

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

BRIANA MARIE TYLER,

Plaintiff,

v.

PHILIP M. ARMSTRONG, III
Administrator of the Estate of
ANDRE M. BING, deceased

and

CASE NO. CL23-1863

WALMART, INC., t/a Walmart Supercenter,

Serve: CT Corporation System, Registered Agent
4701 Cox Road, Suite 285
Glen Allen, Virginia 23060

and

WAL-MART ASSOCIATES, INC.

Serve: CT Corporation System, Registered Agent
4701 Cox Road, Suite 285
Glen Allen, Virginia 23060

and

WAL-MART STORES EAST, L.P.
A Limited Partnership

Serve: CT Corporation Systems, Registered Agent
4701 Cox Road, Suite 285
Glen Allen, VA 23060

Defendants.

AMENDED COMPLAINT

COMES NOW the Plaintiff, Briana Marie Tyler, (hereinafter referred to as "Plaintiff," or "Briana"), by counsel, and moves this Honorable Court for a judgment and award of execution

against Philip M. Armstrong, III, qualified as the Administrator of the Estate of Andre M. Bing, pursuant to Section 64.2-454 of the Code of Virginia of 1950, as amended, (hereinafter referred to as the “Bing Estate”) and the Defendants, Walmart, Inc., t/a Walmart Supercenter, Wal-mart Associates, Inc. and Wal-Mart Stores, LP (hereinafter collectively referred to as “Walmart”), jointly and severally, in the amount of **FIFTY MILLION DOLLARS and 00/100 (\$50,000,000.00)**, together with prejudgment interest from November 22, 2022, as well as her costs expended, and such other and further relief as this Court may deem appropriate, for the reasons more particularly set forth as follows:

PARTIES

1. The plaintiff, a resident of Virginia Beach, Virginia, is an individual who at all relevant times was an individual employed by the defendant Walmart.

2. On January 23, 2023, Philip M. Armstrong, III, a resident of Virginia Beach, Virginia, qualified as the Administrator of the Estate of Andre M. Bing, pursuant to Section 64.2-454 of the Code of Virginia of 1950, as amended.

3. The defendants Walmart are national corporations and a Limited Partnership all of which are headquartered in Bentonville, Arkansas, and own, run, operate and employ individuals in the Walmart Supercenter located at 1521 Sam's Circle, Chesapeake, Virginia, 23320, (hereinafter referred to as “Chesapeake Walmart”, or “store”), and as of January 31, 2023, reported annual sales of **611.289 Billion Dollars**, and reported annual profit for that period of **147.568 Billion Dollars**. Walmart is the World’s largest non-governmental employer, employing over **2.3 million people** worldwide.

FACTS

4. On October 7, 2022, Briana began working as an overnight shelf stocker for Walmart at the Chesapeake Walmart.
5. Briana's shift supervisor, team lead and associate at the time of hire was Andre Bing (Bing).
6. On November 22, 2022, the plaintiff was beginning her shift at the Chesapeake Walmart, and was standing in the breakroom awaiting shift instructions from team lead Bing.
7. As team lead, Bing was authorized by Walmart to assemble his co-workers in the breakroom before their shift and assign his co-workers their duties for that night's shift, which is precisely what Bing was doing that night.
8. Employees working for Walmart on the night shift were required to assemble in the breakroom to receive information and instruction from Bing, who was aware that the employees would be gathered to await him in the ordinary course of their work schedule.
9. At this time, Bing entered the breakroom standing in the doorway, and after initially addressing the plaintiff and his other co-workers, suddenly began firing a 9 mm handgun throughout the breakroom, striking, injuring and murdering co-workers of the plaintiff.
10. Upon seeing Briana in the breakroom, Bing locked eyes with Briana, pointed his gun directly at her head, and pulled the trigger.
11. The bullets fired by Bing missed Briana by inches.
12. Bing then saw Jessie Wilczewski, a Walmart employee and associate of Bing and Briana, hiding under the table. Bing locked eyes with her, but then put his gun up and said to her, "Jessie, go home."
13. Ms. Wilczewski then got up and left the room unharmed.

14. Bing then exited the breakroom, turning right as he exited, and proceeded down the adjacent hallway, chasing an unknown Walmart employee.

