

IN THE FIFTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

SHAUNDELLE BROOKS, as next-of-kin to the)	
deceased, AKILAH DASILVA,)	
)	
Plaintiff,)	
)	No. 19C980
v.)	
)	
METROPOLITAN GOVERNMENT OF)	
NASHVILLE AND DAVIDSON COUNTY,)	
TENNESSEE,)	
)	
Defendant.)	

**THE METROPOLITAN GOVERNMENT'S
ANSWER TO THE FIRST AMENDED COMPLAINT¹**

The Metropolitan Government of Nashville & Davidson County (“Metropolitan Government”) hereby submits its Answer to the First Amended Complaint (“Complaint”).

1. The Metropolitan Government is without sufficient information to admit or deny the allegations in paragraph 1 of the First Amended Complaint and hereby denies the same.

2. The Metropolitan Government admits that Travis Reinking (“shooter”) shot Mr. DaSilva and others on April 22, 2018 at the Waffle house located at 3571 Murfreesboro Pike and that Mr. DaSilva’s girlfriend and brother were present but denies that Mr. DaSilva was shot only once by the shooter.

3. The Metropolitan Government admits that it received multiple calls to its 9-1-1 facility but denies the remainder of the allegations in paragraph 3 of the First Amended Complaint.

¹ The Metropolitan Government denies that it agreed to provide Plaintiff with the specific information requested but admits that it has provided Plaintiff with the identity of the persons that worked in relation to this event and the persons providing such training. Further, Tennessee law establishes, as discussed in previous filings by the Metropolitan Government, that the Emergency Communications District of the Metropolitan Government of Nashville and Davidson County is a separate and distinct entity under the law.

4. The Metropolitan Government admits that it initially dispatched the emergency response to a different Waffle House on Murfreesboro Pike, but denies the remaining allegations in paragraph 4 in the First Amended Complaint.

5. The Metropolitan Government admits that Plaintiff's claims center on an emergency medical response but denies the remaining allegations in paragraph 5 of the First Amended Complaint.

6. The Metropolitan Government denies the allegations in paragraph 6 of the First Amended Complaint.

7. The Metropolitan Government denies the allegations in paragraph 7 of the First Amended Complaint.

8. The Metropolitan Government is without sufficient information to admit or deny the allegations in paragraph 8 of the First Amended Complaint and hereby denies the same.

9. The Metropolitan Government admits that it is a defendant in this matter and that it operates the Department of Emergency Communications, which was established, in part, to reduce delays in emergency response times.

10. It is admitted that this Court has jurisdiction to hear this matter.

11. The Metropolitan Government admits the allegations in paragraph 11 of the First Amended Complaint.

12. The Metropolitan Government admits that this is the proper venue for this matter at this time.

13. The Metropolitan Government admits the allegations in paragraph 13 of the First Amended Complaint.

14. The Metropolitan Government admits that multiple callers called 9-1-1 seeking an emergency response to the shooting, but the Metropolitan Government is without sufficient information to admit or deny the allegations in paragraph 14 of the First Amended Complaint and hereby denies the same.

15. The Metropolitan Government admits that it receives 9-1-1 calls and operates its emergency communications center to handle all types of emergency requests for service by its citizens and provides such services to the citizens of Metropolitan Nashville and Davidson County, but it denies the remainder of the allegations in paragraph 15 of the First Amended Complaint.

16. The Metropolitan Government admits that it received 9-1-1 calls in relation to the event but is without sufficient information to admit or deny the allegations in paragraph 16 of the First Amended Complaint on the basis of the Plaintiff's use of the phrase "successfully completed" in the First Amended Complaint, and hereby denies the allegations.

