

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
Civil Action No. 2:21-cv-00034-FL

LILLIE BROWN CLARK, as the )  
Administrator for the Estate of )  
Andrew Brown Jr., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Investigator DANIEL MEADS, in his )  
individual capacity; Deputy Sheriff II )  
ROBERT MORGAN, in his individual )  
capacity; Cpl. AARON LEWELLYN, )  
in his individual capacity; )  
Sheriff TOMMY S. WOOTEN II, in his )  
official capacity; and WESTERN )  
SURETY BONDING COMPANY, )  
surety for Sheriff Tommy S. Wooten II, )  
 )  
Defendants. )  
 )

**ANSWER OF DEFENDANTS**  
**TOMMY S. WOOTEN II AND**  
**WESTERN SURETY COMPANY**

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NOW COME defendants Tommy S. Wooten II and Western Surety Company, by and through counsel, and, responding to the plaintiff's Amended Complaint, answer and allege as follows:

**AMENDED COMPLAINT FOR DAMAGES**

No response to this paragraph is required.

**INTRODUCTION**

It is admitted that the quoted passage from Tennessee v Garner 471 U.S. 1, 11 (1985), speaks for itself.

It is admitted that, on April 21, 2021, Andrew Brown Jr., a 42-year-old African-American man with a significant criminal history, attempted to flee from Pasquotank County sheriff's deputies who were trying to arrest him pursuant to a lawful felony arrest warrant. It is admitted that, as the deputies surrounded Mr. Brown's vehicle, Mr. Brown drove at and around the deputies and was then hit by gunshots fired by two of the deputies. It is admitted that one of the deputies who shot Mr. Brown is also African-American. It admitted that Mr. Brown did not possess a gun on April 21, 2021. The District Attorney of Pasquotank County determined that Mr. Brown posed a threat of harm to the deputies or others, though, by trying to run over them with his car, and it therefore must be denied that Mr. Brown did not pose a threat of harm to the deputies when he attempted to flee.

It is admitted that the plaintiff has brought this action pursuant to state and federal law against defendants Daniel Meads, Robert Morgan, and Aaron Lewellyn in their individual capacities and against defendant Sheriff Tommy Wooten II in his official capacity. The remainder of the allegations of the paragraphs contained in the Introduction are denied.

#### JURISDICTION AND VENUE

1. The allegations of paragraph 1 are admitted.
2. Admitted.
3. It is admitted that defendant Tommy S. Wooten II maintained an official bond as required by state law and that said bond applies to the sheriff and his officers acting in their official capacities as set out by N.C. Gen. Stat. § 162-8 and state law

and the terms of said bond. It is further admitted that, by obtaining an official bond, a sheriff and his officers waive sovereign/governmental immunity for tort claims under state law up to the amount of any such bond. It is admitted that this Court has personal jurisdiction over defendant Wooten, but denied that it has personal jurisdiction over defendant Western Surety Company, which provided the bond to defendant Wooten and which has not been served with process. Except as otherwise admitted, the allegations of paragraph 3 are denied.

4. Admitted.

#### PARTIES

5. Admitted upon information and belief.

6. Admitted.

7. Admitted.

8. Admitted.

9. The allegations of paragraph 9 are admitted, and it is specifically admitted that the defendant Sheriff is sued only in his official capacity.

10. It is admitted that Western Surety Company issued a bond in the amount of fifteen thousand dollars (\$15,000) to Sheriff Wooten for his term in office, that said bond applies to the Sheriff and his officers in their official capacities under N.C. Gen. Stat. § 162-8 and state law, and that the terms of the bond speak for themselves. The remainder of the allegations of paragraph 10 are denied.

## FACTUAL ALLEGATIONS

### *Events That Occurred on April 21, 2021*

11. Admitted.

12. It is admitted that, at a briefing on the morning of April 21, 2021, officers were informed that there was no information suggesting that Mr. Brown was known to carry a gun. It is further admitted that Tyler Doughtie was present for the briefing, that defendant Meads led the briefing, and that Lt. Steven Judd was the senior officer at the briefing, but the remainder of the allegations of paragraph 12 are denied.

13. Admitted.

14. The allegations of paragraph 14 are admitted, except it is denied that officers were present only to execute arrest warrants issued from Dare County; rather, it is admitted that officers also were present to execute a search warrant issued from Pasquotank County. It is further admitted that officers from the Kitty Hawk and Kill Devil Hills Police Departments were also sworn deputies serving in the Dare County Sheriff's Office.

