

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil Case No. _____

Olivia Scullark, as Trustee for
the Heirs and Next of Kin of
Xavius Scullark-Johnson, deceased,

Plaintiff,

vs.

COMPLAINT

Denise Garin, R.N.,
Linda S. Andrews, R.N., and
John Doe 1-5 and Jane Roe1-5
(whose true names are unknown),

DEMAND FOR JURY TRIAL

Defendants.

Plaintiff Olivia Scullark, as Trustee for the Heirs and Next of Kin of Xavius Scullark-Johnson, for her Complaint against the above-named Defendants, states and alleges as follows:

I. INTRODUCTION

1. This action arises out of the wrongful death of Xavius Scullark-Johnson on or about June 30, 2010. Mr. Scullark-Johnson suffered from a series of serious seizures through the night of June 28 and morning of June 29, 2010 while incarcerated at the Minnesota Correctional Facility - Rush City. Defendant nurses and correctional officers failed to provide any medical care for approximately eight hours in response to the seizures. When correctional officers finally called an ambulance upon instruction from a doctor on call, Defendant nurse Denise Garin sent the ambulance away

and did not provide any other medical care. About fifty minutes after Garin sent away the ambulance, Mr. Scullark-Johnson had another serious seizure and his heart stopped. He was pronounced dead the next day. Defendants' deliberate indifference to Mr. Scullark-Johnson's serious medical needs caused his death.

2. Plaintiff's causes of action are based on Defendants' denial of Mr. Scullark-Johnson's federal constitutional rights, including the right to be free from cruel and unusual punishment, while acting under the color of state law, in violation of 42 U.S.C. § 1983. Her action is also authorized by the Wrongful Death Act, Minn. Stat. § 573.02.

II. JURISDICTION AND THE PARTIES

3. Plaintiff's causes of action are for federal statutory civil rights claims pursuant to 42 U.S.C. § 1983, and thereby give rise to federal question jurisdiction pursuant to 28 U.S.C. § 1331.

4. Plaintiff Olivia Scullark, by Order of the State Court of Minnesota in Ramsey County, filed on June 8, 2012 (Docket No. 62-CV-12-4808), has been appointed for the purposes of this lawsuit to act as the Trustee for the heirs and next of kin of her son, Xavius Scullark-Johnson. She is a resident of St. Paul, Ramsey County, Minnesota.

5. Xavius Scullark-Johnson was a 27 year old African American male at the time of his death on June 30, 2010. During the events leading to his death, Mr. Scullark-Johnson was incarcerated by the Minnesota Department of Corrections at its

prison in Rush City, Minnesota, where he has serving a five month sentence for a parole violation.

6. Defendant Denise Garin is, and at all times relevant hereto, was a registered nurse employed by the Minnesota Department of Corrections at its prison facility in Rush City. As such, she was acting under color of state law at all times relevant hereto. In that capacity, she was responsible for examining Mr. Scullark-Johnson and addressing his medical needs. She was deliberately indifferent to his serious medical needs thereby causing Mr. Scullark-Johnson's death. Defendant Garin is being sued in her personal and official capacities.

7. Defendant Linda S. Andrews was at all times relevant hereto a registered nurse employed by the Minnesota Department of Corrections at its prison facility in Rush City. As such, she was acting under color of state law at all times relevant hereto. In that capacity, she was responsible for examining Mr. Scullark-Johnson and addressing his medical needs. She was deliberately indifferent to his serious medical needs thereby causing Mr. Scullark-Johnson's. Defendant Andrews is being sued in her personal and official capacities.

8. Defendants John Doe 1-5, whose true names are unknown, at all times relevant hereto, were employed as medical staff or correctional officers or officials by the Minnesota Department of Corrections at its prison facility in Rush City. As such, they were acting under color of state law at all times relevant hereto. In such capacities,

they were responsible for examining Mr. Scullark-Johnson and responding to his medical needs. They were deliberately indifferent to his serious medical needs thereby causing Mr. Scullark-Johnson's death. The identities of Defendants John Doe 1-5 cannot be determined at this time because the Minnesota Department of Corrections has improperly withheld documents and information from Plaintiff regarding the events leading to Mr. Scullark-Johnson's death. Defendants John Doe 1-5 are being sued in their personal and official capacities.

