

COMMONWEALTH OF KENTUCKY
BULLITT CIRCUIT COURT
DIV. ONE (1)
CIVIL ACTION NO. 21-CI-00341
—*ELECTRONICALLY FILED*—

A.K. ET AL.

PLAINTIFF

V.

NOTICE-MOTION-ORDER

NICHOLAS HIBBS ET AL.

DEFENDANT

** ** *

PLEASE TAKE NOTICE that, at 9:00 am, on this 20th day of September 2021, in the courtroom of the above court, the Plaintiff, Araya Kessler, by and through counsel, the Hon. Zack McKee, shall make the Motions and tender the Order set out below. In support of the motion, Araya Kessler states as follows:

MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

MOTION TO HOLD DEFENDANTS' MOTION TO DISMISS IN ABEYANCE
UNTIL DISCOVERY CAN BE COMPLETED

1. On January 31, 2021, Eric Kessler was shot and killed by Deputy Nicholas Hibbs.
2. Plaintiff has made numerous attempts to retrieve the body camera footage from the Defendant Deputies prior to filing her complaint. These efforts were made on 03/29/21, 04/09/21, 04/23/21, 05/19/21 and 05/27/21.
3. Other uncontrollable factors not within A.K.'s control propelled the filing of A.K.'s initial complaint.
4. On August 27, 2021, Plaintiff was provided the body camera footage of all four (4) defendant deputies and another officer who arrived later.

5. Plaintiff seeks leave to file this amended complaint as it has not been one year since the killing of Eric Kessler.
6. Plaintiff further seeks leave to file this second amended complaint in the interest of justice and to depict accurately and truthfully what occurred to her father on January 30/31, 2021.
7. The Defendants are not surprised by the complaint as they knew what occurred on January 30/31, 2021, have the body camera footage and reviewed the body camera footage.
8. Plaintiff seeks to clarify and add to the facts, her claims of negligent hiring, aiding and promoting, gross negligence, wrongful death, vindictive damages and all other claims.

9. CR 15.01:

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; **and leave shall be freely given when justice so requires.** A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

10. Plaintiff can amend his complaint to conform to the evidence when the amendment does not surprise or prejudice the defendant. *Tarrants v. Henderson County Farm Bureau*, 380 S.W.2d 274 (Ky. 1964).

11. After a motion to dismiss has been filed the party has a right to amend his pleading. *Kentucky Lake Vacation Land, Inc. v. State Property and Bldgs. Commission*, 333 S.W.2d 779 (Ky. 1960).
12. It was proper for the trial court to allow an amended petition in an action for negligence setting up additional acts of negligence. *Western Union Telegraph Co. v. Reed*, 158 Ky. 552, 165 S.W. 656 (Ky. 1914).
13. It was not error to permit the filing of three amended petitions setting up different acts of negligence relating to the same wrongful act and causes of action. *Louisville & N.R. Co. v. Greenwell's Adm'r*, 155 Ky. 799, 160 S.W. 479 (Ky. 1913).
14. Justice requires the amended complaint as Plaintiff was denied the most pivotal evidence.
15. Furthermore, there is substantially more evidence within the confines of the Defendants and the Kentucky State Police Department. For example, Eric's vehicle and Deputy Nicholas Hibbs personnel file which should have the reason he was fired by the Bullitt County Sheriff's Office in November of 2014.
16. Said amendment will not prejudice the Defendants and will only work an injustice against the Plaintiff.
17. Additionally, as substantial evidence still exists, the Plaintiff respectfully requests that the Court hold the Defendants motion to dismiss in abeyance until such time as discovery can be completed.

WHEREFORE, A.K. respectfully requests that this Court grant her leave to file a second amended complaint and hold the Defendants motion to dismiss in abeyance.

Respectfully,

/s/ Zack McKee
Zack McKee
Colin Edmundson
McKee Law Office, PLLC
908 Minoma Avenue
Louisville, KY 40217
P: 502-792-7119
E: McKeeslaw@gmail.com

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing was mailed, via first class mail, this 1st day of September 2021 to:

Hon. Carol Petitt
Hon. Tess Fortune
VAUGHN PETITT LEGAL GROUP, PLLC
7500 WEST HIGHWAY 146
PEWEE VALLEY KY 40056

/s/ Zack McKee
Zack McKee

COMMONWEALTH OF KENTUCKY
BULLITT CIRCUIT COURT
DIV. 1
CIVIL ACTION NO. 21-CI-00341
—ELECTRONICALLY FILED—

ARAYA KESSLER, a minor, ET AL.

PLAINTIFF

V.

SECOND UNIFIED AMENDED COMPLAINT

NICHOLAS HIBBS, ET AL.

DEFENDANTS

** * * * *

Comes the Plaintiff, by Counsel, and for her claim for relief against the Defendants herein, states as follows:

PRELIMINARY STATEMENT

1. **“I should’ve just opened the windows sooner before you all got here.”** That is the feeling of regret, of remorse, of guilt; that is exactly what Deputy Maurice Raque III told the other Deputies as Eric Kessler (hereinafter, “Eric”) laid lifeless in his car. Deputy Raque III knew that Eric would be alive if Deputies Nicholas Hibbs, Terry Compton and Eric Burdon had not arrived.
2. On or about January 31, 2021, Eric, was seated in the driver’s seat of his vehicle, unconscious and with his head down. Both of Eric’s hands were visible as they lay in his lap holding onto his cell phone. For nearly thirteen (13) minutes, Deputy Raque III, hit on Eric’s car windows striking them over six hundred (600) times in an attempt to wake Eric up.
3. During these thirteen (13) minutes, Deputy Raque III can be heard stating “go ahead and start EMS, **unconscious** male in the car,” “I swear I tell you what, **it’s like he’s sleeping**,” “got dude **passed out**,” “he’s breathing but he’s not agonal

[gasping/struggling] breathing,” “**I aint see no needles or nothing either,**” “somebody is calling you dude, **he won’t even wake up for that,**” “he got all kinds of phone calls.”

4. Deputy Raque III did not know that the individual was Eric Kessler. Eric posed no threat as he was clearly sleeping and Deputy Raque III can be heard stating “yeah I’m ok” as he chuckled and conversed with the civilian witness.
5. Ultimately, on or about January 31, 2021, Eric was fatally shot in the back twice: once in the spine, injuring his T3 vertebra and thoracic spinal cord, and once in the back of his head by the Defendant, Nicholas Hibbs, a Bullitt County Sherriff’s Deputy, in Bullitt County, Kentucky resulting in his death. The State Medical Examiner ruled Eric’s death a homicide. The actions of Deputy Nicholas Hibbs, which resulted in Eric’s death were aided and promoted by Defendants, Sheriff Walt Sholar and Bullitt County Sheriff’s Deputies Maurice Raque III, Terry Compton, and Eric Burdon.
6. Deputies Maurice Raque III, Eric Burdon, Terry Compton and Nicholas Hibbs had their body camera footage on and activated. Said footage is attached hereto as “**Exhibit ONE.**” (Verbatim black and gray USB drive conventionally filed at the Bullitt County Clerks Office.)
7. Eric is survived by his only child, Araya Kessler (hereinafter “A.K.”). A.K. did not know that January 31, 2021, would be the last day her father would be on earth. Eric’s life was taken from him and A.K., just a few hundred yards from where A.K. resides. On April 22, 2021, A.K., turned two (2) years old; this was her first of what will be, seventeen (17) birthdays without her father, Eric. Eric was known to many, but above all he was known as Daddy, to A.K.

PARTIES

1. Plaintiff, A.K., is a minor child, under the age of eighteen (18), who was born April 22, 2019; she is the biological daughter of Alyssa R. Glass and Eric S. Kessler, deceased. A.K. is Eric's only surviving child and heir. A.K. has no court-appointed guardian or committee. DNA testing has confirmed that A.K. is the biological daughter of Eric Kessler. See "**Exhibit TWO**."
2. Plaintiff Alyssa R. Glass (hereinafter "Ms. Glass") is the Biological Mother, Natural Guardian and Next Friend of A.K.; she is a resident of Kentucky, is free from disability, and therefore has a right to sue as Next Friend of A.K. according to the provisions of KRS § 387.300. Ms. Glass's affidavit is attached hereto as "**Exhibit THREE**" and incorporated by reference as if fully set forth herein.
3. Plaintiff's Raymond and Deborah Slaughter (hereinafter "The Slaughters") are the maternal great-grandfather, maternal step great-grandmother and Next Friend of A.K. The Slaughters are residents of Kentucky, free from disability, and therefore have a right to sue as Next Friend of A.K. according to the provisions of KRS § 387.300. The Slaughter's affidavit is attached hereto as "**collective Exhibit FOUR**" and is incorporated by reference as if fully set forth herein.
4. At all times pertinent hereto, the Defendant, Bullitt County Sheriff's Deputy Nicholas Hibbs (hereinafter "Deputy Hibbs"), was employed by the Bullitt County Sherriff's Office as a Sherriff's Deputy, was acting under the color of state law and within the scope of his employment. Defendant Nicholas Hibbs, Bullitt County Sherriff's Deputy is being sued in his individual and official capacity.
5. At all times pertinent hereto, the Defendant, Bullitt County Sheriff's Deputy Terry Compton (hereinafter "Deputy Compton"), was employed by the Bullitt County

Sherriff's Office as a Sherriff's Deputy, was acting under the color of state law and within the scope of his employment. Defendant Terry Compton, Bullitt County Sherriff's Deputy is being sued in his individual and official capacity.

