

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

GERALD L. TERHUNE and THERESA)
J. SPERRY, Co-Personal Representatives of)
the ESTATE OF EVAN PAUL TERHUNE,)
Deceased,)

Plaintiffs,)

v.)

CAUSE NO. 3:22-CV-177-RLY-MPB

NATHAN PITT, JACQUELINE A. DUFF,)
CORY OFFERMAN, K. HOWARD (#1475),)
TRENDON AMUZIE, CHRIS EGAN, and)
JOHN McQUAY, in their individual capacities)
as officers of the Evansville Police Department,)
and the CITY OF EVANSVILLE,)

Defendants.)

COMPLAINT FOR DAMAGES AND JURY DEMAND

Come now Plaintiffs, GERALD L. TERHUNE and THERESA J. SPERRY, Co-Personal Representatives of the ESTATE OF EVAN PAUL TERHUNE, Deceased, by counsel, Stephen M. Wagner of WAGNER REESE, LLP, and for their cause of action against the Defendants, NATHAN PITT (hereinafter “Pitt”), JACQUELINE A. DUFF (hereinafter “Duff”), CORY OFFERMAN (hereinafter “Offerman”), K. HOWARD (hereinafter “Howard”), TRENDON AMUZIE (hereinafter “Amuzie”), CHRIS EGAN (hereinafter “Egan”), JOHN McQUAY (hereinafter “McQuay”), in their individual capacities as officers of the Evansville Police Department (hereinafter collectively “Police Officers”), and the CITY OF EVANSVILLE, allege and state as follows:

INTRODUCTORY STATEMENT

“I have never been so terrified in my life...Holy S---, what is happening?” Those were among the last words uttered by 20-year-old Evan Terhune before he died in police custody on November 14, 2020. Evan was a young man who had slipped into a bad habit of abusing drugs, mostly marijuana and Xanax. But he was not a bad kid. Other than one misdemeanor arrest, Evan had never been in trouble with the law. He had a good job as an auto detailer at a car dealership. He had two parents who loved him and were trying to get him help for his drug problem. Evan talked about quitting “cold turkey” and moving to Indianapolis to get a fresh start.

Unfortunately, on November 14, 2020, Evan took a psychedelic drug—LSD (acid)—and experienced a bad trip. He had gathered with friends at 1136 Loft Cove in Evansville, Indiana, to play video games and eat pizza. When the LSD kicked in, Evan started to behave bizarrely. He was crying uncontrollably and then attacked one of his friends. That person called 911 and reported that Evan, “...is on some type of drugs, acting all crazy.” When officers from the Evansville Police Department responded to the scene and went into the house, Evan can be seen on a police dash cam running into a police vehicle and then falling down. As Evan was lying on the ground, Officer Pitt exited the house and approached Evan. Evan jumped up, screamed, and swung wildly at Officer Pitt, grazing his lip. Evan, who was 5’10” tall and weighed 148 lbs., was tased by Pitt who then quickly subdued Evan with the assistance of Officer Duff. He was cuffed behind his back and placed face down on the ground. While the officers held Evan down, he was thrashing around, screaming and hallucinating. Officers on the scene were told that Evan had taken LSD. One officer described him as “super high.” After noting the blood and vomit on Evan’s face, officers put a “spit mask” over Evan’s head.

At this point the officers on the scene strongly suspected Evan was severely impaired by LSD. They knew he was acting erratically and screaming incoherently. They also knew Evan was a danger to himself. Evan was in their custody and at their mercy. Regardless of Evan’s poor decision to take drugs that night, the officers had a duty to protect him and keep him safe. Tragically, they utterly failed in this duty.

