

IN THE CIRCUIT COURT OF NODAWAY COUNTY, MISSOURI

TRENA MCELROY,)
 Lebanon, Missouri 65536,)
 Plaintiff,)
)
 vs.)
)
 CITY OF SKIDMORE, MISSOURI,)
 (Serve: Mayor Steve Peters),)
 Skidmore, Missouri 64487,)
 and)
 COUNTY OF NODAWAY, MISSOURI,)
 (Serve: County Executive)
 Nodaway County Courthouse,)
 Maryville, Missouri 64468,)
 and)
 DANNY ESTES,)
 SHERIFF OF NODAWAY COUNTY,)
 Nodaway County Courthouse,)
 Maryville, Missouri 64468,)
 and)
 STEVE PETERS, MAYOR OF SKIDMORE,)
 Skidmore, Missouri 64487,)
 and)
 DEL CLEMENT,)
 Skidmore, Missouri 64487,)
 Defendants.)

No. CU 784-10200
 Division I

FILED

JUL 9 1984

CIRCUIT COURT
 DIVISION I
 PAT O'RILEY, CIRCUIT CLERK

PETITION FOR DAMAGES

COUNT I

Comes now the Plaintiff, Trena McElroy, by and through her attorneys, Richard E. McFadin, F. A. White, Jr., and Charles W. Spooner, and for Count I of her cause of action against the Defendants, and each of them, alleges and states to the Court as follows:

1. Trena McElroy is an individual and resident of Lebanon, Laclede County, Missouri; that the Defendant, City of Skidmore, is a municipal corporation located in Nodaway County, Missouri; that the Defendant, Nodaway County, is a county of the fourth class existing under the laws of the State of Missouri, the county seat being in Maryville, Missouri; that the Defendant, Danny R. Estes, was the duly elected sheriff of Nodaway County, Missouri, at all times pertinent hereto; that the Defendant, Steve Peters, was the duly elected mayor of Skidmore, Missouri, at all times pertinent hereto; that the Defendant, Del Clement, is an individual and resident of Skidmore, Nodaway County, Missouri.

2. That the Plaintiff's cause of action accrued within Nodaway County, Missouri; that the Plaintiff, Trena McElroy, was at all times referred to herein and for a long time prior thereto the lawful wedded wife of the

decedent, Kenneth Rex McElroy, and is now his widow; there were three children born of said marriage, Aleta McElroy (age 9), Reno McElroy (age 6) and Derome McCloud (age 11).

3. That this Petition is filed within three years after the death of Kenneth Rex McElroy.

4. That on or about the 10th day of July, 1981, in the County of Nodaway, State of Missouri, the citizens and residents of Defendant, the City of Skidmore, and the citizens and residents of the County of Nodaway, Missouri, held a meeting for the specific purpose of planning how to rid the area of decedent, Kenneth Rex McElroy; that the meeting was presided over by Defendant, Danny R. Estes, duly elected sheriff of Nodaway County, and Steve Peter, the duly elected mayor of Skidmore, Missouri.

5. That thereafter, an individual whose identity is unknown to Plaintiff at this time informed those present at the town meeting that Kenneth Rex McElroy was in fact at the D and G Tavern in Skidmore, at which time the meeting was immediately adjourned.

6. That Defendant, Danny R. Estes, Sheriff of Nodaway County, left the Skidmore, Missouri, area and a majority of those present at the aforementioned meeting, including the duly elected mayor of Skidmore, Missouri, retired to the D and G Tavern where decedent, Kenneth Rex McElroy, was present.

7. That thereafter, the decedent, Kenneth Rex McElroy, left the D and G Tavern and a majority of those having been present at the aforementioned meeting, including the duly elected mayor and other city officials and citizens of Skidmore, Nodaway County, Missouri, followed decedent, Kenneth Rex McElroy, out of the D and G Tavern; that upon leaving the D and G Tavern, decedent, Kenneth Rex McElroy, was moving towards his motor vehicle where it was parked across the street from the D and G Tavern, and which was occupied by Trena McElroy, the Plaintiff herein; that the Defendant Del Clement, in the presence of a large number of persons who had followed decedent, Kenneth Rex McElroy, from the D and G Tavern, obtained a rifle from his motor vehicle and fired several shots at the Defendant, Kenneth Rex McElroy, hitting him in the head and killing him.