6. At all times pertinent hereto, the Defendant, Bullitt County Sheriff's Deputy Eric Burdon (hereinafter "Deputy Burdon"), was employed by the Bullitt County Sherriff's Office as a Sherriff's Deputy, was acting under the color of state law and within the scope of his employment. Defendant Eric Burdon, Bullitt County Sherriff's Deputy is being sued in his individual and official capacity.
7. At all times pertinent hereto, the Defendant, Bullitt County Sheriff's Deputy Maurice Raque III (hereinafter "Deputy Raque III"), was employed by the Bullitt County Sherriff's Office as a Sherriff's Deputy, was acting under the color of state law and within the scope of his employment. Defendant Maurice Raque III, Bullitt County Sherriff's Deputy is being sued in his individual and official capacity.
8. At all times pertinent hereto, the Defendant, Walt Sholar (hereinafter "Sherriff Sholar"), was the duly elected Bullitt County Sheriff, employed by the Bullitt County Sherriff's Office and employed Deputies Hibbs, Compton, Burdon and Raque III. Defendant Sherriff Walt Sholar is being sued in his individual and official capacity.
9. Defendant, Bullitt County Sheriff's Office, was at all times relevant to this action, operating in Bullitt County, Kentucky.

JURISDICTION & VENUE

10. Plaintiff incorporates by reference, as if fully set forth herein, each and every averment, allegation and statement contained in all previous paragraphs of this Complaint.

11. Plaintiff's claims fall within the subject matter jurisdiction of this Court by virtue of the fact that this Complaint alleges violations of Kentucky law which occurred in Bullitt County, Kentucky.

FACTUAL ALLEGATIONS

1. On or about January 30, 2021, at approximately 11:45 p.m., Joseph Gibbs called 911 to report an abandoned vehicle stopped in the roadway on Cedar Creek Road and advised that no one was around the car. The location was 1676 Cedar Creek Road, Bullitt County, KY 40229, a narrow road.
2. Joseph Gibbs did not report that anyone was armed and dangerous, or that there was drug trafficking or narcotics involved. Joseph Gibbs did not complain that a felony or misdemeanor had been or was being committed; there was no reason to believe a dangerous situation existed and none existed. The only danger created that night was by the Defendants.
3. Deputy Raque III was dispatched to the scene at 11:46 p.m. and arrived at approximately 11:55:48 p.m. Deputy Raque III had his Axon Body Cam on and activated. When Deputy Raque III first arrived he parked his patrol vehicle in front of Eric's vehicle and approached Eric's car.
4. As Deputy Raque III steps out of his patrol car, Eric is not immediately visible. Deputy Raque III approached the vehicle and observed Eric asleep in the drivers seat. The body camera footage does not show whether Eric's car was in park, drive or reverse. However, it appears that Eric's foot was also on the breaks.
5. Deputy Raque III then walks past Eric's vehicle and flashes his flashlight through both of the driver side windows. Deputy Raque III then reads the license plate to dispatch.

Deputy Raque III comes back around to the driver side and again uses his flashlight to scan the inside of Eric's vehicle. Deputy Raque III does not see any weapons, guns, drugs, or drug paraphernalia.

6. Deputy Raque III knocks on the driver side window with his hand and there is no response from Eric. Eric is visibly slumped over and still asleep. Deputy Raque III again goes back to scanning the inside of Eric's vehicle. Deputy Raque III again uses the palm of his hand to knock on Eric's window, but Eric remains asleep.
7. Deputy Raque III then uses his knuckles and palm of his hand to knock on Eric's driver side window thirty-four (34) times. Eric is still sleeping. Then Deputy Raque III uses his flashlight to knock on the passenger side window eleven (11) times. Eric is still sleeping.
8. Again, Deputy Raque III walks to the passenger side and uses his flashlight to scan the inside of Eric's car. Eric's head is hanging down, visibly asleep with both hands in his lap, holding his cell phone.
9. Then Deputy Raque III walks back to his patrol car and retrieves a hat from the trunk and a jacket from the passenger seat. Deputy Raque III walks back to Eric's car and begins knocking on the driver side window. Eric is still sleeping.
10. Deputy Raque III then begins to hit on the driver side window, again, over thirty (30) times, saying "Hello, wake up." Eric remains unconscious. Deputy Raque III takes a deep breath and sighs before beginning to knock on the driver side window again.
11. After being on scene for five minutes and 5 seconds, Deputy Raque III radios dispatch to "go ahead and start EMS, **unconscious** male in the car." Deputy Raque III begins hitting on the driver side window hitting the window over seventy (70) more times. Yelling, "wake up" and "hello."

- At approximately 12:11:47 a.m., dispatch started EMS because Eric was asleep and “appeared to be breathing normally.” Dispatch started EMS C3 (hot response, arriving with lights and sirens) and EMS was okayed at 12:13:05 a.m.
- At approximately 12:08:15 a.m. dispatch requested an additional Deputy and Deputy Burdon acknowledged he was en route. Despite knowing that dispatched requested only one additional unit and that Deputy Burdon was already en route, Deputy Compton “told” Deputy Hibbs that the two (2) of them were going to the scene as well. Upon information and belief, Deputy Hibbs was shadowing Deputy Compton.
- A back up unit was dispatched prior to EMS being dispatched.

12. Then Deputy Raque III hits on the window a few more times and states, **“I am going to move out of the way before he buses my car.”** Deputy Raque III then moves his patrol car behind Eric’s car. Clearly, Eric’s car was not in reverse.

13. According to Deputy Raque III’s incident report, he moves his patrol vehicle behind Eric’s vehicle and activates his emergency lights because he observed Eric’s “foot on the brake pedal” and the “vehicle in drive.”

- It makes no sense for Deputy Raque III to pull his vehicle *behind* Eric’s vehicle if Eric’s vehicle was in drive; for this would not have stopped Eric’s vehicle from moving forward if/when Eric woke up.

14. Deputy Raque III begins hitting on the driver side windows over twenty-five (25) more times. Then Deputy Raque III says, “I swear I tell you what,” **“it’s like he’s sleeping.”**

15. Deputy Raque III then begins hitting on the driver side window over fifty (50) more times and yelling “wake up” “wake up” “wake up”. Deputy Raque III begins hitting on the window over sixty (60) more times and yelling “wake up” “wake up.”

16. Deputy Maurice Raque III would go on to beat on Eric’s car four-hundred (400) more times and chatting with the civilian witness. Maurice Raque III even chuckles with the civilian witness as it related to Eric being in such a deep sleep. It simply was not a hostile or life-threatening situation.

17. Then Deputy Raque III states, he “got dude passed out” and “I’m about to bust his window.”
18. Deputy Raque III then informs dispatch “**yeah I’m ok, [Eric] got his foot on the break but he’s in drive that’s the only reason why I haven’t done what I’ve done yet.**” Deputy Raque III observed and stated that “[Eric is] **breathing but he’s not agonal breathing.**”
19. For a moment, Deputy Raque III thought that Eric may have overdosed; however, Deputy Raque III no longer thought that after observing and stating that he “**aint see no needles or nothing either**” and that “its too cold and nasty to be out here.”
20. Deputy Raque III can be heard yelling “hey dude,” “wake up, wake up, wake up, wake up, wake up,” “somebody is calling you dude, he won’t even wake up for that,” “he got all kinds of phone calls.”
21. Deputy Raque III was on scene for approximately thirteen (13) minutes, attempting to wake Eric up. As Eric lay sleeping, he posed no threat, let alone an imminent threat, to any deputy or civilian.
22. Deputies Burdon, Compton and Hibbs arrive approximately the same time. From the moment they arrive their actions are overly are overly aggressive and only escalate the encounter. Deputy Burdon parks his patrol vehicle “behind Deputy Raque’s patrol car.”
- If Eric’s vehicle was in drive, then it makes no sense for Deputy Burdon to park behind Deputy Raque III and not park in front of Eric’s vehicle.
23. Prior to his arrival and according to Deputy Hibbs, Deputy Raque III could be heard across the radio “beating” on Eric’s car window.

24. Deputy Raque III had been on scene for 12 minutes and 38 seconds, when Deputy Burdon appears and Deputy Burdon begins violently banging on the front windshield. Deputy Raque III tells Deputy Burdon that he has tried everything.
25. Deputy Raque III had been on scene for 12 minutes and 48 seconds when Deputy Nicholas Hibbs appeared.
26. Deputy Raque III advised Deputy Compton to position his patrol vehicle in front of Eric's vehicle with his push bar against Eric's front bumper to prevent the vehicle from moving.
27. Deputy Hibbs motions and tells Deputy Compton to pull his patrol car in front of Eric's car. The civilian witness then helps Deputy Compton park his patrol vehicle in front of Eric's car, about an inch away from Eric's car.
28. Eric is still asleep, and the scene is so non-threatening that a civilian witness is in the middle of the scene walking and amongst the Deputies and providing help.
29. Deputy Hibbs then comes back to Eric's vehicle and flashes his light in the driver side window and asks, "is that Eric Kessler?" Deputy Raque III responds, "**I don't know.**"
30. At no point was there a gun or any weapon visible or in reach. Deputy Raque III did not know who the individual was. Deputy Raque III did not believe Eric to be armed and dangerous. At no point did Eric brandish a gun or any weapon, nor reach for any gun or weapon.
31. Deputy Hibbs then states, "I think that's Eric Kessler." "I think that might be Eric Kessler, he carries a gun and shit." While Deputy Hibbs is making these statements, he is also flashing his light into the driver side window and looking all around. Hibbs even

bends down to try and get a better look at Eric's face as Eric's head is still slumped over and hanging down.

