

**IN THE CIRCUIT COURT
FOR MARSHALL COUNTY, KENTUCKY**

KAREN MICHELLE CASH,
(individually as surviving spouse
and administrator of the
Estate of Jody Cash); and
DONALD BOWMAN and
TRACEY ELIZABETH BOWMAN

Plaintiffs,

v.

MATT HILBRECHT
(in his official capacity as
Marshall County Sheriff),
NICKY KNIGHT
(in his official capacity as
Calloway County Sheriff),
LOGAN HAMPTON
(in his official and individual capacities)
ZACH JOHNSON
(in his official and individual capacities)
CHRIS BEAVERS
(in his official and individual capacities)
LUKE RUDD
(in his official and individual capacities)
TROY DOSS
(in his official and individual capacities)

Defendants.

Case No.

JURY DEMAND

COMPLAINT

Introduction

1. This lawsuit arises out of the fatal shooting death of Jody Cash, a deceased former deputy of the Calloway County Sheriff's Office who was killed in the line of duty on May 16, 2022.

2. Mr. Cash was killed by Gary Rowland, an armed suspect who, despite being arrested and transported to the Marshall County Sheriff's Office to be interviewed by Mr. Cash and Co-Plaintiff Marshall County Sheriff's Deputy Donald Bowman, was never adequately searched and was able to conceal a loaded 9mm pistol in his pants and a large knife around his neck.
3. During a smoke break, Mr. Rowland drew this firearm and shot and killed Mr. Cash.
4. Donald Bowman was standing next to Mr. Cash, witnessed the shooting, and drew his firearm and fired on Mr. Rowland, killing him.
5. Jody Cash was pronounced dead at Marshall County Hospital.
6. He is survived by his wife, Michelle, his son, Jackson, his stepdaughter, Madyson, and a loving extended family.
7. Donald Bowman survived, but now lives with post-traumatic stress disorder and intense psychological distress.
8. He is unable to continue working as a law enforcement officer.

Parties

9. Karen Michelle Cash is a resident of Calloway County and is the surviving spouse of Jody Cash.
10. Karen Michelle Cash sues individually for loss of spousal consortium pursuant to KRS § 411.145.
11. Karen Michelle Cash also sues for wrongful death pursuant to KRS § 411.130(1) as the duly appointed administrator of the Estate of Jody Cash (appointed as administrator in Calloway County, Kentucky on May 27, 2022. Estate Documents attached as **Exhibit A.**)
12. Donald Bowman is a deputy with the Marshall County Sheriff's Office.
13. Tracey Elizabeth Bowman is Donald Bowman's spouse and sues individually for loss of spousal consortium pursuant to KRS § 411.145.
14. Matt Hilbrecht is the Sheriff for Marshall County, Kentucky. He is sued in his official capacity pursuant to KRS § 70.040 for the liability of his deputies, who are also named parties.
15. Nicky Knight is the Sheriff for Calloway County, Kentucky. He is sued in his official capacity pursuant to KRS § 70.040 for the liability of his deputy, Troy Doss, who is also a named party.
16. Logan Hampton is an officer with the City of Benton, Kentucky, police department. He is sued in his individual and official capacities.
17. Zach Johnson is a deputy with the Marshall County, Kentucky Sheriff's Office. He is sued in his individual and official capacities.

18. Chris Beavers is a Special Deputy with the Marshall County, Kentucky Sheriff's Office. He is sued in his individual and official capacities.
19. Luke Rudd is a deputy with the Marshall County, Kentucky Sheriff's Office. He is sued in his individual and official capacities.
20. Troy Doss is a deputy with the Calloway County, Kentucky Sheriff's Office. He is sued in his individual and official capacities.

Venue

21. Pursuant to KRS § 452.46, venue is proper in Marshall County, Kentucky, as all events and injuries complained of occurred in Marshall County, Kentucky.

