

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>ASHLEY MARIE ABELAR, INDIVIDUAL</b>	§	
<i>Plaintiff,</i>	§	
	§	
<b>V.</b>	§	<b>CIVIL ACTION NO.</b>
	§	
<b>HARRIS COUNTY, TEXAS,</b>	§	
<b>LATOYA S. BRYANT, INDIVIDUAL,</b>	§	
<b>WALMART, INC and,</b>	§	
<b>AXON ENTERPRISE, INC.,</b>	§	
<i>Defendants.</i>	§	

**PLAINTIFF’S ORIGINAL COMPLAINT**

**TO THE HONORABLE JUDGE OF THE COURT:**

**NOW COMES** Plaintiff **Ashley Marie Abelar** and complains of **Harris County, Texas; Latoya S. Bryant**, Individually and as a Harris County Employee, **Walmart, Inc.** and **Axon Enterprise, Inc.** and will show the Court the following:

**CASE SUMMARY**

1. On January 9, 2021, Ashley Abelar was detained for shoplifting at a Houston area Walmart store by Harris County Sheriff Deputy Latoya Bryant. Ms. Abelar voluntarily accompanied deputy Bryant to the store’s loss prevention office. Without cause or warning, Deputy Bryant pushed Ms. Abelar up against a wall, pulled her gun and pointed it at Ms. Abelar’s face. While still pushing Ms. Abelar up against a wall and brandishing her gun, Deputy Bryant then pulled her Axon taser and tasered Ms. Abelar in the chest. Severely stunned, Abelar fell to the ground. Deputy Bryant continuously discharged the taser into Ashley Abelar’s chest for more than 92 consecutive seconds, causing arcs of conducted electricity to leave bloody permanent burn marks between her thighs and on the palms of her hands. Axon Taser’s product guide states that “Most human CEW lab testing has not exceeded 15 seconds and none has ever exceeded 45 seconds.”

This lawsuit seeks damages for violations of Ashley Abelar’s civil rights against Harris County Texas, Latoya Bryant, and Walmart. This lawsuit also seeks damages for product defect claims against Axon Enterprise, Inc. for a manufacturing a defective and dangerous product.

### **JURISDICTION AND VENUE**

This Court has jurisdiction over Plaintiff’s federal claims under 28 U.S.C. § 1331 and 1343, 42 U.S.C. §§ 1983 and 1988, and the 4<sup>th</sup>, 5<sup>th</sup> and 14<sup>th</sup> amendments to the U.S. Constitution. This Court has supplemental jurisdiction under 28 U.S.C. § 1367(a) to hear Plaintiff’s state law claims, if any.

Venue is proper in this Court, under 28 U.S.C. § 1391(b) because the incident at issue took place in Harris County, Texas within the United States Southern District of Texas, Houston Division.

Axon Enterprise, Inc. is a Scottsdale, Arizona based corporation that conducts business throughout the United States and in Texas, including Harris County, and is subject to service of judicial process in this judicial district.

### **PARTIES**

Plaintiff **Ashley Marie Abelar** is a resident of Harris County, Texas. Ms. Abelar is represented by Paul Anderson, PLLC, 601 North Street, Nacogdoches, Texas 75961.

Defendant, **Harris County, Texas**, is a government entity existing under the laws of the State of Texas and is located within the U.S. Southern District. Harris County, Texas can be served with this lawsuit by serving Harris County Judge Lina Hidalgo at 1001 Preston, Suite 911, Houston, Texas 77002. The **Harris County Sheriff’s Office** is part of the Harris County, Texas government.

Defendant **Latoya Bryant** is a Harris County Sheriff’s Office Employee who can be served with process of summons at her place of employment, the **Harris County Sheriff’s Office**, 1200 Baker Street, Houston, Texas 77002.

Defendant **Walmart Stores Texas, LLC** (“Walmart”) is a foreign business corporation that is registered to do business in Texas. Wal-Mart Stores Texas, LLC may be served by serving its registered agent, CT Corporation System, 1999 Bryan St. Suite 900, Dallas, Texas 75201.

Defendant **Axon Enterprise, Inc.**, the manufacturer of the device that harmed Plaintiff, is a corporation residing at 17800 N. 85<sup>th</sup> St. Scottsdale, AZ, 85255. Axon Enterprise, Inc. can be served in Texas through CSC, 211 East 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701.

### **NARRATIVE OF EVENTS**

On January 9<sup>th</sup>, 2021 Ashley Abelar was detained for shoplifting at the Houston, Texas area Almeda-Genoa Walmart located at 9598 Rowlett Road in south Houston near Hobby Airport. Ms. Abelar, who was 31 at the time, was stopped before she left the store by Harris County Sheriff's Deputy Latoya Bryant, who was working at Walmart as a loss protection officer.

