

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

LISA G. FINCH et al.	)	
	)	
Plaintiff(s)	)	
	)	
vs.	)	Case No. 18-cv-1018-JWB-ADM
	)	
CITY OF WICHITA, KANSAS et al.	)	
	)	
Defendant(s).	)	

**PRETRIAL ORDER**

U.S. Magistrate Judge Angel D. Mitchell conducted a pretrial conference in this case on October 8, 2019. Plaintiffs Lisa G. Finch and Dominica C. Finch, as Co-Administrators of the Estate of Andrew Thomas Finch<sup>1</sup> appeared through counsel Sheila Bedi, Alexa Van Brunt, and Rick Bailey (in person) and Carlton Odim and Andrew Stroth (by phone). The defendants City of Wichita, Wichita Police Officer Justin Rapp, and Wichita Police Sergeant Benjamin Jonker appeared through counsel, Steven Pigg and Sam Green (in person).

This pretrial order supersedes all pleadings and controls the subsequent course of this case. It will not be modified except by consent of the parties and the court’s approval, or by order of the court to prevent manifest injustice. Fed. R. Civ. P. 16(d) & (e); D. Kan. Rule 16.2(b).

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<sup>1</sup> As set forth in footnote 2 below, plaintiffs have now abandoned Counts 2-4 of their First Amended Complaint. (ECF No. 64.) These were the only claims asserted by Lisa G. Finch in her individual capacity, and by plaintiffs Adelina Finch (now deceased) and Ali Abdelhadi. Accordingly, those plaintiffs are dismissed from this action. The only remaining plaintiffs are Lisa G. Finch and Dominica C. Finch in their capacity as co-administrators of Mr. Finch’s estate.

**1) PRELIMINARY MATTERS.**

**a) Subject-Matter Jurisdiction.** This action is brought pursuant to 42 U.S.C. § 1983 *et seq.* for violations of the United States Constitution. Subject matter jurisdiction is invoked under 28 U.S.C. § 1331 (federal question) and is not disputed

**b) Personal Jurisdiction.** The court’s personal jurisdiction over the parties is not disputed.

**c) Venue.** Venue in this court is not disputed.

**d) Governing Law.** Subject to the court’s determination of the law that applies to the case, the parties believe that the substantive issues in this case are governed by federal law.

**2) STIPULATIONS.**

**a)** The following facts are stipulated for purposes of summary judgment and trial. The parties may later agree to additional stipulated facts in advance of trial.

1. Andrew Thomas Finch (“Finch”) is deceased. At the time of his death, he was 28 years old. He resided at 1033 W. McCormick Avenue in Wichita, Kansas.
2. Plaintiff Lisa G. Finch is Finch’s mother, a resident of Sedgwick County, Kansas, and the Co-Administrator of the Estate of Andrew Thomas Finch filed in the 18th Judicial District of Sedgwick County, Case No. 2018-PR-000050 (the “Finch Estate”).
3. Plaintiff Dominica C. Finch is Finch’s sister, a Sedgwick County resident, and the Co-Administrator of the Finch Estate.
4. Former plaintiff Ali Abdelhadi is a Sedgwick County resident.
5. Former plaintiff Adelina Finch was Finch’s niece and a Sedgwick County resident. She died while this lawsuit was pending and is no longer a party to this action.
6. Defendant City of Wichita (“City”) is a city and municipality organized under the laws of the State of Kansas.
7. The City is responsible for the Wichita Police Department’s (“WPD”) policies, practices, and customs.