15. The plaintiff asserts an incorrect statement of the law in paragraph 15 and therefore the allegations of said paragraph are denied. This Court has held that, if a "plaintiff asserts that the criminal process resulting in his arrest was invalid because the magistrate judge's name was typed onto the warrant, his claim fails because North Carolina State law does not require that a warrant be hand-signed by a magistrate judge. See N.C. Gen. Stat. §§ 15A-246, 15A-301." Jilani v. Freeman, 2020 WL 417481, \*7 (E.D.N.C. Jan. 23, 2020). N.C. Gen. Stat. § 301.1(b) states: "Any

criminal process may be created, signed, and issued in electronic form.” The plaintiff was previously informed that this assertion is incorrect and yet, despite being so informed, the plaintiff still chose to include it in the Amended Complaint.

16. It is admitted that Andrew Brown sold illegal drugs on two separate occasions in Dare County in March 2021 and that this conduct supported probable cause for the arrest warrant issued in his name. It is denied that said warrant was unlawful. It is admitted that Pasquotank County sheriff’s deputies obtained a lawful search warrant for Mr. Brown’s residence at 421 Perry Street and for his vehicle. Except as otherwise admitted, the allegations of paragraph 16 are denied.

17. The first sentence of paragraph 17 is nonsensical and is therefore denied. It is admitted, however, that the sale and possession of illegal drugs may be felonies under North Carolina law and that Mr. Brown’s conduct was felonious. It is admitted that the sheriff’s deputies who attempted to arrest Mr. Brown did not know whether he possessed a weapon on the day they sought to arrest him, but the allegation that Mr. Brown did not have a violent history against law enforcement or a propensity of violence toward others is denied and contradicted by the evidence, which included Mr. Brown’s long history of criminal conduct, arrests, and convictions.

18. It is admitted that, before law enforcement officers arrived at Mr. Brown’s home, he was sitting in his BMW, parked in his driveway, and apparently talking on a cell phone. It is denied that his hands were visible at all times to the officers on the scene.

19. It is admitted that officers had no information suggesting that Mr. Brown was armed with a gun, but the allegation that there was no information that Mr. Brown had a history of violence toward law enforcement officers or others is denied; rather, it is admitted that officers were specifically informed that Mr. Brown had such a history. It is admitted that seven Pasquotank County sheriff's deputies, who served on the Special Operations And Tactics (SOAT) team, confronted Mr. Brown, that some officers had rifles, that deputies shouted orders to him to get out of the car, and that some deputies used profanity. Except as otherwise admitted, the allegations of paragraph 19 are denied.

20. It is admitted that Mr. Brown put his car in reverse and attempted to escape arrest. The plaintiff, the defendants, and all others are without knowledge or information sufficient to form a belief as to whether Mr. Brown was "startled and afraid," and thus this allegation must be denied. The District Attorney for Pasquotank County concluded that the officers around Mr. Brown's vehicle faced a threat of imminent harm or injury from Mr. Brown's driving his vehicle, and thus this allegation must be denied. Except as otherwise admitted, the allegations of paragraph 20 are denied.

21. The allegations of paragraph 21 are denied for the reasons stated in paragraph 20, above. It is further denied that the plaintiff "negotiated" his vehicle.

22. The allegations of paragraph 22 are denied, except it is admitted that defendant Meads initially fired his service weapon once into the front windshield of Mr. Brown's car.

23. The allegations of paragraph 23 are denied, except it is admitted that defendant Meads fired his service pistol a total of five times at Mr. Brown's car and hit Mr. Brown once.

24. The allegations of paragraph 24 are denied, except it is admitted that defendant Meads fired his service pistol five times at Mr. Brown's car and hit Mr. Brown once.

25. It is admitted that defendant Morgan fired his AR-15 service rifle five times at Mr. Brown's car and hit Mr. Brown once, that he was the only officer on the scene who fired a rifle, and that he fired .223-caliber rounds, but the remainder of the allegations of paragraph 25 are denied. It is specifically denied that Brown's car was a "considerable distance away from the law enforcement officers" and no longer a threat to officers, and it is specifically denied that Morgan fired ".233 rounds."

26. It is admitted that defendant Lewellyn fired four 9mm rounds from his Glock-17 service pistol, but it is denied that Brown's car was a "considerable distance away from the law enforcement officers" and no longer a threat to officers. It is further admitted that Lewellyn told the SBI that he fired because he believed that Mr. Brown was going to run over Deputies Lunsford and/or Swindell.