Officers agreed that Evan needed to be taken to the hospital. One officer commented to an EMT, “We’ll transport him in the wagon...unless you want him in your ambulance? He’s covered in blood and throw up. But I’m not riding back there [in an ambulance]...it’s not happening.” At the instruction of Sergeant McQuay, the officers then put Evan—who was terrified out of his mind, hallucinating, cuffed behind his back, and covered with a mask—in the back of a metal paddy wagon which was not equipped with seatbelts or any sort of restraints. Almost immediately, Evan began violently thrashing about in the back of the wagon. For 13 minutes, Evan can be heard (and seen) on police video screaming and violently banging his head and body against the sides of the transport wagon during the drive to Deaconess Hospital. The driver of the wagon, Officer Egan, could hear, and feel, Evan striking the walls of the wagon. The shocking scene was recorded in its entirety on surveillance video. All the while, Egan drove the wagon at normal speeds without emergency lights or siren. He stopped at stoplights and listened, and felt the wagon shake, as Evan flailed about in the back of the wagon. Another officer, Howard, followed the wagon in her own

patrol car. Despite knowing that Evan was harming himself in the back of the wagon, Egan refused to stop and check on Evan, even though another officer was following and available to assist him. Upon arrival at Deaconess, officers stood outside the wagon casually chatting for another 7 agonizing minutes as Evan continued to scream and bang his head into the side of the wagon. One officer commented, “Acid sometimes gives people a spiritual experience...this guy is having a whole different experience.” The same officer concluded, “It’s not a good day for this guy.” Egan responded, “Every time we would start moving [the wagon], it was a bad experience for him.” A woman officer responded, “I think if you were tripping on acid, being in the back of the wagon...every vibration would get to you.”

When the officers finally opened the back door, Evan was unresponsive on the floor of the wagon, his breathing labored. His limp body was placed in a wheelchair, blood streaming from his nose, and he was wheeled into the ER. When a nurse finally examined him several minutes later, Evan’s pupils were dilated and nonreactive. Officers removed his handcuffs, and Evan began posturing, a clear sign of brain injury. A CT scan confirmed that Evan had sustained a massive subdural hematoma. Despite surgical intervention, Evan would never regain consciousness and was pronounced dead three days later. The coroner determined Evan’s cause of death was blunt force trauma to the head due to hallucinogen intoxication.

Like so many other young people, Evan made a mistake by using drugs, in this case, LSD. However, that mistake should not have resulted in a death sentence. Evan’s parents, Gerald Terhune and Theresa Sperry, are bringing this lawsuit to force the Evansville Police Department to change the way they treat those in their custody who cannot take care of themselves. The Constitution requires as much.

JURISDICTION AND VENUE

1. This is a civil rights wrongful death action brought for violations of the Fourth Amendment of the Constitution of the United States of America made actionable pursuant to 42 U.S.C. § 1983.

2. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1343 as well as 42 U.S.C. §§ 1983 and 1988. Plaintiff further invokes the supplemental jurisdiction of this Court to hear and decide Plaintiff’s claims arising under state law pursuant to 28 U.S.C. §1367.

3. The acts or omissions giving rise to the Plaintiff's claims arose in the City of Evansville, Vanderburgh County, Indiana. Thus, pursuant to 28 U.S.C. §1391(b)(2), venue is proper in the United States District Court, Southern District of Indiana, Evansville Division.

PARTIES

4. On February 25, 2021, by Order of the Warrick County Circuit Court under Cause Number 87C01-2101-ES-000010, the Plaintiffs, Gerald L. Terhune and Theresa J. Sperry, were appointed Co-Personal Representatives of the estate of their deceased son, Evan Paul Terhune, and in such capacity bring this cause of action against the Defendants.

5. At all relevant times herein, the decedent, Evan Paul Terhune (hereinafter "Evan"), was unmarried and a citizen of the United States of American, State of Indiana, City of Newburgh, County of Warrick. Evan is survived by his natural parents who are the Plaintiffs herein, Gerald L. Terhune and Theresa J. Sperry.

6. Defendants Pitt, Duff, Offerman, Howard, Amuzie, Egan, and McQuay were at all relevant times sworn law enforcement officers for the City of Evansville and the Evansville Police Department. At all times herein Defendants were acting under color of state law and within the course and scope of their employment for the City of Evansville and the Evansville Police Department.

7. Defendant, City of Evansville, is a municipality, created and existing by virtue of the laws of Indiana. The Evansville Police Department (hereinafter "EPD") is a department of the City of Evansville.

FACTUAL ALLEGATIONS

8. On November 14, 2020, at approximately 6:40 PM Evan and several coworkers visited the home of a friend located at 1136 Loft Cove, Evansville, Indiana. The group spent the evening playing video games and eating pizza.

9. At some point during the evening, several of the guests, including Evan, used recreational drugs including LSD and marijuana.