8. Defendant Police Officer Justin Rapp (“Rapp”) was employed by the WPD when Finch was shot (“Finch shooting”). Rapp remains employed by the WPD.
9. Defendant Police Sergeant Benjamin Jonker (“Jonker”) was employed by the WPD at the time of the Finch shooting. Jonker remains employed by the WPD.
10. Rapp and Jonker were acting within the scope of their employment with the WPD at the time of the Finch shooting on December 28, 2017.
11. At 6:10 p.m. on December 28, 2017, the downtown City “Badge on the Floor” received a call (“the call”) from phone number 316-435-8355. The Badge on the Floor is a city hall security screener. The Badge on the Floor referred the call to 911 emergency dispatchers. The person who made the call (“the caller”) hung up and called back multiple times.
12. At 6:18 p.m., Sedgwick County 911 dispatchers made contact with the caller. The caller told the 911 dispatchers that he was located at 1033 W. McCormick in Wichita (“the scene”); that he had shot his father in the head and his father was not breathing; that he was holding his mother and brother hostage at gun point in a closet; and that he wanted to kill himself and light the house on fire.
13. At 6:19 p.m., dispatchers transmitted alerts by tone to officers that a shooting had occurred. Forty-two seconds later, a dispatcher radioed over the air that a suspect at 1033 W. McCormick in Wichita had shot his father in the head, that his father was not breathing, and that he was holding his mother and brother hostage at gun point in a closet.
14. That call was a false or “swatting” call. A swatting call occurs when someone makes a telephone call to an emergency service to falsely report a critical or emergency situation.
15. At the time of the swatting call, there was no person at 1033 W. McCormick who had shot a person or who was holding a person hostage.
16. The caller was later identified as Tyler Barriss. Barriss was a Los Angeles resident and serial “swatter.” He had no connection to Finch.
17. After the Finch shooting, the Los Angeles Police Department arrested Barriss, and the Sedgwick County District Attorney’s Office charged him with involuntary manslaughter and other criminal acts. The United States Attorney for the District of Kansas also charged him by indictment with cyberstalking, wire fraud, and interstate threats. Barriss pled guilty in the federal case and was sentenced to 240 months in prison.
18. As a result of the dispatch on December 28, WPD officers and Sedgwick County Sheriff’s deputies responded to the scene.

19. Finch was at home when law enforcement arrived. Also present at 1033 W. McCormick that evening were Lisa Finch, Adelina Finch, Ali Abdelhadi, and Micah Johnico.
20. At 6:28 p.m., Rapp shot Finch on the front porch of 1033 W. McCormick Street from a distance of approximately 40 yards.
21. An autopsy was performed on Finch's body at the Sedgwick County Regional Forensic Science Center on December 29, 2017. The cause of death was ruled a gunshot wound to the upper left side of his chest.

b) The parties will confer and file a stipulation to the authenticity of exhibits for purposes of trial and summary judgment on or before November 1, 2019.

**3) FACTUAL CONTENTIONS.**

**a) Plaintiff's Contentions.**

***Individual Liability***

On December 28, 2017, approximately 16 heavily armed WPD officers and Sedgwick County Sheriff's deputies surrounded Finch's home (the "scene"). Finch went out onto his front porch, and Rapp shot him in the chest less than 10 seconds later. Rapp was the only officer to shoot his firearm. Finch was unarmed and was not holding anything in his hands that might have been mistaken as a weapon. No weapon was found on his body or anywhere inside the residence. Finch did not make any threatening movements or statements. He was not engaged in committing any crime. Finch died of his wounds at a local hospital about 30 minutes later.

The officers arrived at the scene in response to a hoax (a "swatting" call) made by Barriss, who had no connection to Finch. The occupants of the house were ignorant of the hoax call, and law enforcement officers did not know the call was a prank when they initially responded to the scene. They believed they were confronting a potentially armed and suicidal suspect who was holding hostages. It was a "typical" critical incident of the kind WPD officers encounter regularly.

Jonker was the WPD on-scene supervisor who was responsible for providing directives to the responding officers and formulating a planned response. He failed to implement substantive measures to direct the WPD officers and ensure the safety of all involved, including Finch. By the time Finch exited the porch, Jonker had not established a plan for the WPD's response, provided instructions to officers about how to handle the incident, or made or directed subordinate officers to make announcements to the occupants to alert them that the police had surrounded the house and provide them with options to end the encounter peacefully. Jonker did not take any steps to ensure that WPD officers identified themselves to Finch before the shooting. The officers were not visually recognizable as police. Jonker also failed to designate a primary point of contact responsible for communicating with any civilian who might come outside—a violation of WPD policy. When Finch stepped on the porch, every officer on the scene began screaming at him and issuing instructions from all around the house.

Also contrary to WPD protocol, Jonker failed to conduct a preliminary investigation about the incident. Had he (or someone under his command) conducted a cursory inquiry, including talking to Finch, WPD would have learned that neither Finch nor anyone in the house presented a serious threat and that the emergency call was a hoax, thus averting the need for lethal force.