17. The Metropolitan Government denies the allegations in paragraph 17 of the First Amended Complaint.

18. The Metropolitan Government denies the allegations in paragraph 18 of the First Amended Complaint.

19. The Metropolitan Government admits the allegations in paragraph 19 of the First Amended Complaint.

20. The Metropolitan Government denies the allegations in paragraph 20 of the First Amended Complaint.

21. The Metropolitan Government admits that not every call-taker asked for cross streets near the location of callers before the termination of their emergency calls and admits that

its employees rely upon an electronic database to assist in identifying the address of 9-1-1-callers but it denies the remaining allegations in paragraph 21 of the First Amended Complaint.

22. The Metropolitan Government admits that at least one 9-1-1 caller provided the correct address for the location of the emergency before the dispatch of emergency services to the erroneous Waffle House but denies the remainder of the allegations in paragraph 22 of the First Amended Complaint.

23. The Metropolitan Government admits that it initially dispatched first responders to the Waffle House at 816 Murfreesboro Pike, before dispatching responders to the Waffle House at 3571 Murfreesboro Pike. The Metropolitan Government denies the remainder of the allegations in paragraph 23 of the First Amended Complaint.

24. The Metropolitan Government denies the allegations in paragraph 24 of the First Amended Complaint.

25. The Metropolitan Government admits that the 816 Waffle House is located within a different police precinct than and approximately 8.7 miles away from the 3571 Waffle House, but it denies the remainder of the allegations in paragraph 25 of the First Amended Complaint.

26. The Metropolitan Government admits that then-director Michele Donegan issued a reminder for call-takers to utilize all the tools available to them to verify the location of emergency calls and that Ms. Donegan stated that there were no changes to policies and procedures as a direct result of this incident, but it denies the remainder of the allegations in paragraph 26 of the First Amended Complaint.

27. The Metropolitan Government admits the allegations in paragraph 27 of the First Amended Complaint.

28. The Metropolitan Government is without sufficient information to admit or deny the allegations in paragraph 28 of the First Amended Complaint and hereby denies the same.

29. The Metropolitan Government is without sufficient information to admit or deny the allegations in paragraph 29 of the First Amended Complaint and hereby denies the same.

30. The Metropolitan Government admits that Mr. DaSilva was transported by Metropolitan Government emergency medical providers to Vanderbilt Hospital's trauma center but denies the remainder of the allegations in paragraph 30 of the First Amended Complaint.

31. The Metropolitan Government is without sufficient information to admit or deny the allegations in paragraph 31 of the First Amended Complaint, and hereby denies the same.

32. The Metropolitan Government denies the allegations in paragraph 32 of the First Amended Complaint.

33. The Metropolitan Government denies the allegations in paragraph 33 of the First Amended Complaint.

34. The Metropolitan Government admits that it initiated an emergency response to the mass shooting, including an emergency medical response, but it denies the remaining allegations in paragraph 34 of the First Amended Complaint.

35. The Metropolitan Government admits that it utilized an electronic business directory that did not include the location at issue in the emergency response, but it denies the remaining allegations in paragraph 35 of the First Amended Complaint.

36. The Metropolitan Government admits that the Waffle House at 3571 Murfreesboro Pike was not listed in the electronic database utilized at the Department of Emergency Communications and that the ECC Director indicated that there were no policy

changes or procedures after shooting, but it denies the remainder of the allegations in paragraph 36 of the First Amended Complaint.

37. The Metropolitan Government denies the allegations in paragraph 37 of the First Amended Complaint.

Count One – Negligent Operation of Equipment

38. The Metropolitan Government incorporates its responses to Plaintiff's allegations in paragraphs 1-37 of the First Amended Complaint as if fully stated herein.

39. The Metropolitan Government denies the allegations in paragraph 39 of the First Amended Complaint.

40. The Metropolitan Government denies the allegations in paragraph 40 of the First Amended Complaint.

41. The Metropolitan Government denies the allegations in paragraph 41 of the First Amended Complaint.

42. The Metropolitan Government admits that one or more of its employees relied upon the third-party electronic business database, but it denies the remainder of allegations in paragraph 42 of the First Amended Complaint.