32. None of the other Deputies or civilian witness responds to Deputy Hibbs. First, Eric is asleep; and second, there is no gun or weapon ever visible. Not one time did any Deputy see a gun or weapon or think that Eric even had a gun or weapon. Nor did they know who he was.
33. As Deputy Hibbs walks off, he says "I'm pretty sure its him." Deputy Hibbs walks over to the passenger side. Subsequently, the Deputies decide to bust out a car window and Deputy Raque III asks "are yall ready." At which point they then discuss which window to actually break.
34. They *collectively* make the decision to break the front passenger side window and Deputy Raque III states "yall ready, I've never done this before." Deputy Raque III is directed by the other deputies to hit the corner of the front passenger side window and Deputy Raque III begins to do so.
35. As Deputy Raque III is pounding on the window you can see and hear glass breaking. Deputy Raque III stops and then Deputy Hibbs begins to violently and aggressively beat the same window. Deputy Hibbs does so eleven times, with a flashlight, causing a visible hole.
36. Deputies can be heard chuckling and one stating "I have a sledgehammer." Around this time Deputy Burdon walks back to his patrol vehicle to retrieve a "hammer" and then Deputy Compton walks to his patrol vehicle to look for something to "cut out" Eric's car window.
- Upon information and belief, the defendant Deputies made the collective decision to trap an asleep, twenty (20) year old, non-threatening Eric in; and prevent him from

leaving once they began beating, breaking, and shattering his car windows. They knew or should have known such unnecessary violence would startle and awaken Eric.

- Upon information and belief, Eric was asleep up until this point and not posing any threat or danger or immediate threat or danger to any of the Deputies. The Defendants collective actions of beating, damaging and breaking into Eric's vehicle were careless, unreasonable and malicious.

37. As Deputy Hibbs is breaking through the front passenger side window Eric begins to

wake up; Eric is dazed, disoriented, sleepy and startled by the Deputies. Eric's eyes are squinted and not fully open as he slowly begins to move.

38. This should have been the end. The Deputies did not tell Eric he was under arrest or what

he was under arrest for. Eric had not committed a felony. Eric was not under suspicion that he had committed a felony. There was no weapon. They did not know who he was.

There was no need to get sledgehammers and otherwise frighten and threaten Eric.

Again, Eric had been asleep.

39. Deputy Hibbs then states "is that Kessler, I'm pretty sure that's him" while flashing his

light in Eric's face from the passenger side. Deputy Hibbs is also poking his baton through the hole in the window that was created.

40. As Eric is still waking up, the Deputies can be heard yelling "put the car in park." From

Deputy Burdon's body camera footage, Deputy Burdon is at the driver's side window and is yelling at Eric to put the car in park while holding a sledgehammer. You can see the palm of Eric's hand, in his lap, holding his cell phone. Eric is looking at Burdon and Eric nods his head yes and puts his hands up in the air.

41. The Deputies are all yelling at 20-year-old Eric, who is not even fully awake, from

different directions, flashing lights in his face from different directions, menacing him with sledgehammers and batons and in an overly aggressive and unnecessary display of

force. It must be emphasized that Eric was simply asleep/unconscious just seconds ago.

As they continue to yell, Eric looks at and tries to roll down the driver side window. Still not fully awake.

42. Deputy Burdon is also flashing his light directly in Eric's face. You can see Eric squinting his eyes, trying to see. Eric then puts his face close to the driver side window and looking out of the driver side window. Deputy Burdon yells "put it in park or I am taking the window out." Eric again puts his hands up in the air.
43. Deputy Burdon is trying to open the driver side door. Another Deputy yells, the car is in park. Eric looks to his left, through the driver side window and backs up. As Eric backs up Burdon tells deputy Raque III to move so he swings his sledgehammer with such force that the driver side rear-view mirror is knocked off. No one was directly behind Eric's vehicle and Eric was not aiming towards anyone.
- Eric's reversing was so non-threatening that Deputy Burdon felt safe and comfortable enough to strike the car with a sledge-hammer.
 - As Eric reversed, none of the Defendant Deputies fired their service weapon at Eric's reversing vehicle because none of the Defendant Deputies or civilian were in Eric's immediate path, had no reason to believe and did not believe that themselves or another would suffer serious bodily injury.
 - Eric did not reverse with such force, speed or acceleration as to cause serious damage to Deputy Raque's patrol vehicle or propel Deputy Raque's patrol vehicle into Deputy Burdon's patrol vehicle.
 - Only Deputy Raque III completed an "Incident Report Form" for "equipment damage," wherein; Deputy Maurice Raque III alleges "damage to rear left corner of the vehicle, including the whole rear bumper."
44. As Eric's bumper hits the bumper of Deputy Raque III's patrol vehicle Eric is jerked and appears startled. Deputy Compton's patrol vehicle is directly in front of Eric's vehicle.

Directly behind Eric's vehicle is Deputy Raque III's patrol vehicle, which is bumper to bumper with Eric's.

45. On Eric's left, the driver's side, is Deputies Raque III, Compton, Burdon and the civilian witness. Eric is looking to the left. It is also nighttime. Eric does not turn left towards any of them. Eric was not trying to run over anyone.
46. Deputy Hibbs, who was on the passenger side of Eric's vehicle, positioned himself off the road up in the grass on a small hill.
47. Eric puts the car in drive and begins to pass everyone to exit the hostile situation. Deputy Burdon then strikes the driver side window with the sledgehammer with such force that it sounds like a gun shot. The force of the sledgehammer to the driver's side window causes a gaping hole in the driver side window. This clearly frightened and distracted Eric. This was aimed to strike Eric in the head.
48. Then Deputy Hibbs fires the first shots. The trajectory of these first shots through the front windshield, like the body camera footage, will further prove that Deputy Hibbs was not directly in front of Eric's vehicle. Eric only turned right to go around Deputy Compton's patrol vehicle, and the other Deputies and civilian witness in an effort to retreat from Deputy Burdon's clear assault. Eric was not driving at Deputy Hibb's or anyone else.
49. As Eric is going around Deputy Compton's patrol vehicle. See, "**Exhibit FIVE.**" Exhibit Five is a still photo of Deputy Raque III's body camera footage which shows Deputy Raque III's position. Behind Deputy Raque III is the civilian witness. Pictured in the still photo is Deputy Compton on the far left. In the Middle is Deputy Burdon. On the far right up on a small hill is Deputy Hibbs.

50. No one is in Eric's direct path, and everyone is behind Eric's vehicle as he pulls alongside Deputy Compton's vehicle. Deputies Compton, Raque III, and the civilian are standing and watching Eric drive away. Neither Deputy attempts to stop him, draw their weapon or pursue him. No Deputy is in Eric's direct path as they are behind him. None of them fear for their life or the life of others.

51. Deputy Burdon jogs a few steps and catches Eric's car; he swings his hammer towards the driver side back door. Eric was traveling slowly, through the wet grass and mud; so slow that Deputy Burdon was able to catch him within a few steps at a jogging pace. Deputy Burdon never draws his weapon either.

52. Deputy Burdon stated in his January 31, 2021, incident report that "as the vehicle passed me, *I threw my hammer at the vehicle and then heard gun shots. I moved away from the vehicle and saw the vehicle go around Deputy Compton's cruiser.*"

- What is clear is that Deputy Burdon did not believe that the use of deadly force was necessary as he threw his hammer at Eric's car. Moreover, Eric's car was not moving that fast as Deputy Burdon was able to throw a hammer at the car.
- Also, Deputy Hibbs placed other Deputies, specifically Deputy Burdon in the line of fire. Deputy Hibbs' actions were reckless and uncalled for.
- Deputy Burdon saw Eric go around Deputy Compton's patrol vehicle and not at Deputy Hibbs. Deputy Burdon does not state in his January 31, 2021, incident report that Eric was driving toward Deputy Hibbs or that he feared for Deputy Hibbs' safety. Deputy Hibbs does not fire one shot into either passenger side door as Eric passes him.
- Eric was not headed towards Deputy Hibbs, who was off the road, in the grass, in an elevated position but instead going around Deputy Compton's patrol vehicle. Eric was attempting to avoid the deputies and any civilian and their vehicles by simply going around them, not at them.
- Deputies Raque III, Burdon and Compton all declined to draw or fire their service weapons; not in self-defense and not in defense of another. They could not have believed and did not believe that Eric was headed towards any of them or Deputy Hibbs or that any of them or Deputy Hibbs were in danger of suffering serious bodily injury.