Factual Background

22. On May 16, 2022, Marshall County Deputy Nathan Maxlow was called to a home in Benton, Kentucky. A black Chrysler 300 vehicle was parked partially in the landowner's driveway. (01-22-0258-748).¹
23. There was a loaded AR-15 semi-automatic weapon in the back seat. (*Id.*)
24. Deputy Maxlow called in the vehicle's license plate and was advised by dispatch that the plate did not match the vehicle. (*Id.*)
25. Benton Police Sergeant Logan Hampton arrived on the scene along with Benton Police Chief Stephen Sanderson. (01-22-0258-749.)
26. Sergeant Hampton located some pieces of mail in the vehicle with the name Michael Patterson on the envelope and an address in Mayfield, Kentucky. (01-22-0258-492.)
27. Sergeant Hampton was aware that an individual named Manta (or Monta) Harper from the Mayfield area lived in the apartment complex in Benton near where the Chrysler 300 was found. (*Id.*)
28. Calloway County Sheriff's Deputy Jody Cash overheard the radio traffic concerning the Chrysler 300 and the AR-15. (*Id.*)
29. Deputy Cash advised he recognized the vehicle from a recent pursuit of a suspect named Gary Rowland. (01-22-0258-751.)

¹ All page number references are to the Kentucky State Police KYIBRS Supplementary Report, Case Number 01-22-0258, attached as **Exhibit B**.

30. Deputy Cash had also been monitoring Mr. Rowland by pinging his cell phone, and those pings matched the general area where the vehicle was found. (01-22-0258-752.)
31. Mr. Rowland had made statements to Deputy Cash indicating that Rowland did not intend to go back to jail and would go down shooting. As Benton Police Chief Stephen Sanderson recounted: “Rowland told [Cash], you all don't come after me . . . I'm not going to back to jail. I got too much time hanging over my head. I will, I've got plenty of guns. I'm gonna have a shootout with you guys. I remember having that conversation with Jody 'cause he, he wanted to make us well aware that this guy was possibly armed and dangerous.” (01-22-0258-138.)
32. As recounted in the Synopsis to the Kentucky State Police Report, “Sergeant Hampton contacted Probation and Parole Officer Brett Sorrells to respond to the scene. Officer Sorrells was able to contact Mr. Harper via phone and asked him to come down to the street. He confirmed that Mr. Rowland was asleep on his couch in the apartment. Mr. Rowland had multiple outstanding warrants, to include an absconding parole warrant out of Calloway County.” (01-22-0258-7.)
33. Based on the above details concerning Mr. Rowland, the multi-jurisdictional Special Response Team (“SRT”) was activated. (01-22-0258-194.)

34. The SRT comprises Marshall County Sheriff's Office, Benton Police Department, one member of Calloway County Sheriff's Office (Troy Doss), and Marshall County EMS. (*Id.*)
35. The full-time leader of the SRT was Marshall County Sheriff's Major Tim Reynolds, but Reynolds was sick that day, so Marshall County Deputy Luke Rudd assumed command of the SRT and activated the SRT. (01-22-0258-531.)
36. The SRT operates under the ultimate direction and leadership of the Sheriff of Marshall County. (01-22-0258-239.)
37. In fact, according to Mr. Rudd, he activated the team that day at the direction of Marshall County Sheriff-elect (at that time) Matt Hilbrecht. (01-22-0258-254.)
38. Neither Jody Cash nor Donald Bowman is or was a member of the SRT.
39. As part of the initial briefing of the SRT, SRT team members were provided a packet of information on Gary Rowland. (01-22-0258-634.)
40. This packet included the statements that Rowland had made about not "going back to prison" and that Rowland was armed with semi-automatic weapons. (*Id.*)
41. The team members of the SRT met at the location of the apartment complex. (*Id.*)
42. Assistant Team Leader Rudd set the "stack order," which was the order in which the team would assemble to enter the apartment where Rowland was suspected of residing. (*Id.*)