10. LSD, or Lysergic Acid Diethylamide, is a hallucinogen, or psychedelic, drug capable of altering thoughts and perceptions in those who use it, including inducing hallucinations and synesthesias—a condition where they see and hear things that are not real.¹

11. Common side effects of LSD use include:

- Sweating
- Nausea
- Dilated pupils
- Rapid heartbeat
- Dry mouth
- Tremors
- Insomnia
- Blurred vision
- Raised body temperature
- Weakness
- A distorted sense of time
- Visual hallucinations
- Mixed senses (for example, “seeing” sounds)
- Intensified sense of smells and noises
- A sense of a mystical experience²

12. During the evening of November 14, 2020, Evan overdosed on LSD.

13. An LSD “overdose” can result in what is commonly known as a “bad trip.” Because the person experiencing an LSD overdose is largely unaware of what they are doing, severe injury

¹ See <https://drugabuse.com/drugs/hallucinogens/lsd/overdose/>, last accessed November 2, 2022.

² *Id.*

and death can occur as an indirect result of using LSD, in that the person experiencing the overdose is at greater risk for accidents, self-mutilation, and suicide.³

14. When someone has a bad trip using LSD, the experience is overwhelmingly unpleasant and dangerous. LSD users may experience frightening alterations in their thoughts and moods, which places them at increased risk for associated injury and even fatal consequences. Some of the potentially adverse outcomes include:

- Extreme anxiety
- Feelings of lost identity, i.e., that they are ceasing to exist.
- Panic
- Paranoia
- Rapid mood swings
- Aggression towards others, including homicide
- Self-mutilation
- Dying in an accident
- Committing suicide

15. An LSD overdose is a medical emergency requiring immediate medical treatment which can help prevent harm through self-mutilation, suicide, or other highly dangerous behavior.⁴

16. As the evening of November 14, 2020, progressed, Evan started behaving bizarrely and aggressively with his friends.

17. Thereafter, an argument took place between Evan and several of his friends that quickly escalated. Evan was put outside, but he tried to get back into the house.

18. As a result of Evan's bizarre and aggressive behavior, one of Evan's friends called 911 at approximately 9:41 PM and reported an individual was trying to break into his house.

19. During that 911 call, the caller identified the suspect as Evan Terhune. He also reported that Evan was "possibly on drugs."

³ *Id.*

⁴ *Id.*

20. Fearing for his safety due to Evan's bizarre and aggressive behavior, one of Evan's friends pulled out a handgun and accidentally shot another person present at the residence.

21. The 911 dispatch officer noted in radio transmissions that the "suspect was possibly on drugs."

22. At approximately 9:46 PM, Defendants Pitt and Duff arrived on the scene.

23. Upon arrival, Pitt and Duff found an individual with a minor gunshot wound to the leg. The officers were advised by the occupants of the house that Evan had left through the back door.

24. After Pitt and Duff arrived on scene, Evan can be seen on a dash cam running into Pitt's police vehicle and then falling to the ground.

25. Shortly thereafter, Pitt went back outside to retrieve medical supplies from his vehicle. At that time he saw Evan lying on the ground near his vehicle.

26. Pitt gave Evan verbal commands to stay on the ground.

27. In response to those commands, Evan jumped up and began screaming. He then lunged and swung wildly at Officer Pitt, grazing Pitt's lip.

28. From inside the residence, Officer Duff heard Pitt yelling and went outside to assist.

29. As Duff and Pitt surrounded Evan, both screamed profanity-laced commands at Evan to get down.

30. When Evan refused to get down, Pitt deployed his taser which temporarily incapacitated Evan.

31. Pitt and Duff then quickly subdued Evan, who was 5'10" tall and weighed 148 lbs.

32. Pitt's use of force in this situation was reasonable and justified under the circumstances.

33. Pitt and Duff then handcuffed Evan behind his back and restrained him in a prone (face down) position.

34. Evan continued to struggle, screaming unintelligible or nonsensical phrases.

35. Other officers subsequently arrived on the scene, including Officer Offerman, Officer Howard, and Sergeant McQuay.

36. Officer Amuzie arrived on the scene at approximately 10:00 PM and observed Evan restrained in a prone position on the ground, throwing up, exhibiting labored breathing, with blood coming out of his mouth.