8. That the injuries and resulting death of the decedent, Kenneth Rex McElroy, as hereinbefore set forth, were directly and proximately caused by

the wrongful acts and conduct of the Defendants, and each of them, in the following particulars, to-wit:

(a) That the injuries and resulting death of the decedent, Kenneth Rex McElroy, as hereinbefore set forth, were directly and proximately caused by the wrongful acts and conduct of the Defendant, City of Skidmore, in that the City of Skidmore through its duly elected officials, including but not necessarily limited to, the mayor of Skidmore, held a town meeting for the specific purpose of discussing how to rid the community of Kenneth Rex McElroy; that although the duly elected mayor was present at said meeting and was possessed of sufficient knowledge to have known of the impending danger to Kenneth Rex McElroy, with sufficient time to have taken evasive action or warned the decedent, Kenneth Rex McElroy, the duly elected mayor and other city officials and citizens of Defendant Skidmore, Missouri, present at said meeting did nothing other than to further the assault upon decedent, Kenneth Rex McElroy.

(b) That the injuries and resulting death of the decedent, Kenneth Rex McElroy, as hereinbefore set forth, were directly and proximately caused by the wrongful acts and conduct of the Defendant, Danny R. Estes, and Defendant, Nodaway County, Missouri, in that Danny R. Estes, the duly elected sheriff of Nodaway County, and responsible in an official capacity for maintaining the peace and protecting the citizens in Nodaway County, violated those duties by not only attending a meeting wherein the imminent assault upon Kenneth Rex McElroy was discussed, but by presiding over said meeting, and then at a time when Defendant Danny Estes knew or should have known of the impending danger to decedent Kenneth Rex McElroy, he left the area; that the Defendant, Nodaway County, was responsible for the injuries in that the Defendant, Nodaway County, would be responsible for the wrongful acts of its duly elected sheriff, Defendant Danny R. Estes.

(c) That the injuries and resulting death of the decedent, Kenneth Rex McElroy, as hereinbefore set forth were directly and proximately caused by the wrongful acts and conduct of the Defendant, Del Clement, in that Defendant Del Clement was at all times the aggressor responsible

for shooting the decedent, Kenneth Rex McElroy, with a high-powered rifle without just provocation or excuse; that the Defendant Del Clement intended to take the life of Kenneth Rex McElroy and reflected upon this matter cruelly and fully before doing so in violation of the Revised Statutes of Missouri; and that the Defendant Del Clement shot the decedent, Kenneth Rex McElroy, in the back of the head with a high-powered rifle unexpectedly and without warning so that the decedent, Kenneth Rex McElroy, was helpless to defend himself, all without just cause or excuse under the circumstances which resulted in the death of Kenneth Rex McElroy.

9. That as a direct result of the death of her husband as hereinbefore set forth, Plaintiff Trena McElroy has been compelled to obligate herself to expend a sum of money for the burial of her said husband, and has also suffered pecuniary losses in that Plaintiff and her three minor children, actually living and co-habiting with the decedent, Kenneth Rex McElroy, were totally dependent upon the decedent for their sole and only support, and by reason of the death of Plaintiff's husband, the additional burden of supporting the three minor children as well as herself has now been cast upon the Plaintiff; that by reason of the death of Plaintiff's husband, Plaintiff has been compelled to obligate herself for other financial loss, in that Plaintiff has been and will be deprived of the value of services, consortium, companionship, company, instruction, guidance, counsel, training, and support of her said husband, to which Plaintiff is legally entitled, all to Plaintiff's damage in the amount of Two Million Dollars (\$2,000,000.00).

10. That the acts and conduct of the Defendants, and each of them, as hereinbefore set forth, were reckless, wanton, and in total disregard of the rights and safety of the decedent, Kenneth Rex McElroy, resulting in aggravating circumstances attending the death of Plaintiff's husband, Kenneth Rex McElroy, to which Plaintiff is entitled to further punitive damages in the amount of Three Million Dollars (\$3,000,000.00).

WHEREFORE, by reason of the premises, Plaintiff prays judgment against the Defendants, and each of them, in the total sum of Two Million Dollars (\$2,000,000.00) as actual damages, and Three Million Dollars (\$3,000,000.00) as exemplary and punitive damages, together with costs herein incurred and expended.

