally placed Joshua in anticipation of an imminent unwanted and harmful touching, which constituted an assault on Joshua.

42. As a direct and proximate cause of the assault, Joshua suffered conscious pain and suffering and a premature and preventable death.

COUNT V:
BATTERY AGAINST DEFENDANT CORRECTIONAL OFFICERS

43. The Plaintiff incorporates by reference paragraphs 1 through 42 of this Complaint and states further as follows.

44. Defendants, Daniel Kerr, George Billadeau, Timothy Soares, Clifford Foster, James Baker, Derek Howard, John Raposo, Christopher Rego, and Raymond Thibault, attacked Joshua, as described above, and intentionally and unlawfully hit, kicked, and otherwise beat Joshua. The Defendant's unwanted and unprovoked beating constituted unlawful battery.

45. As a direct and proximate cause of the battery Joshua suffered conscious pain and suffering and a premature and preventable death.

COUNT VI:
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
AGAINST DEFENDANT CORRECTIONAL OFFICERS

46. The Plaintiff incorporates by reference paragraphs 1 through 45 of this Complaint and states further as follows.
47. When Defendants, Daniel Kerr, George Billadeau, Timothy Soares, Clifford Foster, James Baker, Derek Howard, John Raposo, Christopher Rego, and Raymond Thibault, assaulted and beat Joshua, as described above, they intended to inflict emotional distress, or they knew or should have known that emotional distress was the likely result of their conduct.
48. The acts the Defendants engaged in were extreme and outrageous, beyond all bounds of decency and utterly intolerable in a civilized community.
49. The beating of Joshua by the Defendants caused Joshua to suffer emotional distress so severe that no reasonable person would be expected to endure it.
50. As a direct and proximate result of the Defendants' conduct, Joshua suffered emotional distress before he died.

COUNT VII:
NEGLIGENCE
AGAINST DEFENDANT CORRECTIONAL OFFICERS

51. The Plaintiff incorporates by reference paragraphs 1 through 50 of this Complaint and states further as follows.
52. Defendants, Daniel Kerr, George Billadeau, Timothy Soares, Clifford Foster, James Baker, Derek Howard, John Raposo, Christopher Rego, and Raymond Thibault, owe a duty to patients and inmates, to use only reasonable force and to

refrain from using excessive force.

53. Defendants, Daniel Kerr, George Billadeau, Timothy Soares, Clifford Foster, James Baker, Derek Howard, John Raposo, Christopher Rego, and Raymond Thibault, breached this duty when they used unreasonable and excessive force when they subdued Joshua.
54. Defendants, Daniel Kerr, George Billadeau, Timothy Soares, Clifford Foster, James Baker, Derek Howard, John Raposo, Christopher Rego, and Raymond Thibault, owe a duty as correctional officers to intervene and stop the use of excessive force by other correctional officers.
55. Defendants, Daniel Kerr, George Billadeau, Timothy Soares, Clifford Foster, James Baker, Derek Howard, John Raposo, Christopher Rego, and Raymond Thibault, breached this duty by their failure to intervene and stop the beating of Joshua.
56. Defendants, Daniel Kerr, George Billadeau, Timothy Soares, Clifford Foster, James Baker, Derek Howard, John Raposo, Christopher Rego, and Raymond Thibault, owe a duty as correctional officers to summon timely and adequate medical service for patients and inmates who have been injured in the course of their detention.
57. Defendants, Daniel Kerr, George Billadeau, Timothy Soares, Clifford Foster, James Baker, Derek Howard, John Raposo, Christopher Rego, and Raymond Thibault, breached this duty when they failed to summon timely and adequate medical service to treat Joshua.

58. As a direct and proximate result of the negligence of the defendants, Joshua suffered conscious pain and suffering and a premature and preventable death.

COUNT VIII:
NEGLIGENCE
AGAINST DEFENDANTS BRIDGEWATER STATE HOSPITAL; and
COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF
CORRECTION

59. The Plaintiff incorporates by reference paragraphs 1 through 58 of this Complaint and states further as follows.

60. Defendant Bridgewater State Hospital and the Massachusetts Department of Correction owe a duty to patients and inmates to properly train and supervise correctional officers in the use of reasonable force, the intervention to stop the use of excessive force, and the rendering of adequate and timely medical service for injured patients and inmates.

61. Defendant Bridgewater State Hospital and the Massachusetts Department of Correction breached this duty by their failure to train and supervise the Defendants Daniel Kerr, George Billadeau, Timothy Soares, Clifford Foster, James Baker, Derek Howard, John Raposo, Christopher Rego, and Raymond Thibault, on proper use of reasonable force, the proper intervention to stop the use of excessive force, and to summon adequate and timely medical service for injured citizens.

62. As a direct and proximate cause of the Defendants, Bridgewater State Hospital and the Massachusetts Department of Correction's, negligence Joshua suffered conscious pain and suffering and a premature and preventable death.

COUNT IX:
GROSS NEGLIGENCE
AGAINST DEFENDANT CORRECTIONAL OFFICERS

63. The Plaintiff incorporates by reference paragraphs 1 through 62 of this Complaint and states further as follows.
64. Defendants, Daniel Kerr, George Billadeau, Timothy Soares, Clifford Foster, James Baker, Derek Howard, John Raposo, Christopher Rego, and Raymond Thibault, through conduct described above, were grossly negligent when they willfully, wantonly, and/or recklessly caused the death of Joshua.
65. As a direct and proximate cause of the Defendants, Daniel Kerr, George Billadeau, Timothy Soares, Clifford Foster, James Baker, Derek Howard, John Raposo, Christopher Rego, and Raymond Thibault's, gross negligence, Joshua suffered conscious pain and suffering and a premature and preventable death.