53. After Eric had passed everyone, Deputy Hibbs was behind Eric's vehicle. Deputy Hibbs begins firing the deadly shots after being on scene 2 minutes and forty-seven 47 seconds. Deputy Hibbs fires eight (8) shots.
54. As Deputy Hibbs is firing, Deputy Burdon retreats again from the gun fire. Deputy Hibb's is shooting through the back windshield and marching towards the back of Eric's car. Deputy Hibb's body camera footage shows that he was never directly in front of Eric's vehicle and nor was Eric trying to hit or run over Deputy Hibbs. To the contrary. Eric was trying to go around Compton's vehicle that was parked in front of his and avoid everyone.
55. Deputy Raque III's body camera footage clearly shows Deputies Compton, Burdon, Hibbs and himself behind Eric. "**Exhibit FIVE.**" The civilian was behind Deputy Raque III. No one is ever in Eric's direct path. Eric was not trying to drive at any Deputy or civilian.
56. Deputy Hibbs carelessly, intentionally, and recklessly shoots Eric multiple times from behind, striking Eric in his spine and in the back of his head. This use of deadly force was careless, wanton, and malicious. According to witnesses, about eight (8) shots could be heard. That was in fact how many shots were fired the second time.
57. According to the State Medical Examiner's report and photos the bullet went straight through Eric's brain, back through front, going away from the Deputies. The other bullet hit Eric's spine.
58. According to Deputy Compton, Eric drives "off the road up a small embankment and continued on as Deputy Hibbs fired his weapon an unknown amount of times through the rear glass."

59. According to Deputy Hibbs, “*the vehicle passed me* and continued in the direction where I believed Deputy Compton was standing near his vehicle. At this time, I fired my weapon an unknown amount of times through the back windshield of the suspect vehicle in fear of Deputy Compton’s safety.”

- “Exhibit FIVE” clearly shows this is not true.
- However, Deputy Compton was clearly behind Eric’s vehicle, on the same side as Deputies Raque III, Burdon and the civilian witness. Moreover, Deputy Compton did not fire his service weapon out of fear or belief that Eric was headed towards him.
- Neither Deputy Raque III nor Deputy Burdon state that they believed Eric was headed towards Deputy Compton. The body camera footage clearly shows Eric was not. Deputies Compton, Raque III and Burdon all see Eric’s vehicle pass them.

60. Eric, presumably dead or paralyzed, has his foot on the gas pedal as his car veers off the road. Eric and the car travel a long distance, going through a fence, over a driveway, passing a home, and over a small creek before finally crashing against some trees, where Eric and his car both come to rest. This, according to the Defendants, was safer than simply letting Eric leave.

61. At the time Eric was shot by the Defendant, Deputy Hibbs, Eric did not pose a threat of serious bodily injury to any person and there was no basis to believe that Eric posed a threat of serious bodily injury to any person.

62. The use of a deadly weapon and deadly force by the Defendant, Deputy Hibbs, was unreasonable and in violation of clearly established law prohibiting assault, battery and gross negligence.

63. The Deputy Defendants actions displayed an extreme indifference to the value of human life and acted without due regard for public safety. The Deputy Defendants were at all times the initial and only aggressor.

64. The Defendant, Deputy Hibbs' use of a deadly weapon, as defined by KRS § 500.080(4), a gun, resulted in the death of Eric. Such use was carless, reckless, willful, wanton, malicious, grossly negligent, and not in self-defense or in defense of others.
65. The Defendant Deputies actions were not undertaken in self-defense or the defense of others. The use of a deadly weapon and deadly force was not justifiable, and the defendants did not believe or could not have believed that such deadly force was reasonably necessary or in good faith, to protect themselves from death, serious physical injury, kidnapping, sexual intercourse, a felony involving the use of force, or defensive force regarding a dwelling, residence or occupied vehicle as defined by KRS 503.055.
66. Eric posed no threat to any of the deputies or civilians, especially as they watched his taillights reseed. Eric did not display use of, or imminent use of unlawful physical force.
67. The Defendants used both unnecessary force and violence when they fired multiple gun shots, one hitting Eric in the back of the head and the other hitting Eric in the spine.
68. The Deputy Defendants assaulted Eric as described above. An assault requires the threat of unwanted touching. Such threat of unwanted touching was described above.
69. As described above, the Deputy Defendants committed a battery upon Eric, which requires actual unwanted touching.
70. The Defendants used excessive and unlawful force upon Eric.
71. Defendant Deputies Raque III, Burdon and Compton, through their acts and omission, were aiding and/or promoting Deputy Hibbs, which resulted in Eric's death.
72. Defendant Deputies Raque III, Burdon and Compton failed to intervene and owed a duty to Eric to prevent Deputy Hibbs from using unlawful force and deadly force.

73. Defendant, Sheriff Walt Sholar, aided and promoted the death of Eric S. Kessler by negligently hiring, retaining, supervising and training Deputies Nicholas Hibbs and Eric Burdon.

74. The Defendant, Sheriff Walt Sholar, is liable for the acts and omissions of Deputies Raque III, Burdon, Compton and Hibbs. KRS § 70.040.

75. The Defendant, Bullitt County Sheriff's Office & Defendant Sheriff Sholar, employed the Defendants, Deputies Hibbs, Raque III, Burdon and Compton; and are therefore vicariously liable (*Respondeat superior*) for their acts and omissions. KRS § 70.040.

THE DEPUTIES BODY CAMERA FOOTAGE AFTER ERIC IS KILLED AND HIS CAR COMES TO A STOP

76. As they approach Eric's car the Deputies have their guns drawn and are yelling for Eric to get out of the car. Eventually, they realized that they have shot Eric in the back of his head. Deputy Raque III breaks out the back windshield with his sledgehammer. Blood can be seen streaming down the sides of Eric's face as he lays lifeless and slumped over.

77. Deputy Burdon tells Deputy Hibbs, "you hit him in the head, you hit him in the head brother, he's done." Deputy Burdon then proceeds to ask the other deputies if they are ok and checks the other deputies to see if they were shot by Hibbs.

78. Deputy Hibbs goes up to the passenger side window, bends down and uses his flashlight to look into the passenger window to see Eric's deceased body.

79. Burdon hits the passenger side window a few more times with his ASP baton before being told to stop.

80. Deputy Raque III states "**I should've just opened the windows sooner before you all got here.**" Deputy Raque III goes on to say "this is my third officer involved shooting I been in."

81. Deputy Burdon responds, "you were just trying to wake him up," "I guess we waited too long to go at that window, huh?" Deputy Compton responds "yeah." Then Deputy Burdon tells Deputy Raque III, **"I guess in hindsight being 20/20 we probably should have put a car right up against the back of him too."**

82. Deputy Raque III was the first on scene and Eric had done nothing. All Deputy Raque III was doing was trying to wake Eric up so he can go on his way. Deputy Raque III knows that had it just been him, the incident would not have occurred.

83. Deputy Burdon tells Deputy Raque III to "watch Hibbs because he's the one that shot him." Deputy Raque III tells Hibbs "you need to get out of here, nothing against you but this is my third officer involved shooting" and chuckles.

84. Deputies Burdon and Raque III continue to state, "I'm fine," "I'm good." Deputy Burdon, still not knowing its Eric Kessler, states, "that guy looks familiar." Both Deputy Raque III and Burdon discuss that Hibbs said he recognized Eric. Another Deputy warns the Deputies to stop talking and don't make any statements.

85. **Deputy Compton goes around the crime scene telling other deputies not to move their vehicles and where to tape the crime scene, but he moves his vehicle, which is a part of the crime scene. The position of Compton's vehicle and where Eric was driving, proves that Eric was driving around the vehicle, but the vehicle was moved and not preserving the crime scene.**

86. Deputy Compton tells other crime scene investigators that the shooting occurred at Deputy Raque III's vehicle but it happened at Deputy Compton's vehicle that Deputy Compton moved.

87. Deputy Compton then tells EMTS: **“He was passed out at the car, I mean out, for a long time**, beating on the windows for a long time, never would wake up. We started trying to break the passenger window. He finally come around....I had mine parked nose to nose with his so if he tried to go forward, he couldn’t....**He goes around my car....”**
88. Deputy Raque III states, “I lost my flashlight” and the other deputies chuckle as one says “F**K a flashlight.”
89. An EMT tells Deputy Burdon “I’m sorry buddy” to which Deputy Burdon responds, “I’m the hammer guy, I’m just waiting to collect my hammer” and chuckles. Showing no remorse. The EMT responds “it still sucks.”
90. Deputy Burdon confirms to the EMT that upon arrival Eric was unconscious. Deputy Burdon also confirms that the hole on the passenger side window was “us trying to get in.”
91. EMT’s asked to check out the Deputies and Deputy Compton states **“I don’t think they got hit, they didn’t think they got hit.”** Deputy Burdon then says **“I looked everybody over and they did not have any marks on nobody.”**
92. Deputy Hibbs tries to mouth something to Deputy Compton. Then Hibbs says, “I don’t want to say anything on camera.”

DESTRUCTION OF POWER TO LABOR AND EARN INCOME
AND
LOSS OF PARENTAL CARE

93. Eric, at the age of twenty (20), was healthy, in good physical condition, and had a life expectancy of at least sixty (60) years. The Defendants actions resulted in the destruction of Eric’s capacity to labor and earn income.