43. The stack order, from first to last, was Troy Doss (Calloway County Sheriff's Office), Zach Johnson (Marshall County Sheriff's Office), Keegan Cole (Benton Police), Logan Hampton, (Benton Police), Luke Rudd (Marshall County Sheriff's Office), and Chris Beavers (Marshall County EMS). (01-22-0258-259.)
44. SRT members Nick Spears (Marshall County Sheriff's Office) and Aaron Lane (Marshall County Sheriff's Office) were also present on the exterior, covering an alternate exit route. (*Id.*)
45. Troy Doss, who was first in the stack order, recounted the SRT's entry into the apartments as follows:

"Deputy Zach Johnson opened the door. I went in. They said it was the door to the left at the end of the hallway. When I got to that doorway, I started yelling sheriff's office, open the door, and I immediately saw an individual on the couch. He was laying on his right side facing the back of the couch. Uh, continued verbal commands, sheriff's office, show me your hands, sheriff's office, show me your hands . . . he was approximately 15 yards from the threshold, and I had eyes on him before breaking the threshold. Uh, started moving slowly towards him. Kept giving verbal commands. Uh, he wasn't moving. He wasn't responding in any way. Got all the way up to him, I actually pushed his back with my foot. Um, I couldn't see his left hand until I got right up on him. I thought it was here. It was actually here, but his right hand was here and I could see it from the doorway. Um, even after pushing him with my foot, no response, no movement. I moved my rifle to, uh, what we call a retention position. So I tucked the stock under my armpit. I grabbed Mr. Roland's arm with my left hand. It would've been his left arm. I pulled him off the couch and over like a, onto like an ottoman type piece of furniture. From that point, uh, Deputy Johnson and the rest of the guys in the stack grabbed a hold of him, and I'm pretty sure Deputy Johnson tripped on, I, I don't know what caused him to trip, but he went to the floor. Uh, from that point, I'd went from contact to a cover position. Uh, I didn't know what had been cleared in the apartment thus far. Uh, they were maybe 3-4 feet from me on the floor while I was watching the rest of the room. Um, after some time, they started to stand him up. I slung my rifle, grabbed his, under his right arm, stood him up and we were closer to I guess like the kitchen area of the apartment. Um,

grabbed his arm with my right hand, swept the small of his back, grabbed it with my left hand, swept his stomach, saw what looked like a bulge in his sweatpants pocket, reached in his pocket. It was a pack of Marlboro Red cigarettes, I think.”

(01-22-0258-208—01-22-0258-209, emphasis added.)

46. Troy Doss describes a protective “sweep” search of Mr. Rowland’s stomach, back, and sweatpants pocket.
47. Troy Doss did not perform any further search of Mr. Rowland.
48. Zach Johnson was second in the stack order. He describes the entry into the apartment as follows:

“We go. I'm number two. Uh, Troy's in front of me, so, and that's me, and then the rest of the team behind me. So we go upstairs. Uh, Troy gets on the north side of the door. I'm on the south side. I open the door. Troy [Doss] does a sweep. He goes in and he sees the apartment, goes into the apartment. Once we enter the apartment, Troy's first. He immediately starts giving commands – sheriff's office; let me see your hands – over, repeatedly comments. Guy doesn't move. Guy's laying on the couch. Um, the couch is up against the back wall of the house and there's a window right above him, so he's layin' on the couch. He's laying on his right side facing the couch, so we can't see him. All we see is his back. Uh, he's laying, his arm is kinda down on the couch; it's, it would be his right arm. Left arm is kinda over him like a normal person that would lay on the couch. Uh, kinda can't see his hands at all, but we can see how he's laying, so as we're going to advance, doesn't move, doesn't even acknowledge us.

Um, we start, Troy starts walking toward him. I come up to the right, um, continue to give him commands. Doesn't even, doesn't move; doesn't even acknowledge we're there. Uh, at that point, Troy walks up and kinda nudges on the couch and him, doesn't move, and then, um, after we're continuing to give him commands, he kinda, I say when he pops up, he kinda just acts like he's comin' to and, and what's goin' on and kinda makes a quick movement up. At that time, Troy grabs one arm and I grab the other, and we're assisting him to the ground. Uh, at that time, there was a rug, I guess you would say, in the living room that's all bunched up along with a, just a bunch o' other clutter. Um, I actually end up trippin' and then fallin' backwards, and I immediately get up and