27. The allegations of paragraph 27 are admitted. It is further admitted that Sgt. Swindell told the SBI that he did not think Mr. Brown was going to hit him, but that he also said that he did not know what the other officers saw. It is further admitted that several other deputies said that they felt they or others would be hit by Mr. Brown's car.

28. Admitted.

29. The allegations of paragraph 29 are admitted, and it is further admitted that each officer was in a different physical position from the other officers and thus each officer had different vantage points from which to evaluate events.

30. It is admitted that Mr. Brown was shot twice, that other rounds were fired into his car, and that he was killed by a gunshot wound. The remainder of the allegations of paragraph 30 are denied. It is specifically denied that the defendants acted maliciously or recklessly. Except as otherwise admitted, the allegations of paragraph 30 are denied.

31. The District Attorney of Pasquotank County determined that Mr. Brown posed a threat to the safety of the law enforcement officers at the scene, and thus this allegation must be denied, but the remainder of the allegations of paragraph 31 are admitted.

32. Admitted.

33. It is admitted that Mr. Brown's house was briefly "search[ed]" (sic) after the shooting, but only to ensure that no one was inside. It is admitted that, during this safety search, which occurred in several dark rooms, defendant Meads asked Deputy Justin Langley to shine a light on Meads' pistol so Meads could determine the number of rounds he had fired by counting the remaining rounds left in the magazine of his pistol. It is admitted that Deputy Langley told the SBI that Meads wanted to be sure how many rounds he had fired. The remainder of the allegations of paragraph 33 are denied.



34. The allegation that Meads “altered” or “manipulated” his gun is false and irresponsible, and therefore the allegations of paragraph 34 are denied. It is specifically denied that Meads could or did “alter” or “manipulate” his gun, the firing of which had just been captured on body-worn video camera and witnessed by at least six other officers. It is further denied that any attempt to “alter” a gun that had already expelled five rounds would have been futile, and it is denied that doing so would have or could have had any effect whatsoever on the investigation in the shooting of Mr. Brown, an investigation that began within minutes of the event and involved dozens of other law enforcement officers and other witnesses on the scene. It is denied that Meads “manipulated” the magazine of his gun, but admitted that he took the magazine out to count the remaining rounds and further admitted that this is the only way to determine the remaining rounds left in a magazine. It is denied that defendant Meads concealed this information from the SBI or that there was anything wrong with trying to determine the number of rounds left in the magazine. It is admitted that defendant Meads can be seen on body-camera video counting the rounds in the magazine, that Meads asked for Deputy Langley to shine a light in a dark room, and that Meads was aware that officers’ body cameras continued to record as the officers searched the house. It is denied that Meads concealed that he counted the rounds in his magazine; rather, it is admitted that, after an SBI agent asked him about video showing him counting his rounds, he said that he had done so. It is further admitted that, while en route with a detective to the sheriff’s office, defendant Meads again counted the rounds in his magazine, that this was not captured on video,

and that this information is known only because Meads told an SBI agent that he had done so. Except as otherwise admitted, the allegations of paragraph 34 are denied.

35. Admitted.

36. Admitted.

37. The allegations of paragraph 37 are admitted. It is further admitted that the internal affairs investigation also concluded that shots were fired at Mr. Brown's vehicle only after it had struck Deputy Joel Lunsford twice and that the shots were fired within seconds of said contact.

38. Admitted.

39. Admitted.

40. Admitted.

41. Admitted.

42. The allegations of paragraph 42 are denied. It is specifically denied that Meads concealed anything to the SBI or that he "altered" his weapon. It is also specifically denied that he removed bullets from his weapon, except to count them and put them back, or that he could possibly conceal how many rounds he had fired given that the rounds already had been discharged and were being collected as evidence by other officers at the scene.

43. The allegations of paragraph 43 are denied, except it is admitted that District Attorney Womble informed the public that he had reviewed the evidence in the SBI report.

44. It is admitted that District Attorney Womble informed the public that he had reviewed the evidence in the SBI report, which included Sgt. Swindell's statement. It is further admitted that District Attorney Womble stated that he believed that Mr. Brown was going to run over the officers and that Mr. Brown's car made contact with them twice before driving off. It is further admitted that several officers told the SBI that they believed Mr. Brown would run over one or more officers. The remainder of the allegations of paragraph 44 are denied.