37. While Pitt, Duff, Offerman, Howard, Amuzie and McQuay were on the scene, they learned that Evan, and some of the others present, had taken LSD.

38. The person who fired a shot from his handgun was detained by the police officers at the scene. He told Officer Duff that he and others had taken LSD, smoked marijuana, and drank alcohol. He also told Duff that Evan was acting “crazy” and that “he had never seen this behavior out of Evan before.”

39. Evan continued to scream and make unintelligible noises while being restrained.

40. Officer Duff looked at Evan and commented on video, “That isn’t weed!”

41. Officer Amuzie stood over Evan and commented on video, “He’s super high. He’s got blood everywhere. He’s throwing up. Anyone have a spit mask?”

42. While he was restrained in a prone position on the ground, Evan screamed that he has “never been so terrified in his fucking life... holy shit what the fuck is happening?”

43. Amuzie then placed a “spit mask” over Evan’s head.

44. After the spit mask was placed over Evan’s head, Evan was ready to be transported from the scene.

45. Officers Pitt, Duff, Offerman, Howard, Amuzie and McQuay (hereinafter collectively referred to as “officers on the scene”) determined that Evan needed to go to the hospital for clearance before he could be booked into jail.

46. When emergency medical personnel asked whether anyone (other than the shooting victim) needed medical care or evaluation, the officers on the scene told the medical personnel Evan did not need medical care or evaluation.

47. As Evan was restrained on the ground in a spit mask, there was a stretcher with restraints a few feet away from him. There was also an ambulance present at the scene which could have transported Evan safely to the hospital.

48. When ambulance personnel offered to transport Evan by ambulance to the hospital, the officers on the scene declined.

49. One of the officers on the scene then commented, “We’ll probably take him in the Wagon...unless you want him in your ambulance. He’s covered in blood and throw up.”

50. The officers on the scene then decided to call for a police Transport Wagon.

51. At the request of the officers on the scene, EPD Transport Wagon #37 (hereinafter referred to as “the Wagon”), driven by Officer Egan, was dispatched to scene to transport Evan to the hospital.

52. The Wagon was not equipped with any seat belts or restraints of any kind.

53. The officers on the scene made the decision to transport Evan to the hospital in the Wagon (1) despite being told that Evan had taken LSD and other drugs, (2) despite the fact that Evan was showing obvious signs of an LSD overdose including hallucinations, unintelligible speech, labored breathing and violent behavior, (3) despite the fact that Evan was at risk to harm

himself if placed, unrestrained, in the back of the Wagon, and (4) despite the fact that Evan was in obvious need of emergency medical attention.

54. At approximately 10:10 PM Officers Egan, Amuzie, Offerman and Howard placed Evan in the rear of the Wagon, unrestrained, with his hands cuffed behind his back and a spit mask over his head.

55. As soon as doors to the Wagon closed, Evan began violently thrashing about the inside of the Wagon for at least a minute. Officers Egan, Amuzie, Offerman and Howard heard Evan striking his body against the inside of the Wagon but did nothing.

56. McQuay was well aware of Evan's violent and self-destructive behavior but still ordered Egan to transport Evan to the hospital without stopping for any reason.

57. At 10:11 PM Egan began the twelve (12) minute drive to Deaconess Hospital.

58. During the drive to Deaconess Hospital, Evan can be heard (and seen) on police video screaming and violently banging his head and body against the sides of the Wagon.

59. During the drive to Deaconess Hospital, Officer Egan could hear, and feel, Evan striking the walls of the wagon.

60. The shocking scene was recorded in its entirety on surveillance video.

61. All the while, Egan drove the Wagon at normal speeds without emergency lights or siren.

62. Egan stopped at stoplights and listened, and felt the wagon shake, as Evan flailed about in the back of the Wagon.

63. Another officer, Howard, followed the Wagon in her own patrol car.

64. Despite knowing that Evan was harming himself in the back of the Wagon, Egan refused to stop, check on Evan, and prevent Evan from harming himself, even though Howard was following and available to assist Egan.

65. Egan and Howard arrived at the hospital at 10:23 PM at which time Evan's violent and self-destructive behavior intensified causing the Wagon to shake back and forth as it was parked in front of the hospital.