Ms. Abelar voluntarily accompanied Deputy Latoya Bryant to a single room office with one desk. There were two unidentified Walmart employees in the office and present during the incident.

The incident was recorded on one or more CCTV cameras.

Ashley Abelar states that, "One woman [Deputy Latoya Bryant] pulled a gun and held it to my face. The end of the gun made contact with my lips. She yelled at me "bitch." While the gun was in my face, she pulled a tazer [sic] she shot me in the abdomen with the prongs. I fell to the ground, and she continued to tase me." *See attached Exhibit "A"* – Ashley Abelar August 3<sup>rd</sup>, 2021 Affidavit. *See also attached Exhibit "B"* – Ashley Abelar November 7<sup>th</sup>, 2022 affidavit.

Ashley Abelar was continuously tasered by Deputy Latoya Bryant for the next 92 consecutive seconds.

Ms. Abelar suffered documented medical injuries and states, "I was also burned between my thighs as a result of arcing from the taser." *Id.*

The Houston Police Department Internal Affairs Division visited Ashley Abelar shortly after the incident and interviewed her while she was in custody of the Galveston County Jail. Ms. Abelar states that, "On or about April 11<sup>th</sup>, 2021 photographs were taken. A report was taken by HPD IAD." *Id.* Plaintiff has never been provided a copy of any law enforcement report but has seen the video of the incident that is the basis for this lawsuit.

Axon Enterprise, Inc. sells Conducted Electrical Weapons (“CEWs”), also known as “tasers” throughout the United States and the world for use in civilian personal self-defense, law enforcement, military, paramilitary and other tactical applications. A taser is designed to be a less-than-lethal weapon. When triggered, two darts connected by thin wires are fired from the device, powered by 50,000 volts of electricity. An Axon taser, likely a model X-26, was used by Harris County Sheriff Deputy Latoya Bryant to taser Ashley Abelar for 92 consecutive seconds.

A November 23<sup>rd</sup>, 2020 Axon Enterprises, Inc. “CEW Warnings, Instruction, and Information guide with :Important Safety and Health Information” document says: “Most human CEW lab testing has not exceeded 15 seconds of CEW application, and none has exceeded 45 seconds.” *See attached Exhibit “C”* - Page 2, November 23, 2020 CEW Warnings, Instruction and Information Manual.

## CLAIMS

### **42 U.S. SECTION 1983 CLAIM AGAINST HARRIS COUNTY**

Plaintiff incorporates all preceding paragraphs by reference for all intents and purposes.

The Civil Rights Act, codified as 42 U.S.C. § 1983, provides as follows:

*Every person who, under color of any statute, ordinance, regulation, custom or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any laws, privileges, immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 US.C. § 1983.*

The 4th Amendment to the United States Constitution provides:

*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

The 5th Amendment to the United States Constitution provides:

*No person shall be deprived of life, liberty, or property, without due process of law;*

The 14th Amendment to the United States Constitution provides:

*No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.*

**42 U.S.C. § 1983 CLAIMS**  
**(EXCESSIVE FORCE)**

Plaintiff Ashley Abelar brings claims for actual damages and punitive damages against all Defendants under 42 U.S.C. § 1983 because Defendant Latoya Bryant, acting under the color of law, assaulted Ashley Abelar in violation of her protected rights under the 4<sup>th</sup> and 14<sup>th</sup> Amendments of the U.S. Constitution.

The 4<sup>th</sup> Amendment guarantees the right of a person “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” *U.S. Const. Amend. IV*. The 14<sup>th</sup> Amendment guarantees due process of law. Such violations are actionable pursuant to 42 U.S.C. Sections 1983 and 1988.

Where an individual’s conduct amounts to a mere “passive resistance,” use of force is not justified. *Trammell v. Fruge*, 868 F.3d 332, 341 (5<sup>th</sup> Cir. 2021).

The excessive force used by Deputy Latoya Bryant on January 9<sup>th</sup>, 2021 against Ashley Abelar was objectively unreasonable under the circumstances and inflicted unnecessary injury, pain, and suffering upon Ashley Abelar.

"To prevail on an excessive-force claim, [a plaintiff] must show (1) injury, (2) which resulted directly and only from a use of force that was clearly excessive, and (3) the excessiveness of which was clearly unreasonable." *Cooper v. Brown*, 844 F.3d 517, 522 (5<sup>th</sup> Cir. 2016) (quoting *Elizondo v. Green*, 671 F.3d 506, 510 (5<sup>th</sup> Cir. 2012)).