9. Defendants Jane Rose 1-5, whose true names are unknown, at all times relevant hereto, were employed as medical staff or correctional officers or officials by the Minnesota Department of Corrections at its prison facility in Rush City. As such, they were acting under color of state law at all times relevant hereto. In such capacities, they were responsible for examining Mr. Scullark-Johnson and responding to his medical needs. They were deliberately indifferent to his serious medical needs thereby causing Mr. Scullark-Johnson's death. The identities of Defendants Jane Roe 1-5 cannot be determined at this time because the Minnesota Department of Corrections has improperly withheld documents and information from Plaintiff regarding the events leading to Mr. Scullark-Johnson's death. Defendants John Doe 1-5 are being sued in their personal and official capacities.

III. FACTUAL BACKGROUND

10. Xavius Scullark-Johnson had a history of seizure disorder. The

Minnesota Department of Corrections (DOC) and its health care providers who were responsible for providing care and treatment to Mr. Scullark-Johnson were well aware of his medical condition which they had documented during previous incarcerations and the incarceration during which he died. The DOC's records showed Mr. Scullark-Johnson had to be hospitalized in response to some of his serious seizures.

11. From on or about April 13-16, 2010, Mr. Scullark-Johnson was hospitalized for a serious seizure at Regions Hospital in St. Paul, Minnesota. At the time he was hospitalized, Mr. Scullark-Johnson was arrested by the DOC for violations of several conditions of his supervised release which arose out of leaving a treatment program without permission.

12. Upon his discharge from Regions Hospital, DOC transferred Mr. Scullark-Johnson to its Transitional Care Unit (TCU) at the Minnesota Correctional Facility - Oak Park Heights. The TCU is a medical unit inside the prison. It was necessary for DOC to house Mr. Scullark-Johnson in its TCU in order to adequately monitor and treat him for his serious medical condition. He was discharged from the TCU on or about April 22, 2010.

13. On or about April 30, 2010, the DOC conducted a revocation hearing in response to allegations that Mr. Scullark-Johnson violated conditions of his supervised release. Mr. Scullark-Johnson took responsibility for violating the conditions of release due to his leaving his treatment program, while his attorney noted that he was suffering

from active seizure disorder and mental health conditions. The DOC revoked Mr. Scullark-Johnson's release for a period of 150 days, effective the date of his arrest on April 13, 2010. His incarceration would have therefore ended on or about September 10, 2010.

14. On or about April 30, 2010, the DOC transferred Mr. Scullark-Johnson from its prison in Oak Park Heights to its prison in Rush City. He continued to need monitoring and treatment for his medical and mental health conditions, particularly his seizure disorder.

15. On May 25, 2010, Mr. Scullark-Johnson was found to be lying on the floor and disoriented in the dining hall at MCF - Rush City due to a seizure. He had to be taken to his cell in a wheelchair.

16. On or about June 22, 2010, a physician assistant examining Mr. Scullark-Johnson decided to cut his prescribed dosage of Dilantin medication in half because of a determination that the level of Dilantin in his blood had been too high. The medical notes indicated plans to re-check his Dilantin level in one to two weeks.

17. On or about June 28, 2010 at sometime after 10:00 pm, Mr. Scullark-Johnson suffered a serious seizure while in his prison cell. As a result of the seizure, he fell on the floor and lost consciousness. He was observed by corrections officers to be lying on the floor and unresponsive. Corrections officers contacted prison health services to attend to Mr. Scullark-Johnson, and Defendant nurse Lisa Andrews responded. She

observed that Mr. Scullark-Johnson was lying on the floor, that he had a lump on his head, and that he had wet his pants and there was urine on the floor where he was lying. According to her report, Defendant Andrews did not take any readings of blood pressure, pulse, temperature, or any vital signs, or test Mr. Scullark-Johnson's blood for Dilantin level. She did not provide or arrange for any medical treatment. She did not contact a doctor for consultation or instruction. Defendant Andrews left Mr. Scullark-Johnson lying on the floor in his urine, and upon information and belief, left at the end of her shift shortly thereafter. There were no nurses or medical providers on duty at the prison after Defendant Andrews left. She therefore improperly entrusted any further medical attention to Mr. Scullark's serious and grave condition to non-medical personnel.