66. Officers Egan and Howard did not immediately remove Evan from the Wagon.

67. Instead, Officers Egan and Howard stood outside the Wagon casually chatting for seven (7) agonizing minutes as Evan continued to scream and bang his head into the side of the wagon.

68. During this time frame, Officer Howard commented, "Acid sometimes gives people a spiritual experience...this guy is having a whole different experience." Howard then concluded, "It's not a good day for this guy."

69. Egan then responded to Howard, "Every time we would start moving [the Wagon], it was a bad experience for him." Officer Howard then replied, "I think if you were tripping on acid, being in the back of the wagon...every vibration would get to you."

70. When Officers Pitt and Duff arrived at the hospital, the officers finally opened the back door to the Wagon.

71. The officers found Evan unresponsive on the floor of the Wagon, struggling to breathe.

72. Evan's limp body was placed in a wheelchair, blood streaming from his nose, and he was wheeled into the ER.

73. When a nurse finally examined him several minutes later, Evan's pupils were dilated and nonreactive.

74. An officer then removed Evan's handcuffs, and he began posturing, a clear sign of brain injury.

75. A CT scan confirmed that Evan had sustained a massive subdural hematoma.

76. Despite surgical intervention, Evan never regained consciousness and was pronounced dead three days later.

77. The coroner determined Evan's cause of death was blunt force trauma to the head due to hallucinogen intoxication.

CLAIMS FOR RELIEF

Count I – Section 1983 Claims Against the Defendants Pitt, Duff, Offerman, Howard, Amuzie, Egan and McQuay

78. Plaintiffs hereby incorporate by reference paragraphs 1 through 77 of their Complaint for Damages and Jury Demand as if fully set forth herein.

79. When he was taken into custody as described herein, Evan was not arrested pursuant to a warrant.

80. At all times relevant herein, there had not yet been a judicial determination of probable cause with respect to Evan's arrest.

81. At all times relevant herein, Evan was entitled to the protections of the Fourth Amendment to the United States Constitution.

82. After he was detained at the scene and after he was under the custody of Officers Pitt, Duff, Offerman, Howard, Amuzie and McQuay, Evan displayed obvious signs of impairment

from an overdose of psychedelic drugs, including but not limited to bizarre, aggressive, and violent behavior, labored breathing, uncontrolled screaming, and slurred and illogical speech, all of which are signs of a drug overdose which require emergency medical treatment.

83. Officers Pitt, Duff, Offerman, Howard, Amuzie and McQuay denied medical care to Evan at the scene, which denial was objectively unreasonable given Evan's condition and obvious need for medical evaluation and treatment.

84. The decision by Officers Pitt, Duff, Offerman, Howard, Amuzie and McQuay not to have Evan evaluated by the medical personnel present at the scene was objectively unreasonable and violated Evan's Fourth Amendment rights.

85. Officers Pitt, Duff, Offerman, Howard, Amuzie and McQuay denied Evan access to an ambulance and emergency medical personnel present at the scene, which ambulance could have safely transported Evan to the hospital.

86. The decision by Officers Pitt, Duff, Offerman, Howard, Amuzie and McQuay not to have Evan transported by ambulance to the hospital was objectively unreasonable given Evan's condition and obvious need to be restrained during transport so that he did not injure himself.

87. The decision by Officers Pitt, Duff, Offerman, Howard, Amuzie and McQuay not to have Evan transported by ambulance to the hospital was objectively unreasonable and violated Evan's Fourth Amendment rights.

88. Placing Evan in the back of a police transport Wagon, unrestrained, while he was overdosing from LSD and in obvious medical distress, put Evan at a substantial risk of serious harm and violated the Fourth Amendment.

89. Although the failure to provide restraints in the Wagon did not, by itself constitute a substantial risk of serious harm, Evan's obvious impairment and mental instability due to

overdosing on hallucinogenic drugs, in combination with the lack of restraints in the Wagon, posed an obvious risk of substantial harm to Evan.

90. The officers on the scene made the decision not to have Evan evaluated by medical personnel at the scene despite having actual knowledge of the following: (1) Evan was likely severely impaired by LSD, (2) he was acting bizarrely and violently, thrashing around, screaming and hallucinating, (3) he had blood and vomit on his face, and (4) his breathing was labored.