COUNT II

Comes now Plaintiff and for Count II of her cause of action against the Defendants, and each of them, alleges and states to the Court as follows:

1. That Plaintiff incorporates by reference each and every allegation in Count I hereof, as if more fully set forth.

2. That on or about the 10th day of July, 1981, Plaintiff, Trena McElroy, was in the company of her husband, Kenneth Rex McElroy, and had gone to the D and G Tavern; that while Plaintiff was waiting for her husband in the truck, and saw her husband returning, Plaintiff observed Defendant Del Clement take a high-powered rifle, take aim at her husband, and fire several shots in the direction of her husband, who was struck and killed, and also in the direction of this Plaintiff.

3. That thereafter, this Plaintiff was advised by residents of the Defendant, City of Skidmore, Missouri, that her life was also in danger.

4. That for a long period of time, from and after July 10, 1981, Plaintiff has suffered from nervous exhaustion and was so terrified, shocked, and humiliated that she has suffered recurrent nervous exhaustion in a more violent form than she had formerly had it, greatly impairing her health and causing her to suffer loss of sleep and nightmares as a result of the actions of Defendants and each of them.

5. That the actions on the part of the Defendants, and each of them, were done without just cause or provocation, were wilful, wanton, and unlawful; that as a result, Plaintiff has been forced to incur reasonable medical and allied expenses as a result; that her earning power and capacity has been permanently impaired and reduced, and that she has been unable to work and labor; that as a result of each and all the aforementioned foregoing, Plaintiff has been caused to suffer great bodily and mental pain and anguish, and will continue to suffer pain and anguish for the remainder of her life.

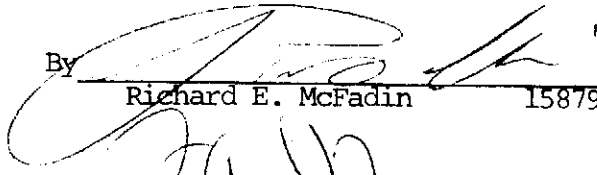
6. That by reason of the foregoing, Plaintiff has been damaged in the sum of Five Hundred Thousand Dollars (\$500,000.00).

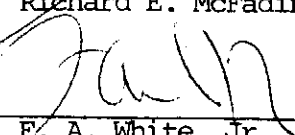
7. That the assault upon the Plaintiff by Defendants, and each of them, and the discharging of a firearm in the direction of Plaintiff, was wilful, wanton, violent, unprovoked, and deliberate, and that Plaintiff should further recover herein the sum of Five Hundred Thousand Dollars (\$500,000.00) as exemplary and punitive damages because of said malicious, wilful, violent,

wanton, unprovoked and deliberate acts of Defendants and each of them in assaulting her and shooting at her.

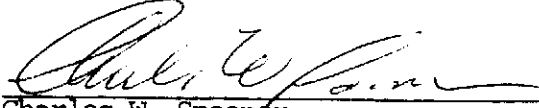
WHEREFORE, Plaintiff prays judgment in Count II of her Petition against Defendants and each of them for the total sum of Five Hundred Thousand Dollars (\$500,000.00) as actual damages, and Five Hundred Thousand Dollars (\$500,000.00) as exemplary and punitive damages, together with her costs herein incurred and expended, and for such other and further relief as the Court deems just and proper in the premises.

McFADIN AND WHITE

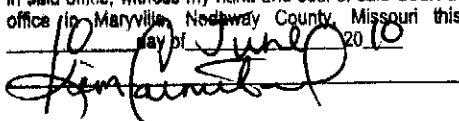
By  _____
Richard E. McFadin 15879

By  _____
F. A. White, Jr. 22565
1920 Swift
Suite 205
North Kansas City, Missouri 64116
(816) 471-3966

and

 _____
Charles W. Spooner
1920 Swift, Suite 205
North Kansas City, Missouri 64116
(816) 221-7266

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF TRUE COPY
STATE OF MISSOURI, }
COUNTY OF NODAWAY } SS:
As clerk of the Nodaway County Circuit Court, Missouri, I
hereby certify under my hand and seal of office that the
following is a true and complete copy of the original
Petition same of record and on file
in said office, witness my hand and seal of said Court at
office in Maryville, Nodaway County, Missouri this
day of June, 1984


FILED

JUL 9 1984

CIRCUIT COURT
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