18. Mr. Scullark-Johnson continued to suffer from further seizures overnight and into the morning of June 29, 2010. He continued to urinate on himself. His cell mate repeatedly called for corrections officers to respond to Mr. Scullark-Johnson's seizures and provide medical care. Upon information and belief, corrections officer Defendants John Doe and Jane Roe continually refused to secure any medical attention. They refused to contact an ambulance or a doctor, and continued to leave Mr. Scullark-Johnson lying on the floor in his urine. Corrections officer Defendants John Doe and Jane Roe responded to the urging of Mr. Scullark-Johnson's cell mate to provide medical attention by removing the cell mate from that cell and placing him in segregation, thereby leaving Mr. Scullark-Johnson all by himself as he continued to suffer from serious

seizures.

19. According to medical records, a corrections officer finally contacted the doctor on call at about 3:30 a.m. on June 29 to discuss Mr. Scullark-Johnson's condition. Upon information and belief, the officer did not provide complete information about Mr. Scullark-Johnson's condition and the doctor lacked access to complete information. Based on the information provided, the doctor suggested letting Mr. Scullark-Johnson sleep and watching him carefully until health services staff arrived.

20. According to medical records, a corrections officer again contacted the doctor on call about an hour later due to concern for Mr. Scullark-Johnson's condition. At that time, the doctor instructed corrections officers to call an ambulance.

21. According to records, the ambulance was called for at 5:30 a.m. on June 29, 2010. It arrived at Rush City prison at 5:39 a.m. and the ambulance staff began examining Mr. Scullark-Johnson at 5:44 a.m. Ambulance staff observed that Mr. Scullark-Johnson was lying on the ground, there was blood and spit on the floor, and he had bitten the inside of his mouth. While ambulance staff were examining Mr. Scullark-Johnson, Defendant nurse Denise Garin arrived on duty and proceeded to examine him. She also observed that Mr. Scullark-Johnson was lying on the floor and bleeding from his mouth and tongue. Defendant Garin, however, instructed ambulance staff **not** to transport Mr. Scullark-Johnson to the hospital, and sent away the ambulance. It is unknown at this time whether any other corrections staff or medical staff were involved in

the decision to send away the ambulance in part because DOC has improperly withheld records relating to this incident.

22. According to the ambulance report, health services staff advised the ambulance staff that the prison health services had protocols to deal with Mr. Scullark-Johnson and would take over his care. Defendant Garin and Defendants Doe and Roe, however, did not provide any medical care to Mr. Scullark-Johnson. Defendants left Mr. Scullark-Johnson lying in the cell by himself after he had suffered numerous serious seizures, was disoriented, unable to control his bodily functions, and had injured himself from his seizures.

23. A little less than an hour later, Defendant Garin was again called to Mr. Scullark-Johnson's cell to examine him. Mr. Scullark-Johnson was again lying face down and unresponsive, and had again urinated on himself. Garin claims in her notes that she went to call a physician, and shortly thereafter, corrections officers reported that Mr. Scullark-Johnson had no pulse. An ambulance was again called. CPR was attempted unsuccessfully.

24. Mr. Scullark-Johnson was finally transported to the Fairview Lakes Hospital in Wyoming, Minnesota. Later in the day on June 29, 2010, Mr. Scullark-Johnson was transferred to Regions Hospital in St. Paul in an attempt to save his life. His life could not be saved. Mr. Scullark-Johnson was declared brain dead later that night, and his life support was removed on June 30, 2010.