The excessiveness of the force used against Ashley Abelar by Deputy Latoya Bryant was extremely unreasonable because Ashley Abelar was literally blindsided by Bryant’s extreme conduct of

holding a gun to Abelar's face, followed by an unexpected tasing to Ashley's chest after having a gun put in her mouth by Bryant.

“Excessive force claims are necessarily fact-intensive; whether the force used is ‘excessive’ or ‘unreasonable’ depends on ‘the facts and circumstances of each particular case.’” *Deville v. Marcantel*, 567 F.3d 156, 167 (5th Cir. 2009) (quoting at 704, *Graham v. Connor*, 490 U.S. 386, 396, 109 S.Ct. 865, 104 L.Ed.2d 443 (1989)). In making this determination, a court should consider the totality of the circumstances, “including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” *Graham*, 490 U.S. at 396, 109 S.Ct. 865.

“The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Id. Graham*, at 396.. “The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Id.* at 396-97, 109 S.Ct. 865.

“We have consistently held that a police officer uses excessive force when the officer chokes, punches, or kicks a suspect who is not resisting arrest.” See, e.g., *Aguilar v. Robertson*, 512 Fed.Appx. 444, 450 (5th Cir. 2013) (per curiam); *McCaleb*, 480 Fed.Appx. at 773; *Sullivan v. Allred*, 297 Fed.Appx. 339, 342 (5th Cir. 2008) (per curiam); *Estate of Sorrells v. City of Dallas*, 45 Fed.Appx. 325 (5th Cir. 2002) (per curiam).

Ashley Abelar was cooperating and was not resisting arrest, but for some unknown reason Deputy Latoya Bryant, in absolutely violation of Sheriff's Department policy, was able to use a defective taser to taser Ashley Abelar in the chest with such force that it caused medical injuries that persist to this day.

### **No Qualified Immunity**

Plaintiff realleges and incorporates all allegations of this Complaint as if fully set forth herein.

Harris County Sheriff's Deputy Latoya Bryant and Harris County, Texas do not have qualified immunity under the facts and circumstances of this case.

Qualified immunity shields officers from liability unless their conduct violates “clearly established statutory or constitutional rights of which a reasonable person would have known.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). When officers invoke qualified immunity at summary judgment, courts ask two questions: (1) whether the evidence viewed in the light most favorable to the plaintiff shows that the officers violated a constitutional right, and (2) whether the unlawfulness of their conduct was “clearly established” at the time. *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018).

Ashley Abelar was shoplifting. She voluntarily surrendered and was not resisting arrest when she was assaulted by Deputy Latoya Bryant with a defective taser.<sup>1</sup>

To prevail on an excessive-force claim, the plaintiff must show (1) an injury, (2) that resulted “directly and only” from a use of excessive force, and (3) that the force used was “objectively unreasonable.” *Flores*, 381 F.3d at 396.

The force used against Ashley Abelar by Harris County Sheriff's Deputy Latoya Bryant was objectively unreasonable because shoplifting can never warrant brandishing a firearm or being tased for 92 consecutive seconds. In fact, Deputy Bryant's conduct was objectively outrageous.

A government official's conduct violates clearly established law when, at the time of the challenged conduct, “[t]he contours of [a] right [are] sufficiently clear” that every “reasonable official would have understood that what he is doing violates that right.” *Anderson v. Creighton*, 107 S. Ct. 3034, 3039 (1987)).

In *Kinney v Weaver*, the Fifth Circuit explains that qualified immunity should not be denied unless the law is clear in the more particularized sense that reasonable officials should be on notice that their conduct is unlawful. *Saucier v. Katz*, 533 U.S. 194, 206 (2001). The central concept is that of “fair warning”: the law can clearly be established “despite notable factual distinctions between precedents

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<sup>1</sup> Ashley Abelar was never charged with shoplifting.

relied on and the cases then before the Court, so long as the prior decisions gave reasonable warning that the conduct then at issue violated constitutional rights.” See *Hope*, 536 U.S. at 740 (internal quotation marks omitted).

There is no qualified immunity for Harris County Sheriff’s Deputy Latoya Bryant because her conduct violated Harris County’s policy for use of force and specifically for the use of tasers. Deputy Bryant’s use of force was enabled by a defective Axon Enterprise Inc. taser. Deputy Bryant’s use of the taser was far in excess of the maximum permissible capabilities of the Axon Enterprise, Inc. taser device.