91. The officers on the scene made the decision not to have Evan transported to the hospital by ambulance despite having actual knowledge of the following: (1) Evan was likely severely impaired by LSD, (2) he was acting bizarrely and violently, thrashing around, screaming and hallucinating, (3) he had blood and vomit on his face, (4) his breathing was labored, and (5) Evan was a danger to himself if not restrained.

92. Given Evan's condition which was known to the officers at the scene, placing Evan in the back of a police transport Wagon, unrestrained, was objectively unreasonable and exposed Evan to an unreasonable risk of serious harm.

93. As soon as doors to the Wagon closed, Evan began violently thrashing about the inside of the Wagon for at least a minute.

94. Officers Egan, Amuzie, Offerman and Howard heard Evan striking his body against the inside of the Wagon, and saw the Wagon shaking, but did nothing.

95. At that point, the decision of Officers Egan, Amuzie, Offerman and Howard not to remove Evan from the Wagon and transport him by ambulance to the hospital was objectively unreasonable and violated Evan's Fourth Amendment rights.

96. During the twelve (12) minute drive to Deaconess Hospital, Officer Egan could hear, and feel, Evan screaming and violently banging his head and body against the sides of the Wagon.

97. All the while, Egan drove the Wagon at normal speeds without emergency lights or siren.

98. Egan stopped at stoplights and listened, and felt the wagon shake, as Evan flailed about harming himself in the back of the Wagon.

99. Despite knowing that Evan was harming himself in the back of the Wagon, Egan failed to stop, check on Evan, and prevent Evan from harming himself, even though Officer Howard was following and available to assist Egan.

100. Officer Egan's failure to stop, check on Evan, and prevent Evan from harming himself—even though he could hear Evan banging his head against the metal walls of the transport Wagon—was objectively unreasonable.

101. Officer Egan's failure to stop, check on Evan, and prevent Evan from harming himself—even though he could hear Evan banging his head against the metal walls of the transport Wagon—placed Evan at a substantial risk of serious harm.

102. Officer Egan's failure to stop, check on Evan, and prevent Evan from harming himself—even though he could hear Evan banging his head against the metal walls of the transport Wagon—violated Evan's Fourth Amendment rights.

103. Upon arrival at Deaconess, Officers Egan and Howard stood outside the Wagon casually chatting for seven (7) agonizing minutes as Evan continued to scream and bang his head into the side of the Wagon.

104. Despite knowing that Evan was harming himself in the back of the Wagon, Officers Egan and Howard failed to open the Wagon door, check on Evan, and prevent Evan from harming himself.

105. Egan's and Howard's failure to open the Wagon door, check on Evan, and prevent Evan from harming himself—even though they could hear Evan banging his head against the metal walls of the transport Wagon—was objectively unreasonable.

106. Egan's and Howard's failure to open the Wagon door, check on Evan, and prevent Evan from harming himself—even though they could hear Evan banging his head against the metal walls of the transport Wagon—placed Evan at a substantial risk of serious harm.

107. Egan's and Howard's failure to open the Wagon door, check on Evan, and prevent Evan from harming himself—even though they could hear Evan banging his head against the metal walls of the transport Wagon—violated Evan's Fourth Amendment rights.

108. The Defendant Police Officers herein—Pitt, Duff, Offerman, Howard, Amuzie, Egan, and McQuay—are responsible for Evan's death because (1) they each made an intentional decision regarding the conditions of the Evan's confinement (i.e., transporting an obviously impaired person overdosing on a hallucinogenic drug in the back of a police Wagon, unrestrained, and/or failing to prevent Evan from harming himself in the back of the Wagon); (2) those conditions put the Evan at substantial risk of suffering serious harm; (3) the Defendant police officers did not take reasonable available measures to abate the risk, even though a reasonable officer in the circumstances would have appreciated the high degree of risk involved, making the consequences of the Defendants' inaction obvious; and (4) the Defendants, by not taking such measures, caused the Evans' injuries and subsequent death.

109. A reasonable officer in the Defendants' circumstances would have appreciated the high degree of risk Evan, who was overdosing from LSD and in obvious medical distress, faced by being placed unsecured in the back of a transport Wagon.