I re, I re-grab his arm. We place him on the ground on his, his, face first. I have his right arm and his other arm, his left arm. He's kinda, he's layin' on the ground facedown and not really tucked underneath up into his waist but it's kind of just right there on the side, so I'm tellin' people hey, grab his arm, grab his arm, grab his arm. Beavers comes up, grabs his arm, puts it in the small of his back. **Luke [Rudd] handcuffs, handcuffs him . . .**

[O]nce we had him on the ground, I had the one arm behind his back. Beavers ends up gettin' the other, puts it behind his back. **Luke, he comes in, it'd be on his left, my right, so he comes in, he takes the cuffs out, and cuffs him."**

(01-22-0258-635, 01-22-0258-649, emphasis added.)

49. Deputy Johnson did not search Mr. Rowland.
50. Instead, Johnson's focus was on another room that had not been cleared.
51. As Johnson recounted:

"Nobody's been in [the other room] yet. We don't know if there is anybody in there or not. Could be somebody hiding with a gun, I really don't know, uh, but my primary focus was this bedroom right here because I was literally right in this area, so, of course, if somebody was in there, that was going to be me, so I started, so as what we're trained, uh, **my focus goes to that because Troy [Doss] and [Chris] Beavers, so they have him; my focus goes to that bedroom."**

(01-22-0258-650, emphasis added.)

52. Luke Rudd, the SRT leader for the day and person who initially applied handcuffs to Mr. Rowland in the apartment, recounts the SRT's entrance and arrest of Rowland as follows:

"When I came through, so's, Mr. Rowland was already standing, uh, with his hands out . . . The commands were given show me your hands, um, which he did. Uh, which he did do. He was showing both of his hands. Um, and then it was the next command was get on the ground. When he said get on the ground Mr. Rowland was going very slow. Um, he was barely moving at all, um, going towards the ground . . . Hands were still out but he was inching, um, to, to the ground. At that point, um, Deputy Johnson, Zach Johnson was on the left, Troy was on my right and both

had a rifle on him. There on the ground, um, his left arm kinda caved under him. Um, and I know Troy was still standing like at, at his feet.

Um, Deputy Johnson had got his right arm, put it behind him. Chris Beavers was on his left and got his left arm out from underneath him, put it behind him. Um, **I said who's got cuffs. Nobody moved at that point. So I still had my rifle slung. I grabbed my cuffs. Put the cuffs on him. Um, picked the cuffs off, up, Beavers runs across the back. I come back across, run my hands across the back as well.** Um, get my rifle back out and put a rifle on him and they are working on getting him to stand up. Uh, he's still not helping, um, in any kind of form or fashion so at that point Troy slings his rifle, um, Beaver's is still on his left side and they assist him up to his feet. **When they assist him up to his feet, they move out of the way a little bit.** Uh, this apartment was cluttered. Uh, lotta stuff goin' on. Uh, we still have a lotta people movin' at that point. They move, the two of them move him closer to the door that we made entry into which was the exit door that we used as well. Um, they move him closer to the door. Um, all I remember seeing is Troy reaching, doing something with his right pocket. Uh, what he pulls out of the right pocket I couldn't, can't say for sure but he was doing something with his pocket . . .

Um, at that point I turned to make sure he was secured with them two, I turned around looked at the rest of the guys, started giving them let's do a secondary sweep; look for any hiding places for anybody else. Um, look for anything that we may have missed. Do a secondary sweep, um, and I'll be back with you guys once we get this done.”

(01-22-0258-261—01-22-0258-262, emphasis added.)

53. Luke Rudd did not conduct a thorough search of Mr. Rowland after placing his handcuffs on Mr. Rowland.
54. Nor did Luke Rudd instruct any other SRT team members, including Doss and Beavers, to search Mr. Rowland.
55. Once Mr. Rowland was handcuffed, he was escorted by Troy Doss and Chris Beavers—an EMS medic—to the squad car of Benton Police Officer Logan Hampton. (01-22-0258-263.)