If testing on humans with the taser device has never exceeded 45 seconds, why did the Axon Enterprises Inc taser used by Deputy Bryant continue to discharge far in excess of the known dangerous limits?

Not only did the safety device of the taser device fail, Deputy Bryant’s professional judgment failed also.

Deputy Latoya Bryant’s actions were part of a policy and practice condoned by Harris County, Texas of encouraging taser abuse.

In addition, Harris County (and its governmental branch, Harris County Sheriff’s Office), including its officials and employees in an official capacity, engaged in a policy and practice of deliberate indifference to the care and custody of citizens and detainees that resulted in the injury of Ashley Abelar.

In addition, and in the alternative, Harris County provided inadequate training to Deputy Bryant and failed to properly supervise her.

Plaintiff contends that failures to train and supervise its deputies, especially Deputy Latoya Bryant, regarding the policies, procedures, practices and customs of Harris County, put Plaintiff Ashley Abelar, and potentially others, in a dangerous situation which violated constitutional rights under the First, Fourth and Fourteenth Amendments and for which Plaintiff Ashley Abelar seeks recovery.



As a direct and proximate result of Harris County Sheriff's Deputy Latoya Bryant's acts, which were so outrageous in character and extreme in degree as to be utterly intolerable in a civilized community, Ashley Abelar suffered severe emotional distress and was physically injured and damaged thereby.

Deputy Latoya Bryant failed to follow state and federal laws, including federal and state regulations regarding custodial detainees, specifically brandishing a firearm and tasing a custodial detainee for 92 consecutive seconds. During the relevant time contemplated by this cause of action, Harris County and the HCSO, including but not limited to Deputy Latoya Bryant and other deputies present at the incident, Bryant's supervisors and other officials in an official capacity, in the alternative or in addition, failed to follow their own written policies and procedures and those of the State of Texas and other authorities on standards of care and protection of custodial persons under arrest, but specifically as related to the use of firearms and tasers.

Harris County failed to properly train, hire, control, discipline and supervise employees abusing or issuing tasers or firearms; promulgated, condoned, or showed indifference to improper policies or customs regarding the use of tasers or firearms; continued such practices of improper policies or customs as to constitute a policy willfully ignorant or consciously indifferent to taser and firearm abuse.

Harris County, through its officials and employee Latoya Bryant, has engaged in a deliberate and outrageous invasion of Plaintiff's rights under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

Because of Harris County's conscious indifference and willful ignorance, it should not enjoy the protection or benefit of qualified immunity.

Harris County and the HCSO by their acts and omissions alleged above, under color of law and pursuant to the customs, practices and policies of Harris County, Texas, deprived Ashley Abelar of her rights thereby violating the Fourth Amendment to be secure in her persons, the Fifth and Fourteenth Amendments right to not be deprived of her life and liberty without due process and equal protection

under the Due Process and Equal Protection Clauses of the Fourteenth Amendment pursuant to 42 U.S.C. § 1983.

### ***Monell Claim***

The Monell liability theory was created in *Monell v. Department of Social Services of the City of New York* (436 U.S. 658 (1978)). Most of the time, the claim alleges an agency failed to properly train or supervise the officer and that failure led to the alleged injury. Often the court puts it this way: The plaintiff must show that an official agency policy was the “moving force behind the violation of a constitutional right.”

In this case, Harris County failed to train its officers on proper taser device use. No taser can exceed 45 seconds of discharge time, yet Deputy Latoya Bryant tased Ashley Abelar for over 92 seconds. To establish *Monell* liability on a failure-to-train theory, Ashley Abelar must prove: (1) Harris County failed to train or supervise the officers involved; (2) there is a causal connection between the alleged failure to supervise or train and the alleged violation of the plaintiff’s rights; and (3) the failure to train or supervise constituted deliberate indifference to the plaintiff’s constitutional rights.

Harris County, through its deputy hiring, training, retention and supervision policies is grossly negligent by permitting and ratifying conduct by its employees that violates the U.S. Constitution.

Harris County, through its deputy hiring, training, retention and supervision policies is grossly negligent by permitting and ratifying conduct by Deputy Latoya Bryant.

### ***Product Liability Claim Against Axon Enterprises, Inc.***

In a strict liability defective product claim, the plaintiff does not need to prove that the defendant was negligent but must still prove that: the product was defective; the product’s defect was dangerous; the defect caused the injury; and the product was not changed after leaving the manufacturer.