Jonker was similarly derelict in failing to request the assistance of specialized units. This includes WPD's Special Weapons and Tactics ("SWAT") unit, which is specially trained to respond to high-stakes scenarios; WPD policy required that SWAT be called to any scene involving a barricaded gunman or hostages. It also includes WPD's Crisis Intervention Team ("CIT"), who receive specific training on defusing and safely resolving potential mental health emergencies. Jonker and those under his command also failed to use established de-escalation techniques on which WPD officers are trained to neutralize potentially lethal situations. Instead,

Jonker violated WPD policy by escalating tensions, initiating an aggressive police response, and allowing all officers to interact simultaneously with Finch, rather than identifying a single contact person to stabilize the situation calmly.

Just before Finch was shot, WPD officers circled the house, positioning themselves at points north, east, and west of the residence. Several officers, including Rapp and Jonker, were located on the north side about 40 yards away and across a four-lane street from where Finch came out on his front porch. Minutes after Rapp and other WPD officers arrived at the scene, Rapp shot Finch in the chest with a sniper rifle. At the time, Rapp could not see the officers on the east side of the house who were physically closer to Finch, had a clearer view of him, and were in a better position to evaluate whether he was a potential threat. None of the officers on the east side fired their weapons. Neither Jonker nor any other officer commanded by him warned Finch that deadly force would be used if he did not comply with the instructions being issued on all sides.

At the time Rapp fired his rifle, he could clearly see Finch's hands. He did not see Finch holding a weapon or anything that looked like a weapon. Rapp believes it was possible that, at the time he fired his weapon, Finch was turning to go back into his own home because he was frightened by the police response. Other officers who were on the scene and in the same physical position as Rapp concurred with that assessment. The WPD officers standing beside Jonker and Rapp at the time Rapp fired his weapon did not believe Finch posed a threat to any of the officers on the scene. Sheriff's deputies who were standing on the east side never saw Finch with a weapon or anything that looked like a weapon and did not believe Finch posed a threat when he was shot.

Finch did not die immediately after he was shot. Instead, he remained breathing and bleeding inside the front door of his house for over 15 minutes before receiving emergency assistance. Occupants inside the home heard Finch's body drop, saw him lying on the floor face

down, and heard him giving labored breaths. But they were not allowed to help Finch because WPD officers ordered all of the occupants of the house outside after the shooting. Meanwhile, they handcuffed Finch while he was unconscious and lying on the floor, and they stepped over him to search the house rather than give him any aid. Responding officers waited over 15 minutes before they provided Finch with any emergency medical care.

### ***Municipal Liability***

The City is liable under two theories of municipal accountability.

First, the City is liable for WPD's customary use of excessive lethal force against civilians. In addition to the Finch shooting, WPD officers shot at least 17 other civilians between 2014 and 2017. Of these, 10 died and 4 were injured. In addition, WPD officers shot and killed at least 4 individuals in 2012. Each of these shootings was objectively unreasonable in that WPD officers exhibited specific deficiencies in police practice that contributed to the Department's widespread use of excessive lethal force. These deficiencies include:

- failing to de-escalate situations involving potentially armed individuals, particularly in circumstances involving a potential mental health emergency;
- failing to plan an adequate police response to a critical incident;
- using affirmative escalation tactics in response to potential critical incidents;
- recklessly using firearms in the vicinity of both suspects and innocent bystanders;
- failing to call for specialized back-up, including from SWAT or CIT; and
- failing to properly supervise WPD officers' response to critical incidents.

The City knew or should have known that its officers were consistently using excessive lethal force in responding to critical incidents. By failing to take ameliorative measures to address this, the City was deliberately indifferent to the risk that WPD officers would continue to violate civilians' rights with deadly consequences. Finch died as a result of the City's purposeful inaction.

Second, the City is liable for WPD's inadequate disciplinary and accountability procedures for officers who use lethal force. WPD is expected to conduct criminal investigations of officer shootings, but these investigations do not address potential WPD policy violations. They do not result in documented reports or outcomes. Investigations are conducted by homicide detectives who do not recommend or mandate internal discipline for officers. As a matter of WPD policy and protocol, these functions are relegated to the Professional Standards Bureau ("PSB"). The PSB is an internal affairs agency that is tasked with "conduct[ing] complete investigations of each assigned case" to ascertain whether involved officers complied with WPD policies and regulations. PSB officers are expected to exercise "sound independent judgment"; to "interview complainants, focus personnel and witnesses"; and, above all, to gather "all possible evidence to determine the relevance and value to the investigation."