56. Luke Rudd also accompanied them.
57. Rudd radioed to Hampton, who was still in the apartment, to unlock the vehicle remotely, which Hampton did.
58. Rudd did not search Rowland before he was placed in Hampton's car.
59. Doss did not search Rowland before he was placed in Hampton's car.
60. Beavers did not search Rowland before he was placed in Hampton's car.
61. When Officer Hampton came down from the apartment, Rudd asked Hampton if Hampton wanted to switch the cuffs on Rowland. (01-22-0258-264.)
62. Hampton agreed and replaced Rudd's cuffs with his own.
63. Then-Sheriff McGuire (Marshall County) was present on the scene during the escort of Rowland to Hampton's vehicle. (01-22-0258-355.)
64. According to MCSO Deputy Kyle Mullins, Sheriff McGuire twice asked Beavers and Rudd whether they had searched Rowland. (01-22-0258-158.)
65. As Mullins described the events:
- “While they're walking him out the people or sheriff yells, twice, not even yells, I wouldn't say yell, but says twice did y'all search, did y'all pat, pat him down good, you know, is he, is he good to go?”
- (01-22-0258-159.)
66. Deputy Mullins said that neither Beavers nor Rudd responded. (01-22-0258-162.)

67. Beavers would later confirm that he did not search Rowland (01-22-0258-

303, "I did not physically search him") in part because "I'm not a certified

Kentucky Law Enforcement Officer." (*Id.*)

68. Sheriff McGuire confirmed Mullins's version of events, as follows:

"Then I said, have you all patted him down yet? And I don't remember an answer . . . [T]he guy [Rowland] wasn't real agitated, whatnot, but, uh, he's just real nonchalant and, uh, but I don't know if they ever, I don't know what kind of sweeps or pats they had done before they ever exited the thing. I just saw, you know, those two guys were getting ready to put him in the Explorer. I don't even know why I asked, you know what I mean, I don't even know why, uh, just out of habit, I guess."

(01-22-0258-355.)

69. Logan Hampton describes the events after Rowland was placed in his squad

car as follows:

"Went downstairs to my car where, um, Gary [Rowland] was already in it and, uh, at that point, Luke asked me switch out my handcuffs, or switch out the handcuffs on him. **I put my handcuffs – he was handcuffed behind his back, so I just told him to spin around. He spun his back to me. I just put mine on there, then took whoever's handcuffs were on off, gave 'em to Luke, shut the door . . .** Jody asked to take him back to the sheriff's office. I clarified, you know, sheriff ours or Calloway? He's like just take him to ours. It's no big. So at that point, I transported him to Marshall County, and he kept asking for a cigarette. Of course, I say no. It's up to the detectives whether they want him to smoke or not. **We get to the sheriff's office. I, uh, get him out, just do one last pat-down of his waistband.** He had a lanyard right here. It is a Champion lanyard. I pull it off, had a Chrysler key on it which tracks with him supposedly being in the Chrysler fleeing. So I ask him, you know, hey, that's cool. What kinda Chrysler you drive? I don't drive one. I drive a Tahoe. Not a Chevy key on there. There's a Ford key and Chrysler key. Oh, okay. Well, well, you know, what year? I don't remember what he said, it don't matter, **just shootin' the shit with him as we walked in, walk straight into the interrogation room, put him in.** He stayed handcuffed behind his back the entire time, and, uh, once Jody and Bowman, they were in their office doing whatever they were doing, and I waited outside the door. They came in, appreciate it, all that good stuff. I told Jody, I said,

"I'm gonna go check the keys of the car just to verify that this is the right one for that car, that way we have him in it," and we did our debrief. I went across the hall into the conference room, did our SRT debrief. After that, left there to check, uh, the 300 that we had put in our impound lot since ain't registered. It fled from them. We impounded it. We just went ahead and did that. Went over there, sure as shit, the key works fine. I texted Jody key looks great. Um, if, uh, if you want me to talk to him about it, I'll question him about that and the weapons unless you all want to just all loop that in there together. It's whatever you wanna do. That was it. Next thing I know, we're getting shots fired at the sheriff's office."