It is not known whether the defect that enabled Latoya Bryant to taser Ashley Abelar with an Axon Enterprise, Inc. product for 92 consecutive seconds is a design defect or manufacturing defect. According to the manufacturer, it is known that “Most human CEW lab testing has not exceeded 15 seconds of CEW

application, and none has exceeded 45 seconds.” *See attached Exhibit “B”* - Page 2, November 23, 2020 CEW Warnings, Instruction, and Information manual.

It is logical to assume that, if the Axon Enterprises, Inc. CEW Warnings, Instruction and Information guide with “Important Safety and Health Information” says: “Most human CEW lab testing has not exceeded 15 seconds of CEW application, and none has exceeded 45 seconds” then the Axon Enterprise product used by Deputy Latoya Bryant was defective. *See attached Exhibit “C”* - Page 2, November 23, 2020 CEW Warnings, Instruction, and Information manual.

Pursuant to Texas Civil Practice and Remedies Code Chapter 82 this is a products liability action against a manufacturer, Axon Enterprise, Inc., for recovery of damages arising out of personal injury, allegedly caused by a defective product whether the action is based in strict tort liability, strict products liability, negligence, misrepresentation, breach of express or implied warranty, or any other theory or combination of theories. *See Civ. Prac. & Rem, Code 82, Products Liability.*

#### ***DAMAGES SOUGHT***

Based upon the operative facts plead above, such acts and omissions rise to the level of deliberate and conscious indifference, willful ignorance constituting a violation of Ashley Abelar’s First, Fifth, Fourth and Fourteenth Amendments of the Constitution of the United States and for which Plaintiff seeks recovery.

Each and every of the foregoing acts and omissions, on the part of Defendants, taken separately and/or collectively, jointly, and severally, constitute a direct and proximate cause of the injuries and damages set forth herein. As a direct, proximate, and foreseeable result of Defendants’ unlawful conduct, Plaintiff has suffered, and will continue to suffer, damages in an amount to be proved at trial.

As a direct, proximate, and foreseeable result of Defendants’ unlawful conduct, Plaintiff has suffered, and will continue to suffer, generally physical, mental, and psychological damages in the form of extreme and enduring worry, grief, suffering, pain, humiliation, embarrassment, mental anguish, and

emotional distress in amounts within the jurisdictional limits of this Court, to be proved at trial. Plaintiff is entitled to reasonable attorney's fees and costs of suit as provided for by 42 U.S.C. § 1988(b).

Civil Rights are derived from the Constitution of the United States. 42 U.S.C. Section 1983 makes it unlawful for anyone acting under the authority of state law to put a gun in a citizen's mouth and then tase that person for 92 consecutive seconds. A person is Constitutionally guaranteed the right to be free from excessive force by law enforcement, a guarantee set forth in the Fourth and Fourteenth Amendments to the United States Constitution.

### **PUNITIVE DAMAGES**

Ashley Abelar repeats and realleges each and every allegation contained in the above paragraphs as if fully repeated herein.

As a direct and proximate result of the occurrences which are the basis of this lawsuit, Ashley Abelar was forced to suffer:

- a. Emotional distress, torment, and mental anguish;
- b. Physical injuries;
- c. Physical pain and suffering;
- d. Acts of threats, coercion, and intimidation; and,
- e. Deprivation of her liberty.

When viewed objectively, Harris County Sheriff's Deputy Latoya Bryant's conduct was extreme and unjustifiable, considering the probability and the magnitude of harm. As a direct, proximate, and producing cause, the intentional, egregious, and malicious conduct of Harris County Deputy Latoya Bryant, which was recklessly or callously indifferent to Ashley Abelar's constitutionally protected rights, entitles Ashley Abelar to punitive damages in an amount within the jurisdictional limits of this Court.

### **ATTORNEY'S FEES**

If Plaintiff prevails in this action, by settlement or otherwise, Plaintiff is entitled to and hereby demands attorney's fees under 42 U.S.C. § 1988(b).

**REQUEST FOR RELIEF**

Ashley Abelar respectfully prays that upon final hearing of this case, judgment be entered for her against the Defendants, for damages in an amount within the jurisdictional limits of this Court; together with pre-judgment interest at the maximum rate allowed by law; post-judgment interest at the legal rate; costs of the court; attorney's fees; and such other and further relief to which Ashley Abelar may be entitled at law or in equity.

**REQUEST FOR JURY TRIAL**

Plaintiff demands a jury trial.

**PRAYER**

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff prays that judgment be rendered against the Defendants, for an amount in excess of the jurisdictional minimum of this Court. Plaintiff further prays for all other relief, both legal and equitable, to which she may be justly entitled, including injunctive relief to prevent further retaliation.

Respectfully submitted,

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