In reality, PSB whitewashes officer misconduct. This contributes to a culture in which officers believe they can commit violence with impunity. In the shooting cases referenced above, WPD failed to investigate incidents in which officers used lethal force. PSB has no authority to conduct administrative investigations into an officer shooting separate from the criminal investigation, to recommend needed reforms or policy changes, or to recommend or impose officer discipline. PSB operates under the radar with no independent or public oversight, and wholly at the behest of the Chief of Police and his command channel. WPD command channel officers are responsible for administrative outcomes, but they do not investigate alleged violation(s) and have no first-hand knowledge of the evidence. No policies or procedures govern the command channel review process for PSB "investigations." These reviews (if they occur at all) take place in secret meetings that are never documented or recorded. These deficiencies are demonstrated through numerous investigative files, including but not limited to the PSB reports.

WPD's Early Intervention System ("EIS") is supposed to serve as a bulwark against officer excesses, but it is similarly neutered. As a matter of WPD policy, the EIS is expected to provide PSB with alerts when an officer accumulates a certain number of complaints and uses of force so that supervisors can intervene and "mitigate circumstances that cause negative consequences for employees, co-workers, the Department, and/or the general public." In reality, EIS reports are ignored and their accuracy is never subject to independent audit.

The result of these deficiencies is that WPD officers are not disciplined, counseled, or re-trained after using lethal force in ways that violate WPD policy. This flawed accountability system results in WPD ratifying its officers' misconduct and permitting officers to engage in clearly identifiable patterns of policy violations and misconduct with impunity.

The Finch shooting is emblematic of the City's violations. Rapp was supposedly subject to a criminal WPD investigation for shooting and killing Finch. But there is no documented report from that investigation. Instead, WPD created only an incident report that classified the shooting as a "Justifiable Homicide" before the criminal investigation or PSB review were completed. The report offers no specific findings about Rapp's (or any officer's) conduct, but it exonerates Rapp.

The administrative investigation in the Finch case improperly relied on the flawed criminal investigation to bolster its own exonerative findings. PSB conducted an "administrative review" of the incident, purportedly to determine whether Rapp complied with WPD regulations governing use of force. But PSB failed to conduct any independent inquiry into the shooting—in violation of its own procedures but in keeping with the Department's pattern of failed accountability. Specifically, PSB investigating detective Joseph Pichler relied on interviews conducted by WPD detectives in the separate criminal investigation, despite the fact that these interviews did not address (and are not intended to address) violations of WPD policy or regulations. Pichler did not

collect any evidence related to the incident. He did not interview any witnesses and he failed to consider key evidence, including statements of other officers who were standing right next to Rapp or much closer to the victim and who did *not* find Finch to be a threat at the time he was shot. Pichler did not address the discrepancies amongst statements of officers who were at the scene. He also did not evaluate Jonker's role in escalating and failing to properly supervise the police response. PSB did not subject Jonker's actions to *any* scrutiny, consistent with PSB's failure to investigate supervisory misconduct in shooting incidents.

Pichler also invented non-existent evidence to clear Rapp's name. In "finding" Rapp complied with WPD regulations, Pichler attributed motives to Rapp that Rapp himself never enunciated. Pichler concluded: "*Although it was not articulated*, in order to preserve life, the officers could not let the suspect re-enter the residence." But Rapp himself never justified the Finch shooting based on protecting others in the residence.

WPD's lack of officer accountability is further evidenced by the fact that both Jonker and Rapp were regularly referred to WPD's EIS for uses of force before the Finch shooting and yet they were still allowed to participate in and supervise high-stakes scenarios. Rapp was referred to EIS every year from 2014 to 2017 for engaging in a high number of use-of-force incidents (at least 6 incidents in 6 months), but he still remained certified to use the sniper rifle that he deployed on Finch. Jonker specifically chose Rapp to provide sniper cover at the scene. Jonker himself was referred to EIS in both 2014 and 2016 for his involvement in a high number of use-of-force incidents, but he continued to supervise incidents involving the possible use of deadly force.

The City's systematic accountability violations were the moving force behind the Finch shooting. The WPD's unwritten policy and practice of concealing officer misconduct emboldened officers to act recklessly, knowing they would be protected from disciplinary action even if their

conduct violated WPD policy and the public's rights. When police departments lack institutional accountability for policy violations, officers continue committing misconduct. Finch's untimely death resulted from objectively unreasonable actions by the individual defendants, and the City's deliberate indifference to the risk its officers would act in that manner.