(01-22-0258-494—01-22-0258-495, emphasis added.)

70. Logan Hampton did not search Rowland.
71. Hampton did not search Rowland when he switched the handcuffs.
72. Hampton did not search Rowland before transporting Rowland in Hampton's vehicle.
73. Logan stated he "just [did] one last pat-down of his waistband", but this pat-down failed to find the below 9mm handgun concealed on Rowland's person:



Sig Model P365 XL used by Gary Rowland (01-22-0258-51). Sheriff McGuire described this weapon as “a fuckin' full-size Sig.” (01-22-0258-362.)

74. Rowland was also found to have a large knife on a chain on his neck. Hampton’s “pat-down” search at the Sheriff’s Office did not reveal this weapon, either:



Gary Rowland autopsy photo. (01-22-0258-79.)

75. Sgt. Hampton missed this knife on Rowland's neck despite discovering the lanyard with the car keys on Mr. Rowland's neck, as described above.

76. Among the investigative findings of the KSP report, the following entry is recorded:

"Once at the Sheriff's Office, Sergeant Hampton reportedly did a pat down of Mr. Rowland's waistband and discovered a lanyard with keys around his neck. He took possession of the lanyard, **but did not feel of the chest area again after removing the lanyard.**"

(01-22-0258-854, emphasis added)

77. In short, when Hampton delivered Rowland to Mr. Cash and Mr. Bowman to be interviewed, Rowland was armed with a loaded 9mm pistol and a large knife around his neck.
78. Once at the Marshall County Sheriff's Office, Mr. Rowland was transferred into the custody of Deputies Cash and Bowman, and placed in an interview room.
79. Deputies introduced themselves and Deputy Bowman moved the handcuffs from behind the back to the front as an interview commenced.
80. Mr. Rowland requested to smoke a cigarette, and he was escorted out the front door of the office and was allowed to smoke under an awning.
81. They returned to the interview room and continued with the interview.
82. Mr. Rowland requested to smoke another cigarette. He was again escorted by both Deputies out the front door and allowed to smoke another cigarette.
83. Mr. Rowland was positioned behind a column on the front corner of the building with a Deputy on either side of him.
84. While Mr. Rowland was outside smoking, Deputy Brandon Little had parked his patrol vehicle in the parking lot and walked inside the office to start his shift.
85. As Deputy Little entered the office through the front door, Mr. Rowland produced a pistol from his person and fired, striking Deputy Cash.

86. Deputy Bowman then began to move and fell. Surveillance video from across the street shows that Mr. Rowland appears to be advancing toward and pointing the weapon at Deputy Bowman, who had fallen in the parking lot.
87. As Deputy Bowman gets to his feet, Mr. Rowland is seen changing direction and fleeing toward the roadway. Deputies Bowman and Little return fire, striking Mr. Rowland.
88. Both Deputy Cash and Mr. Rowland were transported to Marshall County Hospital where they were both pronounced deceased.”
89. Various officers involved in the SRT operation and the events afterwards have made statements acknowledging the inadequacy of the searches and pat-downs of Rowland.
90. Benton Police Officer Keegan Cole was asked if there was anything law enforcement could have done differently to change the outcome of the situation and responded: “just probably uh, searching people to the full extent.” (01-22-0258-537.)
91. This statement aligns with Officer Cole’s comments captured on bodycam in the aftermath of the shooting at the Sheriff’s Office, where Cole says: “I guess we didn’t fuckin’, it’s our fuckin’ guy. I guess we didn’t fuckin’ search him good enough. He had a gun in his waistband.” (01-22-0258-820.)
92. Then Sheriff-elect Hilbrecht told KSP investigators that Rowland should have been searched before being transported by Hampton (01-22-0258-408.):

Det. Stout: So if somebody arrests somebody out of a house, brings 'em over to you, you're the transport guy –

Cpt. Hilbrecht: You'd want –

Det. Stout: – what's the first thing you do before you put 'em in your car?

Cpt. Hilbrecht: You'd search 'em. Least that's what we've all been taught.