45. The allegations of paragraph 45 are denied. It is admitted that District Attorney Womble informed the public that he had reviewed the evidence in the SBI report, which included Sgt. Bishop's statement.

46. It is admitted that District Attorney Womble informed the public that he had reviewed the evidence in the SBI report, which included the statements of defendants Meads, Lewellyn, and Morgan. It is further admitted that, as Mr. Brown drove away from the officers, he struck Deputy Lunsford twice and that officers fired immediately after this. The remainder of the allegations of paragraph 46 are denied.

47. It is admitted that the three defendant officers intentionally fired their weapons, but the remainder of the allegations of paragraph 47 are denied. It is specifically denied that Mr. Brown's car was "a considerable distance away from all of [the] law enforcement officers" when the officers fired their weapons.

48. The purported statement of law in paragraph 48 is denied because it is misleading and inaccurate. The plaintiff presents this quoted passage as the Fourth Circuit's holding in Williams v. Strickland, 917 F.3d 763 (4th Cir. 2019), but it is not;

rather, it is the Williams Court describing the holding in Waterman v. Batton, 393 F. 3d 471, 482 (4th Cir. 2005). Though it is admitted that the Williams Court relied on Waterman and came to a similar conclusion, paragraph 48 does not accurately present the holding in Williams.

49. Admitted.

50. It is admitted that the text of Pasquotank County Sheriff's Office Policy 300.4.1 is accurately quoted in paragraph 50, but it is denied that any text of said policy is highlighted in bold, contained in one paragraph, or attached to the Amended Complaint as Exhibit C.

51. Admitted.

## **CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

#### **42 U.S.C. § 1983 – Excessive Force in Violation of Fourth Amendment (Against Defendants Meads, Lewellyn, and Morgan)**

52. The defendant's answers to paragraphs 1 through 51 are re-alleged and incorporated herein. It is admitted that the text of 42 U.S.C. § 1983 speaks for itself.

53. Paragraph 53 contains a grammatical error and is therefore ambiguous. To the extent that the plaintiff intended to allege that the individual defendants are persons for purposes of 42 U.S.C. § 1983, that allegation is admitted. Except as otherwise admitted, the allegations of paragraph 53 are denied.

54. Admitted.

55. Admitted.

56. Admitted.

57. The allegations of paragraph 57 are denied. Given that the District Attorney for Pasquotank County, who is a reasonable law enforcement official, determined that the defendant officers were authorized to use deadly force against Andrew Brown, it is denied that any reasonable law enforcement officer would or should have known that he could not use force in that situation and denied that any alleged right flowing from such a situation was “clearly[ ]established” (sic).

58. Denied.

59. Denied.

60. The allegations of paragraph 60 are denied, except it is admitted that two officers shot Mr. Brown and therefore seized him within the meaning of the Fourth Amendment.

61. Denied.

62. Denied.

63. The allegations of paragraph 63 are denied, except it is admitted that Mr. Brown was hit by gunshots fired by two officers and killed by one gunshot. It is further admitted that the defense of qualified immunity (and doctrine of public officer’s immunity under state law) does not apply to a public official sued in his official capacity or to a surety corporation, and therefore its applicability is not relevant to claims against the answering defendants.

64. The allegations of paragraph 64 are denied, except it is admitted that Mr. Brown was killed by a gunshot wound and that two officers shot him.

65. The allegations of paragraph 65 are denied. It is specifically denied that the plaintiff is entitled to damages for lost future earnings for Mr. Brown, who was not lawfully employed and had no history of gainful employment.

66. Denied.

67. It is denied that the plaintiff is entitled to the relief requested in paragraph 67.

**SECOND CLAIM FOR RELIEF**  
**(Assault and Battery)**  
(All Individual Defendants)

68. The defendant's answers to paragraphs 1 through 67 are re-alleged and incorporated herein.

69. The allegations in paragraph 69 that the force used was objectively excessive and unreasonable is denied, but the remainder of the allegations of paragraph 69 are admitted.

70. Denied.

71. Denied.

72. Denied.

73. The allegations of paragraph 73 are denied, except it is admitted that Mr. Brown died and, as evidenced by his attempt to flee, did not consent to contact from the defendants.