110. The Defendant Police Officers acted with reckless disregard in the face of an unjustifiably high risk of harm to Evan.

111. As a direct and proximate result of the aforementioned conduct of the Defendant Police Officers, Evan was deprived of the rights, privileges, and immunities secured to him under the Constitution and laws of the United State of America, including his rights under the Fourth Amendment of the United States Constitution.

112. As a direct and proximate result of the wrongful acts and omissions of the Defendant Police Officers as described herein, Evan died, and therefore, the Plaintiffs seek to recover damages for the wrongful death of Evan, including his last medical expenses, funeral and burial expenses, expenses incurred in the administration of his estate, reasonable attorney fees and costs pursuing this action, and any and all other damages allowed by state and federal law.

Count II – Negligence Claim Against the City of Evansville

113. Plaintiffs hereby incorporate by reference paragraphs 1 through 112 of their Complaint for Damages and Jury Demand as if fully set forth herein.

114. In accordance with Indiana statute, Defendant, City of Evansville, was timely served with a Notice of Tort Claim on May 6, 2021, by certified mail.

115. Pursuant to Indiana statute, the Plaintiffs' tort claim notice has been constructively denied because the Defendant has had more than ninety (90) days to investigate the claim but has failed to respond in any manner.

116. The City of Evansville is responsible for Evan's death as a result of its intentional, willful, wanton, reckless, and/or negligent acts and omissions, including but not limited to the failure to train and supervise the Defendant Police Officers regarding (1) how to recognize the signs and symptoms of a drug overdose, a medical emergency; (2) the proper protocol for seeking emergency medical attention when an arrestee has overdosed; (3) the proper protocol for safely transporting arrestees experiencing a drug overdose to a medical facility for treatment; (4) the proper way to secure arrestees who are likely to cause harm to themselves during transport; and (5) how to provide a safe environment for arrestees experiencing a drug overdose, including Evan.

117. The City of Evansville negligently hired, supervised, and retained the Defendant Police Officers when it knew, or should have known, that said Police Officers were not properly trained and were otherwise unfit for service.

118. Should a jury determine the actions of any of the Defendant Police Officers were negligent and that said negligence caused the death of Evan Terhune, then Plaintiffs hereby allege that the City of Evansville is vicariously liable for the negligent actions of any of the Defendant Police Officers who were acting in the course and scope of their employment and agency.

119. As a direct and proximate result of the wrongful acts and omissions of the City of Evansville as described above, Evan died, and therefore, the Plaintiffs seek to recover damages for the wrongful death of Evan, including his last medical expenses, funeral and burial expenses, expenses incurred in the administration of his estate, reasonable attorney fees and costs pursuing this action, and any and all other damages allowed by state and federal law.

WHEREFORE, Plaintiffs, Gerald L. Terhune and Theresa J. Sperry, Co-Personal Representatives of the Estate of Evan Paul Terhune, request the following relief:

- a. An award of compensatory damages based on Plaintiffs' 42 U.S.C. § 1983 claims for the violation of Evan Paul Terhune's constitutional rights;
- b. An award of compensatory damages for the wrongful death of Evan Paul Terhune, including but not limited to all damages allowed by federal law and by the Indiana Wrongful Death Act, Indiana Code Section § 34-23-1-2;
- c. An award of punitive damages against Defendant Police Officers based on Plaintiffs' 42 U.S.C. § 1983 claims to punish Defendants for their callous and/or reckless indifference to Evan Paul Terhune's constitutional rights;
- d. An award of attorney fees and expenses pursuant to 42 U.S.C. § 1988;
- e. Trial by jury; and
- f. All other relief just and proper in the premises.

Respectfully submitted,

WAGNER REESE, LLP

/s/ Stephen M. Wagner

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JURY DEMAND

Come now Plaintiffs, Gerald L. Terhune and Theresa J. Sperry, Co-Personal Representatives of the Estate of Evan Paul Terhune, Deceased, by counsel, hereby demand trial by jury against the Defendants on all issues set forth in this cause of action.

Respectfully submitted,

WAGNER REESE, LLP

/s/ Stephen M. Wagner

Stephen M. Wagner, #18248-49

Attorney for Plaintiff