

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

VIOLA BRYANT, as Personal
Representative of the Estate of
GREGORY VAUGHN HILL, JR.,

Case No. 2:16cv14072

Plaintiff,

vs.

SHERIFF KEN MASCARA in his official
Capacity as Sheriff of St. Lucie County,
and CHRISTOPHER NEWMAN,
an individual,

Defendants.

_____ /

DEFENDANT NEWMAN’S ANSWER/DEFENSES TO COMPLAINT

The Defendant CHRISTOPHER NEWMAN, an individual, through his undersigned counsel,
files this his Answer/Defenses to the Complaint and would state as follows:

1. Admitted for jurisdictional purposes only.
2. Without knowledge and therefore denied.
3. Without knowledge and therefore denied.
4. Denied.
5. Denied.
6. Without knowledge and therefore denied.
7. Admitted that the Defendant Newman at all times material was employed by the St.
Lucie County Sheriff’s office as a deputy sheriff.
8. Admitted that Ken Mascara is the Sheriff of St. Lucie County and is sued in his
official capacity only.
9. Admitted that the Defendant Newman at all times material was employed by the St.

Lucie County Sheriff's office as a deputy sheriff and is sued in his individual capacity only.

10. Admitted that at all times material the Defendant Newman was acting within the course and scope of his employment with the St. Lucie County Sheriff's office.

GENERAL ALLEGATIONS

- 11. Denied as phrased.
- 12. Denied as phrased.
- 13. Denied as phrased.
- 14. Denied as phrased.
- 15. Denied as phrased.
- 16. Denied as phrased.
- 17. Denied as phrased.
- 18. Denied.
- 19. Denied as phrased.
- 20. Admitted.
- 21. Denied as phrased.
- 22. Denied.

COUNT I
CLAIM PURSUANT TO 42 U.S.C. § 1983
MUNICIPAL LIABILITY

23 - 32. As this Count is not brought against this Defendant, no responses are being provided to paragraphs 23 - 32.

COUNT II
CLAIM AGAINST CHRISTOPHER NEWMAN PURSUANT TO 42 U.S.C. § 1983

- 33. Denied.
- 34. Denied.

35. Denied.

36. Denied.

37. Denied.

COUNT III
STATE LAW CLAIM OF NEGLIGENCE AGAINST SHERIFF KEN MASCARA

38-42. As this Count is not brought against this Defendant, no responses are being provided to paragraphs 38 - 42.

COUNT IV
STATE LAW CLAIM FOR BATTERY RESULTING IN WRONGFUL DEATH
AGAINST CHRISTOPHER NEWMAN

43. Denied.

44. Denied.

45. Denied.

COUNT V
CLAIM FOR NEGLIGENCE RESULTING IN DAMAGE TO REAL PROPERTY
AGAINST SHERIFF KEN MASCARA

46-51. As this Count is not brought against this Defendant, no responses are being provided to paragraphs 46 - 51.

GENERAL DENIAL

Any and all allegations to which a specific response has not previously been provided is herein denied and strict proof thereof is demanded.

DEFENSES

52. As a first Defense, the Defendant, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, would assert that Plaintiff has failed to make sufficient allegation of ultimate fact from which it may be determined that a claim for relief has been stated.

53. As a further and separate Defense, the Defendant would assert that any and all

injury or damage suffered by Plaintiff was caused in whole or in part by reason of Plaintiff's negligence and/or wrongful acts and/or misconduct.

54. As a further and separate Defense, the Defendant would assert that any and all actions which were taken by him were:

- a. Without malice;
- b. With probable cause and/or reasonable suspicion;
- c. In pursuit of lawful and legal duties;
- d. With such force as was reasonable and necessary under the circumstances.

55. As a further and separate Defense, the Defendant would assert that he is entitled to a set off for any collateral sources of compensation for Plaintiff's alleged injuries and/or damages.

56. As a further and separate Defense, the Defendant would assert that to the extent force was used, the force was justifiable and otherwise lawful pursuant Chapter 776, Florida Statutes.

57. As a further and separate Defense, the Defendant would assert any defense or immunity that is applicable as set forth in Chapter 776, Florida Statutes.

58. As a further and separate Defense, the Defendant would assert that he is immune from any and all liability through application of the concept of qualified immunity, as he, at no time, committed any act in derogation of Plaintiff's civil rights of which a reasonable officer would have had knowledge and, at all times, otherwise acted in good faith relying upon existing statutes and policies and procedures as authority for his actions.

59. As a separate and further Defense, the Defendant would assert that he is relying upon the presumption that the exercise of police power was for the purpose of protecting the

public health, safety and/or welfare and is otherwise presumed to be for the purpose of preventing a harm. Such rebuttable presumption requires proof to the contrary by clear and convincing evidence pursuant to Florida Statute §11.066(2).

60. As a further and separate Defense, the Defendant would state that to the extent the Plaintiff has failed to mitigate the estate's damages, Defendant is entitled to a reduction of any jury award.

61. As a further and separate Defense, the Defendant would assert that any and all injuries or damages suffered by Plaintiff was caused in whole or in part by reason of the wrongful acts of others over which this Defendant had no control or responsibility for control.

62. As a further and separate Defense, the Defendant would assert that as to the state law claims, all actions he took, if any, were taken within the course and scope of his employment, and not in bad faith, or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety or property and consequently he is not subject to suit pursuant to §768.28(9), Florida Statutes.

63. As a further and separate Defense, the Defendant would assert that any and all injuries allegedly suffered by Plaintiff was caused in whole or in part by reason of Plaintiff's decedent's harmful acts and/or negligent conduct for which Plaintiff and/or Plaintiff's decedent are comparatively chargeable.

64. As a further and separate Defense, the Defendant would assert the alcohol or drug defense as set forth in Florida Statute §768.36 based upon the fact that the medical examiner and/or her report and related laboratory results obtained from samples taken during the autopsy of the decedent indicated that his blood alcohol level was well in excess of 0.08 percent. Moreover, discovery may reveal further grounds for this defense to include that the decedent was

under the influence of drugs.

DEMAND FOR TRIAL BY JURY

The Defendant, Christopher Newman, hereby demands trial by jury on all issues so triable.

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF and furnished via email a copy to: **John M. Phillips, Esquire, T.C. Roberts, Esquire, Brent Latour, Esquire**, Law Office of John M. Phillips, LLC, 4230 Ortega Boulevard, Jacksonville, FL 32210; jphillips@floridajustice.com, dmalone@floridajustice.com, tc@floridajustice.com, brent@floridajustice.com this 10th day of March, 2016.

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BY s/ *Summer M. Barranco*
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