**b) Defendants' Contentions.**

Jonker and Rapp responded with other law enforcement officers to a dispatch of a shooting at 1033 W. McCormick in Wichita. Officers were informed that the caller had shot his dad in the head, the dad was not breathing, and that he was holding his mother and brother in the house at gunpoint. Given the nature of the call, Rapp retrieved a rifle and began to cover the west side and rear of the scene with other officers. Officers noticed a shadow through the window that appeared to be someone performing CPR. Jonker arrived and began to assess the situation. Other officers had arrived and taken positions to establish a perimeter. Jonker directed Rapp to the front of 1033 W. McCormick to provide "long cover." Jonker inquired of dispatch and checked with other officers present in an attempt to gather more information.

Approximately 30 seconds after Rapp and Jonker arrived across the street from the front door of 1033 W. McCormick, and within 2-3 minutes after Jonker arrived at the residence, Finch opened the door and stepped partially onto the front porch. Officers directed Finch to show his hands. Jonker directed Finch to walk toward Jonker. Finch initially raised both hands to about shoulder level but then disregarded the orders, dropped his hands, took a step back, bladed his body (*i.e.*, turned the front of his body on the diagonal) towards officers located in the front of the neighboring house to the east, dipped his shoulder, and drew his right hand from his back or right side and raised it toward officers to the east. Rapp perceived Finch to be the suspect who had shot his father, and that the suspect drew a gun and was targeting officers to the east. To protect other

officers, Rapp fired one shot that struck Finch. The shot was fatal. It occurred approximately seven seconds after Finch opened the front door, and only nine minutes after the initial dispatch.

Jonker acted reasonably to assess the situation, establish a perimeter, and evaluate whether SWAT should be called out in accordance with WPD policy for responses to hostage, barricaded suspect, or sniper situations. The shot occurred before SWAT could have deployed at the residence even if SWAT had been called out immediately upon dispatch's receipt of the call.

WPD detectives investigated the shooting with oversight and assistance from the Kansas Bureau of Investigation and the Sedgwick County District Attorney's office. The WPD's PSB monitored the investigation. The Sedgwick County District Attorney reviewed the full investigation and concluded that body camera videos confirmed that Finch initially raised his hands, turned his upper torso to the east at which time his right arm was not visible, then raised his right arm directly in front of his body toward officers to the east. This was consistent with Rapp's perception. The District Attorney recognized that Rapp's perception was reasonable. Other officers also perceived Finch to be the suspect and, depending on their vantage points, perceived that Finch reached to his waist or behind him. Other officers did not fire their weapons for fear of cross-fire with other officers or citizens, or because the officers lost sight of Finch when he moved partially back behind the door threshold.

Jonker and Rapp's actions were based on their reasonable belief that they were responding to a call involving a shooting and hostages. Unknown to them at the time, the dispatch was based on a false call by Barriss, who has since been convicted of charges related to this and other false calls. Barriss made the false call on behalf of a video game player to retaliate against another video game player, but he targeted the wrong address.

The City maintains and enforces a constitutional policy on the use of deadly force. It investigates all officer-involved shootings and takes appropriate action if an officer violates policy. Supervisors review all uses of force. The City also monitors all uses of force through an early intervention system. If an officer's use of force meets a threshold number during a specified time, further review evaluates compliance with policy or further training. The WPD meets or exceeds reasonable police standards for law enforcement officers in the use of force and accountability.

Rapp's split-second decision was objectively reasonable under the totality of the circumstances based on the information provided to him by dispatch and Finch's actions. Rapp's decision to shoot was not caused by any unconstitutional WPD practice regarding use of force.

#### **4) LEGAL CLAIMS AND DEFENSES.**

##### **a) Plaintiffs' Legal Claims.<sup>2</sup>**

Plaintiffs Lisa G. Finch and Dominica C. Finch, in their capacity as co-administrators of the Finch Estate, assert that the Estate is entitled to recover upon the following theories:

- (i)** Count One: 42 U.S.C. § 1983 excessive force claim (Fourth and Fourteenth Amendments) against Jonker and Rapp

Jonker and Rapp, in their capacity as WPD officers, violated Finch's Fourth Amendment rights to be secure in his person against the use of excessive force and, in particular, to be free from the unreasonable use of deadly force. No reasonable officer in Rapp's position would have had probable cause to believe that Finch presented a serious threat of physical harm to himself or any other person at the time Rapp fired his weapon. Jonker and Rapp are also liable under the Fourth Amendment for recklessly and deliberately precipitating the circumstances under which Rapp fired his weapon.