94. Eric had the ability to work (employment) and had already held a few different jobs during his short time on this earth.
95. Eric was mentally healthy and sound and had a high school diploma; he was physically healthy with the ability to work and retain employment. Upon information and belief, Eric was employed at an industrial factory.
96. As a result of Eric's death, A.K. has and will continue to suffer, the loss of love, loss of affection, loss of companionship, loss of services, loss of assistance, loss of aid, loss of society, emotional distress, and loss of parental guidance.
97. A.K. will not be able to be clothed, fed, bathed, or receive any other domestic tranquility, from her father. Such attentive acts on the part of Eric, in the performance of ordinary household duties, will be missed by A.K.
98. As a result of Eric's death, A.K. will not have her father for the first day of school, father daughter dances, birthdays, graduations, field trips, or sports such as cheerleading and dance.
99. A.K. will not have her father for Father's Day, prom, fatherly advice, dating advice, how to ride a bike, how to drive, play dates, security, protection, food, housing, conversation, friendship, emotional/physical health, how a man should love and care for her and question why other children have dads and she does not.
100. Upon information and belief, studies show that fatherless children have a higher risk of negative outcomes such as, poverty, behavioral problems, lower educational success, unhealthy relationships in adulthood, relationships with men as adults that can trigger unresolved issues, feeling being abandoned resulting in isolation, therapy, depression, suicide, eating disorders, obesity, early sexual activity, addictions formation,

difficulty building and holding on to loving relationship, self-esteem aspirations, confidence, self-love, mental disease, pre-impact fear and day care.

101. A.K. and Eric had a clearly established, close bond and relationship; they lived together, he fed her, changed her diapers, bathed her, played with her, nurtured her, consoled her and provided all other forms of domestic tranquility of a parent. Some pictures of A.K. and her father are attached hereto as **Collective “Exhibit SIX”**.

NEGLIGENT HIRING, TRAINING AND RETENTION

102. Defendant Hibbs last day at Pioneer Village Police Department was December 31, 2020. **“Exhibit SEVEN”**. Deputy Hibbs began employment as a Bullitt County Sheriff’s Deputy on or about January 1, 2021, and he had been employed for approximately thirty (30) days.
103. Defendant Hibbs applied to Mount Washington Police Department in June of 2013 and was not selected for eligibility after the oral interview.
104. Defendant Hibbs was previously employed by the Bullitt County Sheriff’s Office as a reserve Deputy. He was hired in July of 2013 and terminated in November 2014.
105. Deputy Hibbs responsibilities included volunteer work at special events, he served as a ride along with other full time road Deputies and served warrants.
106. In November 2014, the Bullitt County Sheriff’s Office either terminated Deputy Hibbs, asked him to resign, or Deputy Hibbs resigned while under investigation. **“Exhibit EIGHT”**.
107. In September of 2015, during the preliminary screening of Defendant Hibbs’ by the Pioneer Village Police Department which utilizes information derived from the LESI Personal History Questionnaire and Psychometric testing results to evaluate a prospective

applicants suitability for a job in law enforcement, noted Deputy Hibbs “may be sensitive to criticism and/or display unusually strong needs for status and recognition.”

108. In a June 7, 2016, applicant interview questionnaire with Pioneer Village Police Department; when asked to explain your feelings toward the use of deadly force, Deputy Hibbs responded that if it’s to protect himself or others it is “no problem.”

109. Deputy Hibbs started school at the Kentucky Department of Criminal Justice on or about November 14, 2016, and left on or about May 19, 2017.

110. Defendant Hibbs was hired by the Pioneer Village Police Department on August 1, 2016, and left December 31, 2020.

111. While employed by the Pioneer Village Police Department and on August 12, 2021, a female citizen complained that Defendant Hibbs had no reason to pull her over and was rude when interacting with her.

112. While employed at Pioneer Village Police Department and on January 9/10 2018 Officer Hibbs assisted Shepherdsville PD in a pursuit averaging 55-80 mph. Indiana State Police deployed a stop stick disabling the vehicle.

113. While employed at Pioneer Village Police Department and on August 11, 2019 another citizen filed a complaint against Hibbs stating he was rude and cussed him out. Hibbs was given a verbal warning and told to “act in a more professional and courteous manner.”

114. While employed at Pioneer Village Police Department and on January 08, 2020, Hibbs was told if he did not follow what was ordered per Pioneer Village Chief of Police, he would be subject to disciplinary action.

115. Deputy Hibbs is an avid hunter.

116. Deputy Hibbs has a record of being careless such as being intoxicated in public places.
117. Deputy Burdon was hired as a Bullitt County Sheriff Deputy on March 27, 2020 but began employment after March 31, 2021. **“Exhibit NINE”**
118. On October 9, 2019, Deputy Burdon was employed by the Jefferson County Sheriff’s Office and was suspended one day without pay. **“Exhibit TEN”** Deputy Burdon was accused of being reckless, endangering the public and his actions could have resulted in injury or loss of life.
119. At the time Deputy Burdon was pursuing a subject who had turned down the wrong street. Deputy Burdon was driving at extreme speeds reaching 100 MPH and recklessly driving on surface streets. Deputy Burdon almost hit multiple cars, driving on the wrong side of the road, disregarding traffic signals and otherwise driving in an extremely dangerous manner.
120. Deputy Burdon filled out many other use of force incident reports involving minor duties or infractions, such as serving a warrant or a traffic stop. Said use of force incident reports were filled out on January 31, 2017, February 3, 2017, July 28, 2017, December 7, 2017, February 23, 2018, April 6, 2019, August 24, 2019, and on November 08, 2019.
121. Deputy Raque III was hired as a Bullitt County Sheriff Deputy on February 12, 2020.
122. Deputy Compton was hired as a Bullitt County Sheriff’s Deputy on April 1, 2020.

CAUSES OF ACTION

COUNT I: WRONGFUL DEATH BY LETHAL WEAPON

123. Plaintiff incorporates by reference, as if fully set forth herein, each and every averment, allegation and statement contained in all previous paragraphs of this Complaint.
124. The Defendant, Deputy Hibbs, carelessly, wantonly or maliciously used a deadly weapon, not in self-defense, resulting in the wrongful death of Eric, resulting in damages recoverable under KRS 411.150, KRS 411.140 and KRS 411.133.
125. The Defendant Walt Sholar and the Defendant Deputies actions and omissions aided and promoted Defendant Deputy Hibbs causing the wrongful death of Eric, resulting in damages recoverable under KRS 411.150, KRS 411.140 and KRS 411.133.
126. Plaintiff's damages caused by the Defendants conduct include Eric's physical and emotional pain and suffering, the destruction of his power to labor and earn income, funeral and burial costs, as well as any other damages to which Plaintiff may be entitled.
127. Plaintiff seeks the recovery of damages caused as a result of Eric's death. In addition to compensatory damages, interest, expenses, and court costs, A.K. is entitled to vindictive (punitive) damages.

COUNT II: FAILURE TO INTERVENE AND AIDING AND PROMOTING

128. Plaintiff incorporates by reference, as if fully set forth herein, each and every averment, allegation and statement contained in all previous paragraphs of this Complaint.
129. Deputies Raque III, Burdon and Compton knew or had reason to know that Deputy Hibbs would use or was using deadly and excessive force.
130. Deputies Raque III, Burdon and Compton all had the opportunity and means to prevent the harm from occurring to Eric.

131. Deputies Raque III, Burdon and Compton all failed to take reasonable steps to prevent said harm from occurring to Eric.

132. Deputies Raque III, Burdon and Compton aided and promoted Deputy Hibbs which resulted in the death of Eric.

133. Sheriff Walt Sholar, aided and promoted in the death of Eric by negligently hiring Deputy Hibbs and Deputy Burdon.

134. In addition to compensatory damages, interest, expenses, and court costs, A.K. is entitled to vindictive (punitive) damages.

COUNT III: ASSAULT & BATTERY

135. Plaintiff incorporates by reference, as if fully set forth herein, each and every averment, allegation and statement contained in all previous paragraphs of this Complaint.

136. On January 31, 2021, the Defendants, without the privilege or authority to do so, committed the torts of assault and battery upon Eric.

137. As a result of this conduct, Eric suffered harm and physical injury.

138. As a proximate result of said conduct, Eric suffered damages, including but not limited to physical pain and suffering, severe emotional distress, fear, anxiety, embarrassment, discomfort, humiliation and medical expenses.

139. In addition to compensatory damages, interest, expenses, and court costs, A.K. is entitled to vindictive (punitive) damages.

COUNT IV: EXCESSIVE FORCE

140. Plaintiff incorporates by reference, as if fully set forth herein, each and every averment, allegation and statement contained in all previous paragraphs of this Complaint.

141. The Defendants each had a statutory duty, pursuant to KRS § 431.025, to refrain from using unnecessary force upon Eric.

142. The conduct described above constituted excessive use of force in violation of KRS § 431.025.

143. As a proximate result of said conduct, Plaintiff (decedent Eric Kessler) suffered damages, including but not limited to death, physical pain and suffering, severe emotional distress, fear, anxiety, embarrassment, discomfort, humiliation and medical expenses.

144. In addition to compensatory damages, interest, expenses, and court costs, A.K. is entitled to vindictive (punitive) damages.

COUNT V: NEGLIGENCE & GROSS NEGLIGENCE

145. Plaintiff incorporates by reference, as if fully set forth herein, each and every averment, allegation and statement contained in all previous paragraphs of this Complaint.

146. It was the Deputy Defendants duty to exercise ordinary care for the safety of other persons, including Eric, to avoid foreseeable injuries.