15. Upon Bing exiting the breakroom, Briana ran as fast as she could out of the breakroom, through the same door for which Bing just exited, but turned left, terrified and seeking to escape the deadly rampage being imposed upon the plaintiff and her colleagues.

16. As Briana exited the breakroom, Bing saw Briana leave the breakroom, and broke off his pursuit of the unknown individual and began chasing Briana.

17. While running down the hallway, seeking to escape Bing, and eventually entering the retail store section of the Chesapeake Walmart, Briana became aware that Bing was now chasing her and firing his gun.

18. The plaintiff was aware of bullets flying near her head, narrowly missing her, which fact was confirmed by video evidence in the possession of Walmart.

19. Specifically, on November 28, 2022, the plaintiff spoke with Clay Thrasher, an agent of Walmart, who informed her that video surveillance in the possession of Walmart confirmed that Bing followed the plaintiff into the retail section of the Chesapeake Walmart and was firing his gun.

20. The plaintiff was able to escape the rampaging Bing by running as fast as she could, injuring both of her legs and experiencing acute chest pain while being chased by Bing.

21. Upon information and belief, Briana was the only individual that Bing chased all the way into the store, firing his gun.

22. Customers and non-employees of Walmart were in the retail store section, and, upon information and belief, saw Bing firing his 9 mm gun.

23. Specifically, the grandfather of Briana, Richard Tate, was in the retail section of Walmart on November 22, 2022, as Bing was firing his gun, and dropped to the floor as the gun was being fired.

24. Eventually the plaintiff reached the parking lot of the Chesapeake Walmart, and exited the Chesapeake Walmart property with her mother, who had come to pick her up upon receiving a frantic call from the plaintiff.

25. Bing, at all times relevant hereto, was an employee of Walmart, having first been employed in 2010.

26. Investigation by law enforcement subsequent to the plaintiff exiting Walmart revealed that six people were killed by Bing, and multiple others injured. Bing later turned the gun upon himself and killed himself in the breakroom on the night of November 22, 2022.

27. Upon returning to her home immediately after the herein described shooting on November 22, 2022, the plaintiff examined the jacket that she was wearing, (see picture on the following page) and realized, upon information and belief, that the bullets that she experienced being fired at her earlier that night had missed her literally by inches, and had gone through the hood of her jacket, inches from her head.



28. During plaintiff's employment at the Chesapeake Walmart, it was well known to her from personal experience, and from speaking with co-workers, that Bing was an individual to be avoided, and one who had a history of disturbing behavior, including, but not limited to:

- a. threatening and berating some co-employees at the Chesapeake Walmart;
- b. harassing some co-employees; and
- c. threatening to kill some co-employees if Bing were ever fired.

29. Upon information and belief, including statements reported publicly from prior and current employees of the Chesapeake Walmart, supervisors of Walmart knew prior to November 22, 2022, of the dangerous and violent propensities of Bing.

30. Upon information and belief, prior to this mass shooting, Bing had been demoted by management for his improper and disturbing interactions with others, but then reinstated as team lead.

31. Bing demonstrated a pattern of disturbing behavior leading up to the shooting, of which Walmart knew or should have known.

32. Bing's behavior prior to the shooting put Walmart on notice that Mr. Bing was violent and could harm others.

33. In fact, many Walmart employees and managers had observed Mr. Bing exhibit bizarre and threatening behavior leading up to the shooting.

34. Upon information and belief, Walmart and its managers were aware of Bing's behavior and threats, but kept employing him anyway.

35. Upon information and belief, Bing was previously disciplined for his bad behavior and harassment of other employees.

36. Upon information and belief, Bing was disciplined leading up to the shooting,

making his violent outburst predictable and foreseeable.

37. Despite Bing's long-standing pattern of disturbing and threatening behavior, Walmart did not terminate Bing in order to keep Walmart customers and employees safe.

38. Despite Bing's long-standing pattern of disturbing and threatening behavior, Walmart continued to permit Mr. Bing access to the breakroom and other common areas.

39. Walmart had a special relationship with Bing as his employer, whereby Walmart could have terminated his employment.

40. The violent and murderous actions of Bing were foreseeable by Walmart.

41. The management and supervisors of the Chesapeake Walmart received complaints from employees, and parents of employees, asking them to remove Bing as an employee, or be removed from a position of leadership, as a result of his violent and dangerous propensities.