Lt. Winn: That –

Det. Stout: That's correct.

93. Hilbrecht also stated that Rowland should have been searched by the SRT

“hands on team,” which is to say, MCSO Deputy Rudd, who handcuffed

Rowland:

“Typically whoever puts those cuffs on does a search and then typically when you transport in a car, the person can do the search. So I don't know where that breakdown was in there with SRT but when I was on the team, we would have a cover guy hold him 'til the house was clear and then you get him up, you search him and then you take him out. I don't know if it happened that way this time.”

94. In fact, Marshall County Sheriff's Office Policy on Prisoner Transport required that “prior to transport, the transporting deputy shall thoroughly search all prisoners for any weapons, tools of escape, or contraband.” (01-22-0258-847.)

CAUSES OF ACTION

I. Negligence of Marshall County Sheriff's Deputies (Rudd, Beavers, Johnson)

95. Plaintiffs reincorporate all above paragraphs.

96. Plaintiff Karen Michelle Cash, individually and as administrator of the Estate of Jody Cash, asserts claims for loss of spousal consortium pursuant to KRS § 411.145 and wrongful death pursuant to KRS § 411.130(1).

97. Kentucky Law is clear that the Marshall County Sheriff's Office may be held liable for the negligent acts of Sheriff's deputies. *Jones v. Cross*, 260 S.W.3d 343, 346 (Ky., 2008) ("the plain language of KRS 70.040 leaves no room for any other reasonable construction than a waiver of the sheriff's official immunity (the office of sheriff) for the tortious acts or omissions of his deputies.") *See also Harlan Cnty. v. Browning*, 2013 WL 657880, at *3 (Ky. App., 2013) ("The plain language of this statute clearly contemplates that deputies shall be liable for damages to the sheriff incurred by the sheriff upon waiver of immunity for his deputies' acts and omissions. Accordingly, the only logical interpretation of the statute is to legally construe it to waive immunity for deputies also while acting in their official capacity.")

98. Deputy Zack Johnson was negligent in failing to search Rowland.

99. Johnson was second in the stack order. He placed his hands on Rowland and helped secure Rowland. But he never performed a search of any kind of Rowland.

100. Under the facts and circumstances of this case, MCSO Deputies owed a duty of care to Jody Cash.
101. Police officers owe a duty of due regard and safety to fellow officers. *See Jones v. Cross*, 260 S.W.3d 343; *see also Keller v. City of Plaquemine*, 700 So.2d 1285, 1288, 96-1933 La. App. 1 Cir. 9/23/97, 4 (La. App. 1 Cir.,1997).
102. Under Kentucky law, the touchstone of the duty inquiry is foreseeability. The Kentucky Supreme Court has recognized that police officers owe a duty of care to confidential informants. *Gaither v. Justice & Public Safety Cabinet*, 447 S.W.3d 628, 638 (Ky., 2014).
103. Here, the foreseeable injury to fellow sworn police officer Jody Cash—that Rowland would shoot him—was imminently foreseeable.
104. It was in fact the precise injury that necessitated the activation of the SRT in the first place. *See Gaither, id.*, “there is no sound reason that we should apply a rule based upon the lack of a foreseeable injury in a case where the injury was uniquely foreseeable.”
105. As a member of the “hands-on” team making initial contact with the suspect, Johnson had a duty to search Rowland. His failure to do so was negligent under the circumstances.
106. The duty of care in this case would of course extend to adhering to MCSO policies regarding best police practices for searching and transporting suspects, especially those, like Rowland, known to be armed and to have expressed a homicidal intent towards law enforcement. *See Elam v. Ohio Dept.*

of Rehab. and Corr., 2010 WL 1139324, at *3 (Ohio App. 10 Dist., 2010) (recognizing potential liability based on proper search technique), *Schinger v. U.S.*, 2014 WL 980757, at *7 (M.D. Pa., 2014) (same).

107. Further, the Kentucky Supreme Court has recognized that searching an individual taken into custody is *not* a discretionary or ministerial act and may support a claim for liability. *Franklin Cnty., Ky. v. Malone*, 957 S.W.2d 195, 202 (Ky., 1997).