147. The Deputy Defendants knew or should have known Eric was at risk of injury and/or death.

148. The Deputy Defendants breach of duty was a substantial factor in causing Eric's death.

149. The Deputy Defendants wanton, reckless, malicious, or oppressive conduct manifested an extreme indifference to the lives and safety of others, including Eric.
150. Each of the Defendants breached their respective duties of reasonable care owed to Eric with said breaches serving as direct and proximate causes of his injuries and Eric's death.
151. These violations of duties include all those previously set forth in this Complaint and actions, which Deputy Defendants failed to follow, each of which were a substantial factor and direct and proximate cause of the damages suffered by Eric.
152. In addition to compensatory damages, interest, expenses, and court costs, A.K. is entitled to vindictive (punitive) damages.

COUNT VI: INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS

153. Plaintiff incorporates by reference, as if fully set forth herein, each and every averment, allegation and statement contained in all previous paragraphs of this Complaint.
154. Deputy Defendants conduct was outrageous and caused severe emotional distress to Plaintiff.
155. In addition to compensatory damages, interest, expenses, and court costs, A.K. is entitled to vindictive (punitive) damages.

COUNT VII: VINDICTIVE DAMAGES (PUNITIVE DAMAGES)

156. Plaintiff incorporates by reference, as if fully set forth herein, each and every averment, allegation and statement contained in all previous paragraphs of this Complaint.

157. The Defendants failed to exercise reasonable care and their conduct was grossly negligent by acting with careless, wanton and/or reckless disregard for the life, safety and property of Eric.

158. The Deputy Defendants conduct was so outrageous as to shock the conscience. Deputy Defendants conduct exhibited a reckless disregard for Eric's rights and was grossly negligent, malicious, sadistic, intentional, willful, wanton, unnecessary, oppressive, reckless and fraudulent. The Deputy Defendants engaged in this conduct with a flagrant indifference for the value of human life with a subjective awareness that Eric would be seriously injured or killed. Accordingly, A.K. is entitled to vindictive (punitive) damages.

159. Defendants took no action to remedy their conduct which lasted for over twenty-seven (27) minutes. As such, vindictive (punitive) damages are necessary against the Deputy Defendants.

160. In addition to compensatory damages, interest, expenses, and court costs, A.K. is entitled to vindictive (punitive) damages.

COUNT VIII: NEGLIGENT HIRING, TRAINING, SUPERVISION AND RETENTION

161. Plaintiff incorporates by reference, as if fully set forth herein, each and every averment, allegation and statement contained in all previous paragraphs of this Complaint.

162. As Deputy Hibbs was previously terminated by the Bullitt County Sheriff's Office due to a pending investigation; and had numerous complaints from Pioneer Village, the Defendants knew or should have known, Deputy Hibbs should not have been hired, re-hired or retained.

163. Deputy Burdon has an extensive record marked by numerous uses of force, as well as a record of being disciplined while carrying out minor functions and task. As such, the Defendants knew or should have known, he should not have been hired.
164. The Defendants, Sheriff Sholar, and Defendant, Bullitt County Sheriff's Office, were negligent in hiring, retaining, training and supervising Deputy Hibbs and Deputy Burdon and failed in their attempts to properly train, supervise, and instruct Defendant, Deputy Hibbs and Deputy Burdon.
165. The acts and/or omissions of the Deputy Defendants caused the injury and death of Eric, for which the Defendants are directly and vicariously liable.
166. In addition to compensatory damages, interest, expenses, and court costs, A.K. is entitled to vindictive (punitive) damages.
167. Deputies Hibbs and Burdon were unfit for the employment; Sheriff Solar and the Sheriff's Department knew or reasonably should have known of Hibbs and Burdon's unfitness.
168. Eric's death was caused by the negligent hiring of Hibbs and Burdon. Sheriff Sholar and the Bullitt County Sheriff's Office did not exercise reasonable care to protect Eric from Deputy Hibbs and Deputy Burdon who Sheriff Sholar and the Bullitt County Sheriff's Office Knew -- or should have known -- posed a risk of harm to the public.
169. Deputy Hibbs was fired from a volunteer/part-time position and the Bullitt County Sheriff's Office and Sheriff Sholar should have known that he would be caring a weapon and interacting with the public.

170. Sheriff Sholar and the Bullitt County Sheriff's office were negligent in their screening for they knew and should have known that Deputy Burdon was unfit and Deputy Hibbs was previously employed by them and was under investigation by them and fired and/or asked to resign while Deputy Hibbs was under investigation.

171. Deputies Burdon and Hibbs have a propensity for violence and other potentially dangerous characteristics and were placed in positions of employment for which such characteristics rendered them unfit.

172. Sheriff Sholar and the Bullitt County Sheriff's Office had actual knowledge of Deputy Burdon's and Deputy Hibbs' unfitness for employment yet re-employed Deputy Hibbs anyways. Sheriff Sholar and the Bullitt County Sheriff's Office knew or should have known of the risk that Deputy Hibbs' and Deputy Burdon's employment created.

COUNT IX: VICARIOUS LIABILITY (KRS 70.040)

173. Plaintiff incorporates by reference, as if fully set forth herein, each and every averment, allegation and statement contained in all previous paragraphs of this Complaint.

174. Defendant Sheriff Sholar and the Bullitt County Sheriff's Office is responsible for the acts or omissions of its deputies.

175. In addition to compensatory damages, interest, expenses, and court costs, A.K. is entitled to vindictive (punitive) damages.

COUNT X: LOSS OF PARENTAL CARE (CONSORTIUM)

176. Plaintiff incorporates by reference, as if fully set forth herein, each and every averment, allegation and statement contained in all previous paragraphs of this Complaint.

177. As a direct and proximate result of the actions of the Defendants, acting within the scope of their employment as a Bullitt County Sheriff's Deputy, Plaintiff, A.K., suffered a loss of loss of love and affection, society, companionship, comfort, protection, attention, advice, counsel, care, training, parental care, guidance and education as a result of the death of her father, Eric, for which she is entitled to be compensated and reimbursed by all the Defendants.
178. That as a further result of the gross negligence of the Deputy Defendants, as described above and within the course and scope of their employment as a Bullitt County Sheriff's Deputy, the Plaintiff is entitled to an award of vindictive (punitive) damages in an amount to be determined by the trier of fact.
179. In addition to compensatory damages, interest, expenses, and court costs, A.K. is entitled to vindictive (punitive) damages.

COUNT XI: VIOLATION OF OPEN RECORDS REQUEST

180. The Bullitt County Sheriff's office is refusing to release Open Records Requests and are not responding to Open Records Requests.
181. All the while, KSP is shaping an incorrect narrative of the events, see:
https://www.wdrb.com/news/wdrb-video/person-shot-and-killed-by-bullitt-county-deputy-sheriff/video_45809ba9-c200-5754-a3bc-622d867f30c5.html
<https://www.wave3.com/2021/01/31/bullitt-county-officer-involved-shooting-under-investigation-by-ksp/>
182. This both is prejudicial and harmful to the above styled action. No showing of harm has been articulated or given.

183. Plaintiff, through counsel, made five (5) lawful Open Records Requests pursuant to KRS 61.870, et seq., on April 23, 2021, in which she sought Defendants' production of several different records, mainly body camera footage.
184. On May 10, 2021, Plaintiff was informed that the requested records would not be released pursuant to KRS 61.878(1)(h) & KRS 17.150(2).
185. Plaintiff responded, indicating that she had not received a response or acknowledgement of records requests two (2) through four (4) and requesting an immediate update on the status of these now delinquent requests. Those requests are as follows:
- 1) Request No. 2- Submitted on April 23, 2021, to request the Bullitt County Sheriff's Policies/SOP's and training material regarding the use of force, Policies/SOP's and training materials regarding the use of body cameras and Policies/SOP's and training materials regarding pursuits.
 - 2) Request No. 3- Submitted on April 23, 2021, to request body camera footage from the night of 01/30/2021 from Deputy Nicholas Hibbs, Deputy Terry Compton, Deputy Maurice Raque III and Deputy Eric Burdon.
 - 3) Request No. 4- Submitted on April 23, 2021, to request a copy of Deputy Nicholas Hibbs entire personnel/HR file and training records; a copy of Deputy Maurice Raque III's entire personnel/HR file and training records; a copy of Deputy Terry Compton's entire personnel/HR file and training records; and a copy of Deputy Eric Burdon's entire personnel/HR file and training records.
186. The Bullitt County Sheriff's Offices' partial denial of Plaintiff's Open Records Requests lacks specificity and is not grounded in fact.

187. The violations of the Open Records Act complained of herein was also a direct consequence of the negligent and deliberately indifferent failure of the Defendant Bullitt County Sherriff's Office to enforce their subordinate's compliance with the Open Records Act.
188. Plaintiff is entitled to a judgement that Bullitt County Sherriff's Office is a public agency as defined in the Open Records Act and has violated KRS 61.872 by failing to timely produce the records as requests.
189. Plaintiff is entitled to an Order that in the future, the Bullitt County Sherriff's Office will comply with the Open Records Act.
190. Because Defendants willfully withheld the records requested by Plaintiff in violation of the Kentucky Open Records Act, Plaintiff is entitled to recover her costs, including a reasonable attorney's fee, and statutory damages pursuant to KRS 61.882(5).
191. Proffer given to the Kentucky Office of the Attorney General relating to a company's business practices was not exempt from disclosure under KRS 61.878(1)(h) because there was no showing that the disclosure would have harmed the agency. *Lawson v. Office of the Atty.*, 2012 Ky. App. LEXIS 44 (Ky. Ct. App. Mar. 2, 2012), *aff'd*, 415 S.W.3d 59, 2013 Ky. LEXIS 640 (Ky. 2013).
192. When a newspaper sought a police department's entire file in a murder case, the file was not categorically exempt due to the potential that the defendant in the murder case would collaterally attack the defendant's conviction, due to the file's relation to a prospective law enforcement action, because, *inter alia*, the exemption in KRS 61.878(1)(h) was properly invoked only when a record's release, due to the record's

content, posed more than a hypothetical risk of harm. *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 2013 Ky. LEXIS 375 (Ky. 2013).