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<sup>2</sup> At the pretrial conference, plaintiffs confirmed that they are abandoning Counts 2-4 of their First Amended Complaint. (ECF No. 64.) The remaining claims are asserted by plaintiffs Lisa G. Finch and Dominica C. Finch in their capacity as co-administrators of the Finch Estate.

(ii) Count Five: 42 U.S.C. § 1983 supervisory liability claim (Fourth Amendment) against Jonker

Jonker is liable as a supervisor for Rapp's Fourth Amendment violation. Jonker personally participated in the Finch shooting by directing, exercising control over, and failing to supervise Rapp and other officers responding to the scene. He set in motion a series of events that he knew, or reasonably should have known, would violate Finch's Fourth Amendment constitutional rights.

(iii) Count Six: 42 U.S.C. § 1983 unlawful policy, practice, or custom claim (as set forth in *Monell v. Department of Social Services of the City of New York* and its progeny) against the City

The City, through the WPD and its officers, had an informal policy, practice, or custom of using excessive deadly force against civilians; the City knew about its officers' repeated use of deadly force and failed to intercede; that policy, practice, or custom caused Finch's death.

The City, through the WPD and its officers, had an informal policy, practice, or custom of failing to hold officers accountable for using excessive deadly force; in this respect, the City was deliberately indifferent to the fact that these discipline failures violated the rights of civilians, including Finch; that policy, practice, or custom caused Finch to be unlawfully shot and killed.

**b) Defendants' Defenses.**

Defendants generally deny plaintiffs' claims and damages and assert the following defenses:

**Count One**

Rapp's split-second decision to fire a single shot at Finch was objectively reasonable under the totality of the circumstances. Finch reasonably appeared to present an imminent threat of serious physical injury to other officers and to hostages if allowed to re-enter the house.

Rapp's belief that he had probable cause to use deadly force was reasonable even if he lacked probable cause, entitling him to qualified immunity. An objectively reasonable officer

would have probable cause to believe that Finch presented an imminent threat to other officers and to use deadly force to prevent the suspect from retreating to the house where he presented a deadly threat to hostages. Officer Rapp did not violate clearly established law.

Defendants engaged in no reckless, wanton, or even negligent conduct that created the need to use force.

Jonker acted reasonably and is entitled to qualified immunity from plaintiffs' claims. Jonker violated no clearly established law.

#### **Count Five**

Rapp and Jonker responded reasonably under the totality of the circumstances to the call reporting a homicide with hostages held at gunpoint and to Finch's actions when he appeared at the front door, disregarded officers' lawful commands, and reacted in a manner replicating drawing a handgun and targeting officers or when he appeared to be retreating into the residence where he posed an imminent threat to hostages.

Rapp did not violate any constitutional right of Finch, thus precluding any supervisory claim against Jonker.

Jonker did not order or direct Rapp's shot, nor have time to intervene. No affirmative link exists between the shot and Jonker's conduct.

Jonker was not deliberately indifferent nor even negligent in any manner that caused a Fourth Amendment violation.

Jonker did not violate any clearly established law and is entitled to qualified immunity.

#### **Count Six**

The City of Wichita did not maintain an unconstitutional custom, practice, or policy relating to WPD officers' use of force.

The City maintained an appropriate accountability system related to WPD officers' use of force.

No unconstitutional custom, practice, or policy of the City caused a violation of plaintiffs' Fourth Amendment rights.

Because neither Jonker nor Rapp violated Finch's Fourth Amendment rights, plaintiffs have no claim against the City.

The City was not deliberately indifferent in any manner that caused a violation of plaintiffs' constitutional rights.

#### **Other Defenses**

No plaintiff other than the Finch Estate has standing to assert any claim based on the use of force against Finch. For example, plaintiffs' claim for loss of consortium is not a proper § 1983 claim on behalf of the Finch Estate.

Plaintiffs withdrew their motion to amend to assert a claim based on denial of medical care and waived any such claim. Defendants acted reasonably to provide medical care to Finch under the circumstances. Finch was immediately unconscious and the injury fatal, so any delay in medical care was not a cause of injury or death.