43. The Metropolitan Government denies the allegations in paragraph 43 of the First Amended Complaint.

Count Two – Gross Negligence / Recklessness

44. The Metropolitan Government incorporates its responses to Plaintiff's allegations in paragraphs 1-43 of the First Amended Complaint as if fully stated herein.

45. The Metropolitan Government denies the allegations in paragraph 45 of the First Amended Complaint.

46. The Metropolitan Government admits that Mr. DaSilva was shot multiple times, and that the initial emergency response was directed to a different Waffle House on Murfreesboro Pike, but it denies the remaining allegations in paragraph 46 of the First Amended Complaint.

47. The Metropolitan Government denies the allegations in paragraph 47 of the First Amended Complaint.

48. The Metropolitan Government denies the allegations in paragraph 48 of the First Amended Complaint.

49. The Metropolitan Government denies the allegations in paragraph 49 of the First Amended Complaint.

50. The Metropolitan Government denies the allegations in paragraph 50 of the First Amended Complaint.

51. The Metropolitan Government denies the allegations in paragraph 51 of the First Amended Complaint.

52. The Metropolitan Government denies the allegations in paragraph 52 of the First Amended Complaint.

General Denial

53. All allegations not specifically addressed heretofore are hereby denied.

General and Affirmative Defenses

1. The Metropolitan Government of Nashville and Davidson County is a political subdivision of the State of Tennessee. As such, all causes of action brought against it and based in tort must be brought within the parameters of the Tennessee Governmental Tort Liability Act (“GTLA”), Tenn. Code Ann. § 29-20-101, *et seq.* The Metropolitan Government asserts that its

immunity is only removed when the conduct at issue is shown to be simple negligence under the GTLA at Tenn. Code Ann. § 29-20-201 *et seq.*, except when Tenn. Code Ann. § 29-20-108 is applicable and reinstates the Metropolitan Government's sovereign immunity. To the extent that Plaintiff asserts or establishes conduct by Metropolitan Government employees that rises to a level of culpability greater than simple negligence, the Metropolitan Government retains its immunity under the GTLA. The Metropolitan Government also specifically asserts the GTLA statutory cap on damages under Tenn. Code Ann. §§ 29-20-310, 29-20-311, and 29-20-403 limit the available recovery in this matter. This specification of defenses is not to be read as a waiver of any defenses available under the GTLA.

2. The Metropolitan Government asserts that its emergency communications call-takers and dispatchers were provided with and maintained the training required by Tennessee law to perform such activities. The Metropolitan Government asserts that it is immune from allegations that its emergency communications call-takers and dispatchers acted negligently under Tenn. Code Ann. § 29-20-108.

3. The Metropolitan Government of Nashville and Davidson County asserts that it is immune from allegations that its emergency communications call-takers and dispatchers to the extent that Plaintiff's injuries arose out of the negligent acts of such employees in the provision of emergency 911 services under Tenn. Code Ann. § 7-86-320.

4. The Metropolitan Government asserts that it is immune from any errors arising out of the use of an electronic business database in its provision of emergency services by express operation of Tenn. Code Ann. § 7-86-320.

5. Because Plaintiff's claims arise out of the provision of emergency medical services by persons licensed and / or regulated by Title 63 or 68, Plaintiff's claims against the

Metropolitan Government and its agents in relation to the provision of emergency medical services are time barred under the Tennessee Health Care Liability Act. Plaintiff failed to provide the requisite pre-suit notice and certification required by the Tennessee Health Care Liability Act, and such claims are time-barred under the act.

6. The Metropolitan Government asserts that any duty it owed in this matter was owed to the public at large in responding to a mass shooting. As such, the Public Duty Doctrine bars Plaintiff's claims in the absence of Plaintiff's establishment of a special duty. Here, the Metropolitan Government did not owe plaintiff an individualized duty in providing an emergency response to this incident.