193. A.K. demands release of the body camera footage, records, compliance with the Open Records Act and attorney's fees.

WHEREFORE, Plaintiff A.K. hereby demands:

- A. Judgment against the Defendants, severally and/or jointly, in a sum of compensatory damages which will fairly and adequately Compensate Plaintiff for the injuries and damage sustained;
- B. Judgment against the Defendants, severally and/or jointly, in a sum which will fairly and adequately compensate the Plaintiff, A.K., for the loss of love, affection, companionship, services, and society of her Father, Eric;
- C. Judgment against the Defendants, severally and/or jointly, in a sum which will fairly and adequately compensate the Plaintiffs for the physical and mental pain and suffering sustained by Plaintiffs' decedent, Eric, prior to his death;
- D. Judgment against the Defendants, severally, and/or jointly, in a sum that will fairly and adequately compensate the Plaintiff for the destruction of the decedent, Eric's power to labor and earn money in the future;
- E. Judgment against the Defendants, severally and/or jointly, in a sum of vindictive (punitive damages) which will fairly and adequately deter such conduct in the future and the Plaintiff is entitled to recover vindictive (punitive) damages and attorney's fees from Defendants in order to deter such conduct in the future.
- F. Costs herein expended;
- G. Trial by jury;

H. For any and all other relief to which she may be entitled.

Respectfully Submitted,

s/ Zack McKee
Attorney Zack McKee
(KBA # 96345)
Attorney Colin Edmundson
(KBA # 98735)
McKee Law Office, P.L.L.C.
908 Minoma Avenue
Louisville, KY 40217
Phone: (502) 792-7119
Fax: (502) 585-3559
mckeeslaw@gmail.com
Attorney for Plaintiff

CERTIFICATE OF SERVICE

It is hereby certified that a copy hereof mailed via first class mail, postage pre-paid,
on this 31st day of August, 2021, to the individual(s) listed below:

Carol S. Pettitt
Vaughn Pettitt Legal Group, PLLC
7500 West Highway 146
Pewee Valley, KY 40056

/s/ Zack McKee
Zack McKee

DNA Test Report

Ref No. NQ5362

DDC is accredited/certified by AABB, CAP, ISO/IEC 17025 by ANAB, CLIA & NYSDOH.

Case 3648438 Name		MOTHER ALYSSA R GLASS		CHILD ARAYA M KESSLER		Alleged FATHER ERIC S KESSLER	
Race		Caucasian				Caucasian	
Sample Type		Buccal		Buccal		Blood Card	
Date Collected		7/6/2021		7/6/2021		2/1/2021	
Test No.		3648438-10		3648438-20		3648438-30	
Locus	PI	Allele Sizes		Allele Sizes		Allele Sizes	
D3S1358	2.52	16		16	17	15	17
vWA	2.39	17	19	16	19	16	19
D16S539	2.83	9	13	13		9	13
CSF1PO	1.65	11		11		10	11
TPOX	1.86	9		8	9	8	
D8S1179	5.05	11	13	11	15	14	15
D21S11	4.72	29		29		29	
D18S51	3.39	13	19	13	15	15	17
D2S441	1.93	14	15	14		12	14
D19S433	12.51	13	14	13	15.2	14	15.2
FGA	5.96	23	26	25	26	24	25
D22S1045	1.42	16		16		15	16
D5S818	13.18	9	11	9		9	12
D13S317	8.07	9	11	10	11	10	11
D7S820	2.41	8	9	8	11	9	11
SE33	10.00	18	20	15	20	15	17
D2S1338	4.33	20	24	24		20	24
Amelogenin		X		X		X	Y

Interpretation:

RN: 10271229

Combined Paternity Index: **9,623,141,399**Probability of Paternity: **99.99999998%**

The alleged father is not excluded as the biological father of the tested child. Based on testing results obtained from analyses of the DNA loci listed, the probability of paternity is 99.99999998%. This probability of paternity is calculated by comparing to an untested, unrelated, random individual of the Caucasian population (assumes prior probability equals 0.50).

Subscribed and sworn before me on July 15, 2021

I, the undersigned Laboratory Director, verify that the interpretation of the results is correct as reported on 7/15/2021.



Kari Ann Bowlin
Notary Public, State of Ohio
My Commission Expires May 9, 2026


 William Sun, Ph.D.

End of Report

AFFIDAVIT

Comes the Affiant, Alyssa R. Glass, and after having been duly sworn, states as follows:

1. I am a resident of the Commonwealth of Kentucky and reside at 1608 Cedar Creek Road, Louisville, KY 40229.
2. I am the Parent, Natural Guardian, and Next friend of Araya Kessler, who was born on April 22, 2019.
3. I am free of any mental or physical disability.
4. I agree to be responsible for costs which accrue during conduct of litigation on behalf of my daughter pursuant to KRS 387.300.

Further, the Affiant sayeth naught.

Alyssa R. Glass
Alyssa R. Glass

STATE OF KENTUCKY)
 SS)
COUNTY OF Jefferson)

Subscribed to and sworn before me by Alyssa R. Glass on this 3rd day of May 2021.

[Signature]
NOTARY PUBLIC, STATE-AT-LARGE

MY COMMISSION EXPIRES: 12/1/2021

AFFIDAVIT

Comes the Affiant, Raymond Slaughter, and after having been duly sworn, states as follows:

1. I am a resident of the Commonwealth of Kentucky and reside at 1608 Cedar Creek Road, Louisville, KY 40229.
2. I am the Guardian and Next friend of Araya Kessler, who was born on April 22, 2019.
3. I am free of any mental or physical disability.
4. I agree to be responsible for costs which accrue during conduct of litigation on behalf of my great-granddaughter pursuant to KRS 387.300.

Further, the Affiant sayeth naught.

Raymond K Slaughter

Raymond Slaughter

STATE OF KENTUCKY)
)
) SS)
COUNTY OF Jefferson)

Subscribed to and sworn before me by Raymond Slaughter on this 30th day of May 2021.

NOTARY PUBLIC, STATE-AT-LARGE

MY COMMISSION EXPIRES: 12/1/2021

AFFIDAVIT

Comes the Affiant, Deborah Slaughter, and after having been duly sworn, states as follows:

1. I am a resident of the Commonwealth of Kentucky and reside at 1608 Cedar Creek Road, Louisville, KY 40229.
2. I am the Guardian and Next friend of Araya Kessler, who was born on April 22, 2019.
3. I am free of any mental or physical disability.
4. I agree to be responsible for costs which accrue during conduct of litigation on behalf of my great granddaughter pursuant to KRS 387.300.

Further, the Affiant sayeth naught.