108. Similarly, Deputy Rudd had a duty to search Rowland.

109. Deputy Rudd failed to search Rowland when he handcuffed him. Rudd led the SRT but failed to tell the hands-on team to search Rowland. Rudd allowed Beavers, who is not a certified police officer and is instead a medic, to escort Rowland to Hampton's vehicle.

110. Sheriff McGuire asked Rudd and Beavers whether they had searched Rowland. Deputy Mullins overheard this. There was no response. But the answer was no—they had not searched Rowland.

111. Beavers, like Johnson, also placed hands on Rowland and failed to search him.

112. Beavers then undertook the duty of escorting Rowland to Hampton's squad car, despite Beaver's own admission that he is not a certified law enforcement officer. Beavers did not search Rowland prior to placing Rowland in Hampton's car.

113. The three Marshall County Deputies (Rudd, Johnson, Beavers) each individually failed to search Rowland despite prior knowledge that Rowland was armed and dangerous and had expressed a homicidal intention to kill police officers.

II. Negligence of Logan Hampton (City of Benton) / Negligent Infliction of Emotional Distress

114. Plaintiffs reincorporate all above paragraphs.

115. The City of Benton, through the actions of Benton officer Logan Hampton, Benton is liable for the death of Jody Cash and the injuries to Donald Bowman and his spouse, Tracey Bowman, including negligent infliction of emotional distress. *See* KY ST § 65.2002; *see also Osborne v. Keeney*, 399 S.W.3d 1, 17 (Ky., 2012) (abrogating “impact rule” for negligent infliction of emotional distress claims and adopting Tennessee’s approach in *Camper v. Minor*, 915 S.W.2d 437, 441 (Tenn. 1996).)

116. Logan Hampton repeatedly failed to search Rowland, who was known to be armed and dangerous, and known to have expressed a homicidal intention to kill police officers.

117. Hampton knew that Jody Cash and Donald Bowman specifically intended to interview Rowland at the Marshall County Sheriff’s Office.

118. Hampton physically transported Rowland in his squad car to the Sheriff's Office, and personally escorted Rowland to the interview room in which Mr. Cash and Mr. Bowman were waiting.

119. On these facts, the specific risk of harm and foreseeability of injury to the victims were readily perceptible.

120. Hampton's failure to follow basic police procedure regarding handcuffing, searching, and transporting of arrested suspects was negligent under the circumstances.

III. Negligence of Calloway County Deputy Troy Doss / Negligent Infliction of Emotional Distress

121. Plaintiffs reincorporate all above paragraphs.

122. Along the same lines and on the same authorities as the above discussion of the liability of MCSO Deputies and Benton Sergeant Hampton, Calloway County Sheriff's Deputy Troy Doss may be held liable to Donald Bowman and Tracey Bowman for the negligent failure to search Rowland during the SRT operation.

123. Doss was second in the stack order and was one of the first officers to place hands on Rowland.

124. Doss describes a quick protective sweep of Rowland while Rowland was on the ground but did not conduct a thorough search or even pat-down of Rowland after Rowland was secured by handcuffs.

125. Nor did he search or pat-down Rowland during the escort of Rowland to Hampton's car and placing Rowland in Hampton's car.

126. Doss's failure to adequately search Rowland was negligent under the circumstances.

PRAYER FOR RELIEF

127. Plaintiffs reincorporate all above paragraphs.
128. As a result of the wrongs complained, Plaintiffs have suffered damages.
129. Plaintiffs ask that a jury be impaneled.
130. In addition to her own damages for loss of spousal consortium, Plaintiff Karen Michelle Cash sues for the damages due to Jody Cash's physical and mental injuries, loss of life, and loss of earning capacity and capacity, as well as for expenses incurred as a result of said accident.
131. All damages are in an amount in excess of the minimum dollar amount necessary to establish the jurisdiction of this court.
132. Wherefore plaintiffs demand judgment against defendant for damages, costs, and all other proper relief.

Respectfully Submitted,

DRS LAW

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