25. The cause of death found by the autopsy was complications of seizure disorder. The toxicology performed in connection with the autopsy revealed a Dilantin level of 4.3 mcg/mL, which is less than half the appropriate therapeutic range.

26. Had Mr. Scullark-Johnson been taken to the hospital or given appropriate medical attention by health services, a blood test would have revealed his low dilantin level, and he could have been properly medicated, intubated, and he would not have died.

27. Defendants knew that Mr. Scullark-Johnson had serious medical needs that they were ignoring. They not only failed to provide any sort of acceptable professional standard of care, but Defendants were deliberately, willfully and maliciously indifferent to Mr. Scullark-Johnson's serious medical needs.

28. Damages caused by Defendants include but are not limited to Mr. Scullark-Johnson's pain and suffering and severe emotional distress, the family members' pecuniary loss and loss of comfort and companionship, and other damages, in an amount to be determined.

IV. CAUSES OF ACTION

COUNT ONE - CRUEL AND UNUSUAL PUNISHMENT

29. Plaintiff hereby realleges and incorporates by reference the allegations contained within Paragraphs 1 through 28 of this Complaint.

30. Defendants violated Mr. Scullark-Johnson's right under the Eighth

Amendment to the United States Constitution to be free from cruel and unusual punishment by their above-described actions, consisting of deliberate indifference to his serious medical needs and subjecting him to conditions that caused him extreme pain and suffering, and exacerbated his medical problems so as to cause his death.

31. Defendants' violations for Mr. Scullark-Johnson's rights under the Eighth Amendment to the U.S. Constitution, while acting under color of state law, give rise to a claim under 42 U.S.C. § 1983.

32. Defendants' above-described violations of 42 U.S.C. § 1983 caused the damages described in Paragraph 28 of this Complaint.

COUNT TWO - DENIAL OF DUE PROCESS

33. Plaintiff hereby realleges and incorporates by reference the allegations contained within Paragraphs 1 through 32 of this Complaint.

34. Defendants violated Mr. Scullark-Johnson's rights under the Fourteenth and Fifth Amendments to the United States Constitution to Due Process by denying him to his most fundamental right to life, and engaging in outrageous conduct, by their above-described actions.

35. Defendants' above-described violations for Mr. Scullark-Johnson's rights under the Fourteenth and Fifth Amendments to the U.S. Constitution, while acting under color of state law, give rise to a claim under 42 U.S.C. § 1983.

36. Defendants' above-described violations of 42 U.S.C. § 1983 caused

the damages described in Paragraph 28 of this Complaint.

COUNT THREE - VIOLATION OF EQUAL PROTECTION

37. Plaintiff hereby realleges and incorporates by reference the allegations contained within Paragraphs 1 through 36 of this Complaint.

38. Defendants violated Mr. Scullark-Johnson's right to Equal Protection of the Laws under the Fourteenth Amendment to the United States Constitution by denying him his most basic right to medical care and subjecting him to torturous treatment which, upon information and belief, differs from treatment accorded to similarly situated citizens.

39. Defendants' above-described violations for Mr. Scullark-Johnson's rights under the Fourteenth Amendment to the U.S. Constitution, while acting under color of state law, give rise to a claim under 42 U.S.C. § 1983.

40. Defendants' above-described violations of 42 U.S.C. § 1983 caused the damages described in Paragraph 28 of this Complaint.

V. RELIEF REQUESTED

WHEREFORE, Plaintiff prays the Court grant relief as follows:

1. Awarding judgment in favor of Plaintiff against the Defendants and each of them jointly and severally in an amount in excess of \$1,000,000.00 as and for compensatory damages.

2. Awarding judgment in favor of Plaintiff against the Defendants and each of

them jointly and severally in an amount in excess of \$1,000,000.00 as and for punitive damages.

3. Awarding Plaintiff reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

4. Awarding Plaintiff costs and disbursements and prejudgment interest herein.

5. For such other and further relief as the Court may deem just and proper.

Dated: June 24, 2012

LAW OFFICE OF JORDAN S. KUSHNER

By s/Jordan S. Kushner

Jordan S. Kushner, ID 219307

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