COUNT X:
GROSS NEGLIGENCE
AGAINST DEFENDANTS BRIDGEWATER STATE HOSPITAL and
COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF
CORRECTION

66. The Plaintiff incorporates by reference paragraphs 1 through 65 of this Complaint and states further as follows.
67. Defendants, Bridgewater State Hospital and Commonwealth of Massachusetts Department of Correction, were grossly negligent when they willfully, wantonly, and/or recklessly caused the death of Joshua.
68. As a direct and proximate cause of the Defendants, Bridgewater State Hospital

and Commonwealth of Massachusetts Department of Correction's, gross negligence, Joshua suffered conscious pain and suffering and a premature and preventable death.

COUNT XI:
WRONGFUL DEATH
AGAINST CORRECTIONAL OFFICERS

69. The Plaintiff incorporates by reference paragraphs 1 through 68 of this Complaint and states further as follows.

70. Defendants, Daniel Kerr, George Billadeau, Timothy Soares, Clifford Foster, James Baker, Derek Howard, John Raposo, Christopher Rego, and Raymond Thibault, through the conduct described above, negligently, willfully, wantonly, and/or recklessly caused the death of Joshua.

71. Joshua was only twenty-three (23) years old at the time of his death.

72. As a direct and proximate cause of the Defendants, Daniel Kerr, George Billadeau, Timothy Soares, Clifford Foster, James Baker, Derek Howard, John Raposo, Christopher Rego, and Raymond Thibault's, conduct, Joshua suffered conscious pain and suffering and a premature and preventable death.

COUNT XII:
WRONGFUL DEATH
AGAINST DEFENDANTS BRIDGEWATER STATE HOSPITAL and
COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF
CORRECTION

73. The Plaintiff incorporates by reference paragraphs 1 through 72 of this Complaint and states further as follows.

74. Defendants Bridgewater State Hospital and Commonwealth of Massachusetts

Department of Correction through the conduct described above, negligently, willfully, wantonly, and/or recklessly caused the death of Joshua.

75. Joshua was only twenty-three (23) years old at the time of his death.
76. As a direct and proximate cause of the Defendants, Bridgewater State Hospital Commonwealth of Massachusetts Department of Correction's, conduct, Joshua suffered conscious pain and suffering and a premature and preventable death.

COUNT XIII:
CONSCIOUS PAIN AND SUFFERING
AGAINST DEFENDANT CORRECTIONAL OFFICERS

77. The Plaintiff incorporates by reference paragraphs 1 through 76 of this Complaint and states further as follows.
78. Joshua was in the custody of the Defendant Bridgewater State Hospital on May 4, 2009.
79. As a direct and proximate result of the acts and omissions of the Defendants, Daniel Kerr, George Billadeau, Timothy Soares, Clifford Foster, James Baker, Derek Howard, John Raposo, Christopher Rego, and Raymond Thibault, Joshua suffered conscious pain and suffering.

COUNT XIV:
LOSS OF CONSORTIUM BY PLAINTIFF KEVIN MESSIER AGAINST
DEFENDANT CORRECTIONAL OFFICERS

80. The Plaintiff incorporates by reference paragraphs 1 through 79 of this Complaint and states further as follows.
81. As the direct and proximate result of the acts and omissions of the Defendants, Daniel Kerr, George Billadeau, Timothy Soares, Clifford Foster, James Baker,

Derek Howard, John Raposo, Christopher Rego, and Raymond Thibault, as set forth and described above, Kevin Messier has suffered great emotional pain and distress, and has been deprived, and continues to be deprived, of the expected and normal affection, parental fellowship, care, assistance, society, companionship, comfort, guidance, services and counsel of his son, Joshua.

COUNT XV:
LOSS OF CONSORTIUM BY LISA MESSIER AGAINST DEFENDANT
CORRECTIONAL OFFICERS

82. The Plaintiff incorporates by reference paragraphs 1 through 81 of this Complaint and states further as follows.

83. As the direct and proximate result of the acts and omissions of the Defendants, Daniel Kerr, George Billadcau, Timothy Soares, Clifford Foster, James Baker, Derek Howard, John Raposo, Christopher Rego, and Raymond Thibault, as set forth and described above, Lisa Messier has suffered great emotional pain and distress, and has been deprived, and continues to be deprived, of the expected and normal affection, parental fellowship, care, assistance, society, companionship, comfort, guidance, services and counsel of her son, Joshua.

RELIEF REQUESTED

WHEREFORE, the Plaintiff, Kevin Messier, Special Personal Representative of the Estate of Joshua Messier, respectfully requests that this Honorable Court:

Order judgment in Plaintiff's favor in such amount as will fully compensate the lawful beneficiaries of Joshua Messier for their losses to the greatest extent allowed by law;

Order such punitive damages as are allowed by law;

Order payment of interest, costs, and attorneys fees as allowed by law;

Order such further relief as this Court deems fair and just.

DEMAND FOR TRIAL BY JURY

The Plaintiff demands that his case be tried before a jury.

Respectfully submitted,
The plaintiff,
By his attorney,



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