74. Denied.

75. It is denied that the plaintiff is entitled to the relief requested in paragraph 75.

**THIRD CLAIM FOR RELIEF**  
**(Assault and Battery)**

(Against Tommy S. Wooten II, in his official capacity as  
Sheriff of Pasquotank County)

76. The defendant's answers to paragraphs 1 through 75 are re-alleged and incorporated herein.

77. Denied.

78. The allegations of paragraph 78 are denied, except it is admitted that Mr. Brown died and suffered bodily injury and, as evidenced by his attempt to flee, did not consent to contact from the defendants.

79. It is admitted that, at the time of the events in question, the individual defendants were acting within the course and scope of their official duties as deputy sheriffs, but it is denied that defendant Wooten is liable for actions that the plaintiff claims were unlawful or tortious. Except as otherwise admitted, the allegations of paragraph 79 are denied.

80. The allegations of paragraph 80 are denied, except it is admitted that Mr. Brown suffered bodily injury and died.

81. It is denied that the plaintiff is entitled to the relief requested in paragraph 81.

**FOURTH CLAIM FOR RELIEF**  
**(Wrongful Death/Intentional)**  
(All Defendants)

82. The defendant's answers to paragraphs 1 through 81 are re-alleged and incorporated herein.

83. Denied.

84. Denied, except admitted that the weapons were fired intentionally.

85. It is admitted that, at the time of the events in question, the individual defendants were acting within the course and scope of their official duties as deputy sheriffs, but it is denied that defendant Wooten is liable for actions that the plaintiff claims were unlawful or tortious. Except as otherwise admitted, the allegations of paragraph 85 are denied.

86. It is denied that the plaintiff is entitled to the relief requested in paragraph 86.

**FIFTH CLAIM FOR RELIEF**  
**(Wrongful Death – Negligence/Gross Negligence)**  
(All Defendants)  
(Pled in Alternative Pursuant to F.R.Civ.P. 8(d)(2))

87. The defendant's answers to paragraphs 1 through 86 are re-alleged and incorporated herein.

88. The allegations in paragraph 88, as written, are incorrect and incomplete statements of the law, and therefore said allegations are denied. It is specifically denied that the defendants breached any duty that they had or might have had to Mr. Brown or others.

89. Denied.

90. Denied.

91. Denied.

92. It is admitted that, at the time of the events in question, the individual defendants were acting within the course and scope of their official duties as deputy sheriffs, but it is denied that defendant Wooten is liable for actions that the plaintiff



claims were unlawful or tortious. Except as otherwise admitted, the allegations of paragraph 92 are denied.

93. It is denied that the plaintiff is entitled to the relief requested in paragraph 93.

### **PRAYER FOR RELIEF**

It is denied that the plaintiff is entitled to relief from the answering defendant.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

Some or all of the plaintiff's claims fail to state claims upon which relief may be granted and should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

#### **Second Affirmative Defense**

Defendant Western Surety Company pleads insufficiency of process and insufficiency of service of process, and therefore lack of personal jurisdiction, pursuant to Rules 12(b)(1), (4), and (5).

#### **Third Affirmative Defense**

The defendant Sheriff, as a public official sued in his official capacity, has sovereign and/or governmental immunity for claims under state law, except for any claim asserted against his official surety bond.

#### **Fourth Affirmative Defense**

The plaintiff's claims are barred by the criminal conduct and contributory negligence of the decedent.

### Fifth Affirmative Defense

Any claims asserted against the defendant Sheriff pursuant to the doctrine of respondeat superior fail as a matter of law to the extent that they are barred by the individual defendants' entitlement to public officer's immunity.

WHEREFORE, having fully answered the plaintiff's Amended Complaint, the answering defendant respectfully requests that the plaintiff have and recover nothing of the answering defendant, that the Complaint be dismissed with prejudice, and that the Court order the plaintiff to pay the defendant its costs and reasonable attorney's fees, and for any other such relief as this Court deems just, equitable, and proper, including, if necessary, a trial by jury of all triable issues.

Respectfully submitted this 9<sup>th</sup> day of December, 2021.

/s/ Christopher J. Geis

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*Wooten II and Western Surety Company*

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an attorney at law licensed to practice in the State of North Carolina, is attorney for Defendants Sheriff Tommy S. Wooten II and Western Surety Company in this matter, and is a person of such age and discretion as to be competent to serve process.

I hereby certify that on December 9, 2021, I electronically filed the foregoing **ANSWER OF DEFENDANT TOMMY S. WOOTEN II AND WESTERN SURETY COMPANY** with the Clerk of the Court using the CM/ECF system, which will send notification of such to the following CM/ECF participant:

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