42. Despite the knowledge of Walmart supervisors and management, and despite the pleas from employees and parents of employees to remove Bing from his position of leadership, or from employment all together, Walmart did nothing.

43. Walmart's failure to remove Bing from employment, and Walmart's failure to remove Bing from a position of leadership constitutes reckless conduct, gross negligence, and negligent retention of Bing, for which it is liable.

44. Bing was a dangerous employee who Walmart knew or should have known was dangerous, violent, unstable, and likely to cause injury, including death to others.

45. Bing was a dangerous employee who Walmart knew or should have known was dangerous, violent, unstable, and likely to commit criminal acts, such as the attempted murder of the plaintiff, and the actual murder of plaintiff's co-workers.

46. Walmart had a special relationship with all of its employees, including the plaintiff and her co-workers at the Chesapeake Walmart, and thus had a duty to keep them safe from harm, including murder and attempted murder.

47. There is no causal connection between the attempted murder of the plaintiff by Bing and the conditions under which Walmart required plaintiff's work to be done.

48. The attempted murder of the plaintiff by Bing did not arise out of her employment.

49. The attempted murder of the plaintiff, in a mass shooting, and the injuries that flow from it, cannot be fairly traced to Briana's employment at Walmart, and was personal to the plaintiff, and not simply common to Walmart employees, as evidenced by Bing:

- a. choosing not to shoot at Jessie Wilczewski and allowing her to leave the room unharmed (¶ 12);
- b. locating Briana in the breakroom, and pointing his gun at her head and pulling the trigger (¶ 10);
- c. breaking off a chase of a Walmart employee, in order to chase after Briana (¶ (¶ 14 and 16); and
- d. chasing only Briana, upon information and belief, in the retail section of the store (¶ 21).

50. The attempted murder of the plaintiff by Bing and indeed the mass shooting by Bing, was not peculiar to the plaintiff's employment, and was common to the neighborhood, as

non-employees and store customers were subjected to gunfire in the retail store section as Bing chased the plaintiff. In fact, *Gun Violence Archive*, a nonprofit research group that tracks mass shootings in the United States, reported that 695 mass shootings occurred in the United States, involving shootings in all circumstances and all locations.

51. The risk of future harm was so grave that discharging Bing was the only reasonable response by Walmart once learning of Bing's violent and dangerous propensities.

52. Walmart showed utter disregard of prudence, amounting to the complete gross neglect and disregard for the safety of others by retaining Bing as an employee, despite knowing his propensity for violence, including murder and attempted murder, which disregard and neglect is shocking to reasonable people.

COUNT I
NEGLIGENT RETENTION

53. Paragraphs 1 through 52 are hereby incorporated by reference.

54. At all relevant times described herein, the defendant Walmart was an employer and supervisor of Bing.

55. Despite being aware that Bing "liked guns," and was exhibiting violent tendencies towards co-workers, and despite being aware that Bing was mentally unstable, Walmart did nothing, and allowed Bing to remain as an employee.

56. Walmart had a duty to terminate the employment of Bing immediately as a result of the violent and dangerous propensities and tendencies being displayed by Bing, yet failed to do so, resulting in harm to the plaintiff.

57. Walmart breached that duty by:

a. employing Bing, who had known propensities for violence, threats, and strange behavior; and

b. retaining Bing, and failing to discharge Bing prior to November 22, 2022, who had known propensities for violence, threats, and strange behavior.

58. The plaintiff was physically injured, harmed, and will be physically and emotionally injured and harmed for the rest of her life, as a result of that breach.

COUNT II
RESPONDEAT SUPERIOR LIABILITY

59. Paragraphs 1 through 58 are hereby incorporated by reference.

60. At all times material herein, Bing was an employee, agent or representative of Walmart.

61. At all times material herein, Bing was acting within the scope of the duties of the employment and in the execution of the service for which Bing was engaged, i.e., as team lead for the team in which plaintiff was employed.

62. As team lead, Bing was responsible for meeting with his co-workers pre-shift, and assigning the co-workers responsible for that shift.