#### **5) DAMAGES AND NON-MONETARY RELIEF REQUESTED.**

Plaintiffs seek to recover compensatory and punitive damages stemming from the defendants' actions that caused Finch's death. These damages include the decedent's pain and suffering when Rapp shot him in the chest while acting under Jonker's direct supervision. They also include the mental anguish, suffering and bereavement of Finch's family, who are plaintiffs in this suit, and who lost their son and brother as a result of the Defendants' actions.

While it is impossible to calculate a monetary amount sufficient to compensate for the loss of an innocent life, plaintiffs seek the following:

Pain and Suffering - \$10,500,000  
Medical & Burial - \$19,315  
Lifetime Lost Earnings - \$2,500,000  
Loss of Consortium - \$10,500,000  
Punitives - \$1,500,000 (\$750,000 against Rapp, and \$750,000 against Jonker)

Total - \$25,019,315

Plaintiffs also seek attorneys' fees in a reasonable amount based on hours expended at a reasonable rate, and other litigation costs, pursuant to 42 U.S.C. § 1988.

**6) AMENDMENTS TO THE PLEADINGS.**

Plaintiffs amended the pleadings once. (*See* First Am. Compl. (ECF No. 67-1).) No other amendments are expected.

**7) DISCOVERY.**

Under the scheduling order and any amendments, all discovery was to have been completed by **September 20, 2019**. The parties agreed to take two expert depositions past the discovery deadline, and reported that they would be complete by October 15.

Unopposed discovery may continue after the deadline to complete discovery so long as it does not delay the briefing of or ruling on dispositive motions or other pretrial preparations. Although discovery may be conducted beyond the deadline for completion of discovery if all parties are in agreement to do so, under these circumstances the court will not be available to resolve any disputes that arise during the course of such extended discovery.

**8) MOTIONS.**

**a) Pending Motions.**

None.

**b) Additional Pretrial Motions.**

After the pretrial conference, the parties intend to file the following motions:

Plaintiffs intend to file motions to exclude and/or limit the expert testimony, including rebuttal testimony, of the Defendants' expert witnesses John J. Ryan and James Borden. Plaintiffs also intend to file motions in limine in advance of trial.

Defendants intend to file motions in limine, motions to exclude or restrict plaintiffs' expert testimony and motions for summary judgment.

The dispositive-motion deadline, as established in the scheduling order and any amendments, was previously set for November 8, 2019. The parties requested an extension of summary judgment briefing deadlines to accommodate the depositions being taken after the discovery deadline by agreement and also because of the volume of the discovery record. The court now extends that deadline and imposes the following schedule: any motions for summary judgment shall be filed on or before **November 30, 2019**; responses shall be filed on or before **January 14, 2020**; and replies shall be filed on or before **February 13, 2020**.

The parties should follow the summary-judgment guidelines available on the court's website:

<http://ksd.uscourts.gov/wp-content/uploads/2015/10/Summary-Judgment-Guidelines.pdf>

In addition, any summary judgment motions and related briefs shall comply with the Honorable District Judge John W. Broomes' Standing Order Regarding Page Limits ("Standing Order"). The parties stated that they may file motions to exceed the page limits established in. Any such motion shall comply with ¶ 1(B) of the Standing Order.

**c) Motions Regarding Expert Testimony.** All motions to exclude testimony of expert witnesses pursuant to Fed. R. Evid. 702-705, *Daubert v. Merrell Dow Pharmaceuticals*,

*Inc.*, 509 U.S. 579 (1993), *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), or similar case law, must be filed in accordance with the dispositive-motion deadline and briefing schedule set forth above.

**9) TRIAL.**

The trial docket setting is **September 29, 2020 at 9:00 a.m.** The case will be tried by jury in Wichita, Kansas. Trial is expected to take approximately 7-10 days. The court will attempt to decide any timely filed dispositive motions approximately 60 days before trial. If no dispositive motions are timely filed, or if the case remains at issue after timely dispositive motions have been decided, then Judge Broomes may enter an order or convene another pretrial conference to set deadlines for filing final witness and exhibit disclosures, exchanging and marking trial exhibits, designating deposition testimony for presentation at trial, motions in limine, proposed instructions in jury trials, and proposed findings of fact and conclusions of law in bench trials.

IT IS SO ORDERED.

Dated October 29, 2019, at Topeka, Kansas.

s/ Angel D. Mitchell  
Angel D. Mitchell  
U. S. Magistrate Judge