7. The Metropolitan Government specifically denies that it or any of its employees were negligent or guilty of any act or omission—including gross negligence / recklessness—which proximately caused or contributed to Plaintiffs' alleged damages. However, if it should be determined that the Metropolitan Government or any of its employees was to some degree proximately negligent, its liability to Plaintiffs must be reduced by the amount of negligence and / or fault attributable to the Defendants in Case No. 18C1777. The Plaintiff sets forth in that action, her claims against the gunman and his father, Jeffrey Reinking, sufficient facts to establish that such persons were directly and proximately responsible for the death of Mr. DaSilva. Plaintiff has obtained a judgment of liability against the gunman and settled the claims against Jeffrey Reinking in that matter. The Metropolitan Government adopts Plaintiff's allegations against the Defendants in Case No. 18C1777 in this matter for the purpose of the allocation of fault by the factfinder in this matter.

8. The Metropolitan Government hereby gives notice that it intends to seek a setoff of damages to the extent allowable under Tennessee law. Plaintiff has maintained several suits

against different persons under the assertion that each is responsible for the death of Mr. DaSilva. The Metropolitan Government maintains that by instituting multiple actions, Plaintiff is not thereby permitted to achieve multiple recoveries for the same harm.

9. The Metropolitan Government asserts its discretionary function immunity. Specifically, the determination of trainings provided above and beyond those required by law, the timing thereof, and the policies governing the provision of 911 services are discretionary functions that are based on the applied judgment of persons performing the governing and policy decisions. To the extent that Plaintiff asserts that policies should have been different or required more than are required by law, such assertions are subject to the Metropolitan Government's governmental immunity for a discretionary function. The Metropolitan Government's determinations as to the provision of certain trainings and the equipment and techniques used during such trainings and in actual application—including that equipment and instruction utilized during the trainings and actual provision of 911 service—are planning-level decisions that are subject to the discretionary function immunity. Such determinations are not an appropriate subject for court determination in this context under Tennessee common law and the GTLA at Tenn. Code Ann. § 29-20-205(1).

10. Additionally, the Metropolitan Government may assert and allege fault against additional parties against whom fault may be asserted as it conducts discovery in this matter sufficient to ascertain whether such assertions are warranted. Such defenses will be asserted through amendment under the Tennessee Rules of Civil Procedure.

11. The Metropolitan Government asserts that it retains its immunity for injuries arising out of any of the circumstances enumerated in Tenn. Code Ann. § 29-20-205.

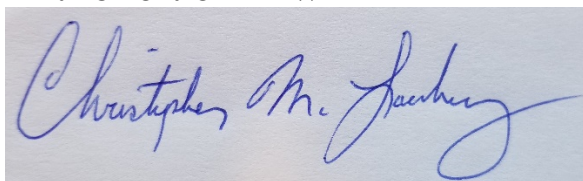
12. To the extent not otherwise limited by the GTLA, the Metropolitan Government asserts that any damages asserted against it be limited by application of Tenn. Code Ann. § 29-39-102.

WHEREFORE, the Metropolitan Government having answered the First Amended Complaint filed against it prays as follows:

1. That this First Amended Complaint be dismissed as to it;
2. That the Court award the Metropolitan Government any relief to which it may be entitled; and
3. That this case be dismissed with all costs taxed to the Plaintiff.

Respectfully submitted,

DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY
ROBERT E. COOPER, JR., #10934
DIRECTOR OF LAW

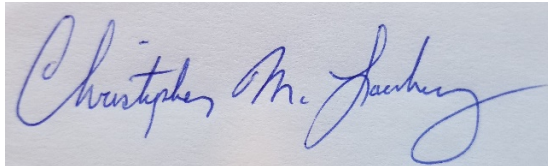


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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been delivered electronically through the Circuit Court Clerk's electronic service to: Daniel A. Horwitz, 1803 Broadway, Suite 531, Nashville, TN 37203; and Afsoon Hagh, 47 Music Square West, Nashville, TN 37203. To the extent that such persons are designated as unserved in the electronic filing system, they will be served by U.S. Mail, postage pre-paid, addressed to

On this the 15th day of November, 2019.



Christopher M. Lackey