63. The attempted murder of the plaintiff was performed while Bing was acting as the team lead for Walmart at the Chesapeake Walmart.

64. As a direct result of the attempted murder of the plaintiff by Bing, the plaintiff was physically and emotionally injured and harmed, and will continue to be harmed for the rest of her life.

COUNT III
NEGLIGENCE

65. Paragraphs 1 through 64 are hereby incorporated by reference.

66. On November 22, 2022, when Bing entered the breakroom brandishing a gun, he had a duty to exercise that degree of care which an ordinarily prudent person would exercise in

similar circumstances and in connection with the possession and use of a firearm, owed a duty of care to other persons not to cause injury to them as a result of the use and possession of a firearm, and a duty of care to avoid utilizing the gun in an unreasonable manner.

67. On November 22, 2022, Bing breached the duty to exercise that degree of care which an ordinarily prudent person would exercise under the same or similar circumstances to avoid injury to another, by shooting the weapon in a closed room occupied by other persons and such conduct constituted negligence.

68. Bing's negligence on November 22, 2022, was the proximate cause of the injuries suffered, and to be suffered, by Briana.

COUNT IV **GROSS NEGLIGENCE**

69. Paragraphs 1 through 68 are hereby incorporated by reference.

70. Walmart's retention of Bing as an employee, the failure to terminate him as an employee prior to November 22, 2022, and the failure to respond to complaints received by Walmart management, constitutes a breach of the duty owed by Walmart to the plaintiff, and constitutes gross negligence.

COUNT V **WILLFUL AND WANTON NEGLIGENCE**

71. Paragraphs 1 through 70 are hereby incorporated by reference.

72. Bing's conduct on November 22, 2022, in opening fire with a gun at the plaintiff, in the breakroom having just purchased the gun on the very same day, evidenced willful and wanton conduct and the nature of the act was such that Bing was aware that his conduct probably would cause injury to, or cause the death of, Briana.

73. Bing's conduct as aforesaid, acting with conscious disregard of Briana's person, safety and life and with reckless indifference to the consequences of his actions, constituted a breach of the aforesaid duty and thus constituted willful and wanton negligence.

74. The plaintiff has been harmed by such breaches set forth in this Complaint.

75. As a direct and proximate result of the aforesaid breaches of duty and gross and/or willful and wanton negligence of Walmart, and as a direct result of Walmart's negligent retention of Bing, the Plaintiff has endured, and will endure for the rest of her life, including, but not limited to, the following:

- a. physical injuries to her legs and chest;
- b. extreme pain and suffering, including both psychological and physical suffering;
- c. night fright;
- d. paranoia;
- e. fear of dark places;
- f. agoraphobia;
- g. fear of being in public places, including, but not limited to, fear of enrolling her 4 year old son in public school, and being at public school with him;
- h. lost present and future wages; and
- i. present and future medical bills.

76. The trauma occasioned to the plaintiff described herein, horrific by nature, is ongoing, and the plaintiff will be dealing with the nightmarish event and injuries that came literally within inches of taking her life, for the rest of her life.

COUNT VI
ASSAULT (ATTEMPTED MURDER)

77. Paragraphs 1 through 76 are hereby incorporated by reference.

78. The actions of Bing as set forth herein, including the firing of a gun at the plaintiff and chasing her with the intent to kill her, was an overt act with the intent to do bodily harm.

79. Bing had the present ability on November 22, 2022 to murder the plaintiff, and intended to murder the plaintiff, creating fear or apprehension of bodily harm as Bing fired bullets at the plaintiff.

80. Bing's action constituted an assault, resulting in long term injury and damage to the plaintiff, as further set forth in ¶ 75 herein, for which the Bing Estate is liable.

WHEREFORE, for the reasons set forth above, your Plaintiff moves this Honorable Court for a judgment and award of execution, jointly and severally, against the defendants Bing Estate and Walmart in the amount of FIFTY MILLION DOLLARS and 00/100 (\$50,000,000.00), in compensatory damages together with interest from November 22, 2022, to date, as well as her costs expended in these proceedings and such other and further relief as this Court may deem appropriate.

A TRIAL BY JURY IS HEREBY DEMANDED.

BRIANA MARIE TYLER

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