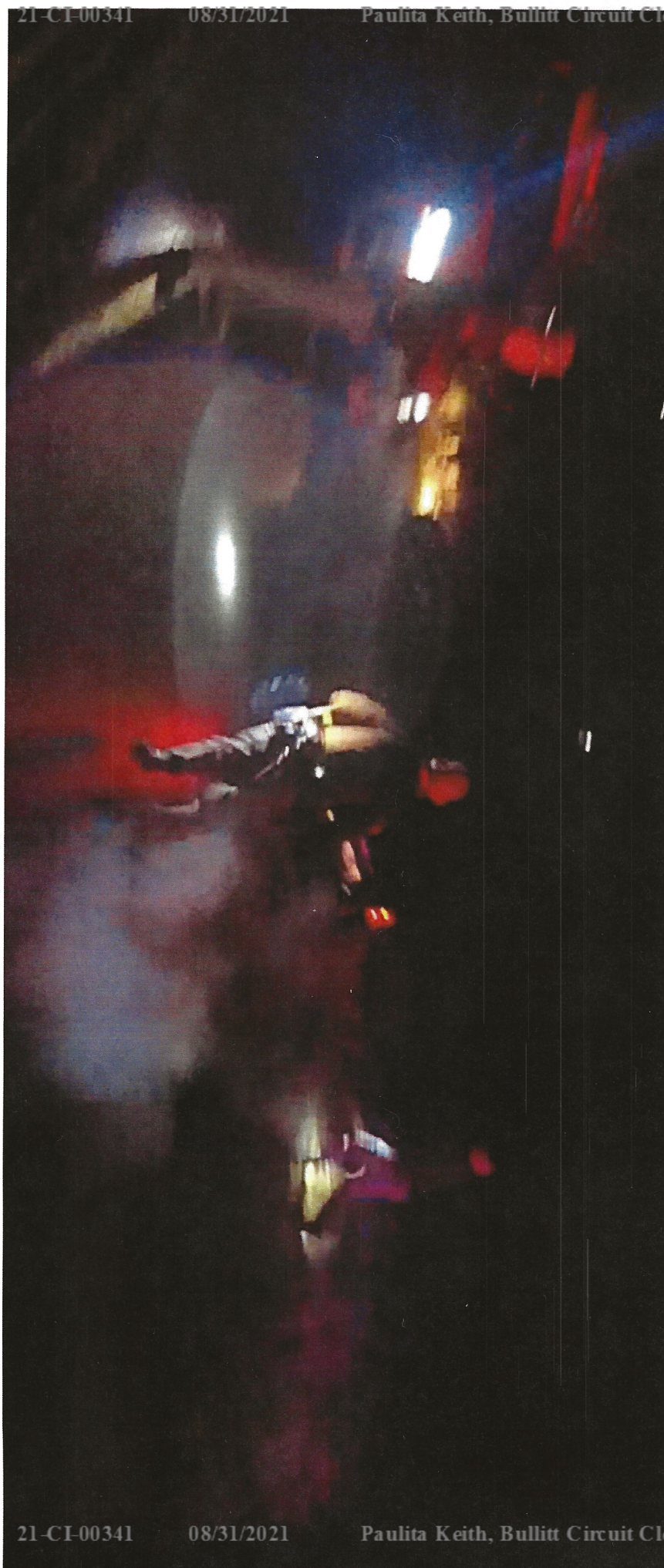
Deborah Slaughter
Deborah Slaughter

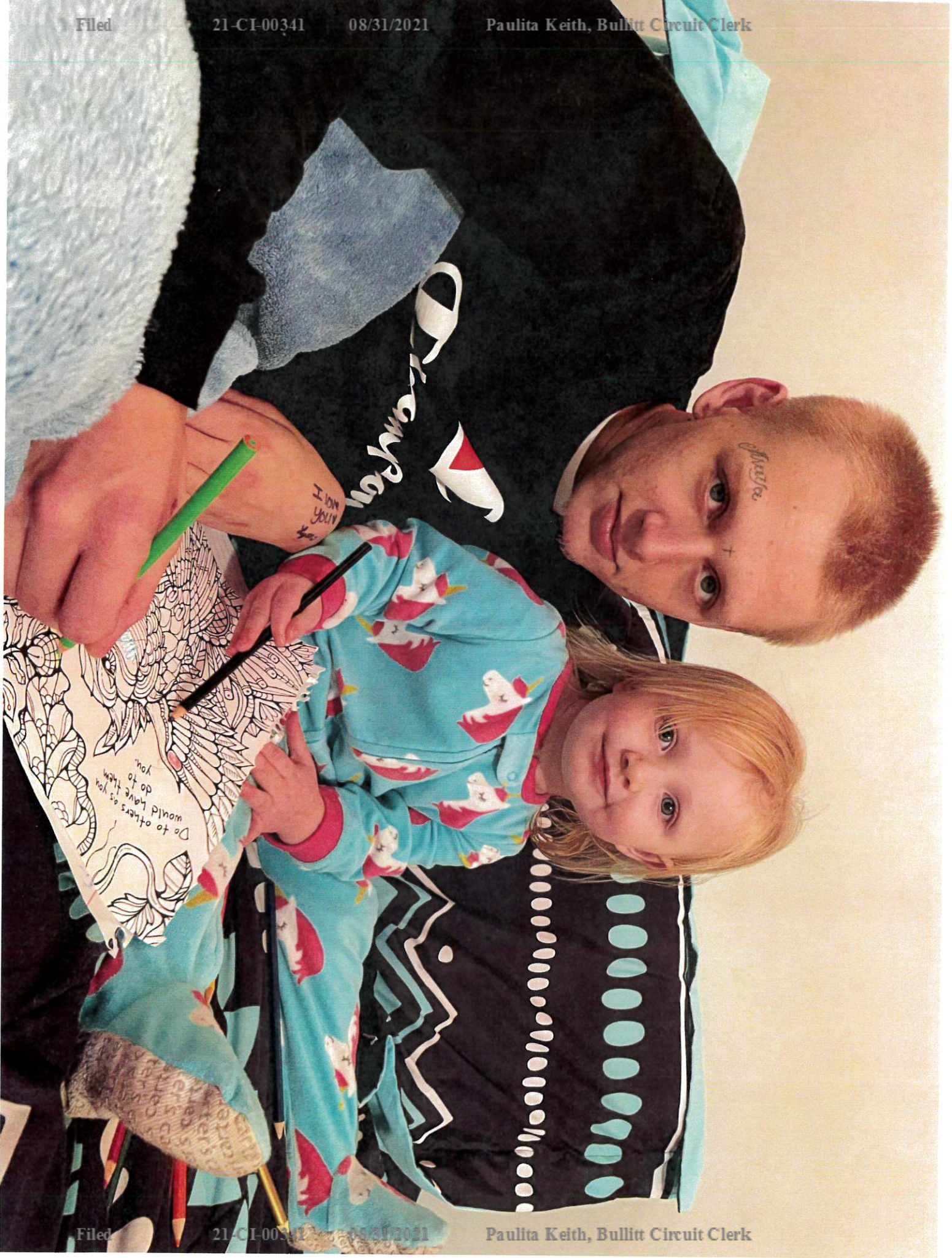
STATE OF KENTUCKY)
COUNTY OF Jefferson)
SS))

Subscribed to and sworn before me by Deborah Slaughter on this 3rd day of May 2021.

NOTARY PUBLIC, STATE-AT-LARGE

MY COMMISSION EXPIRES: 12/1/2021





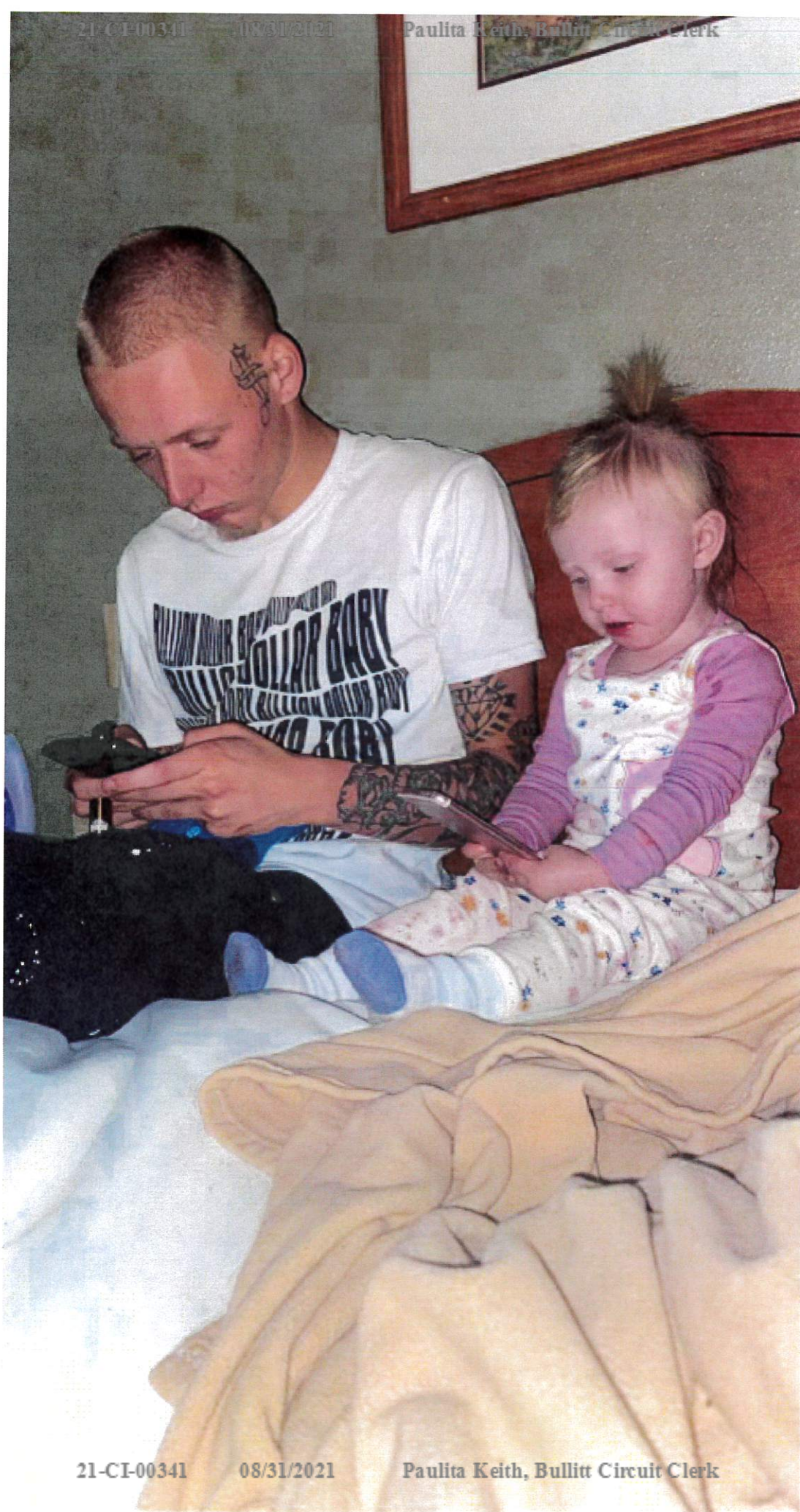






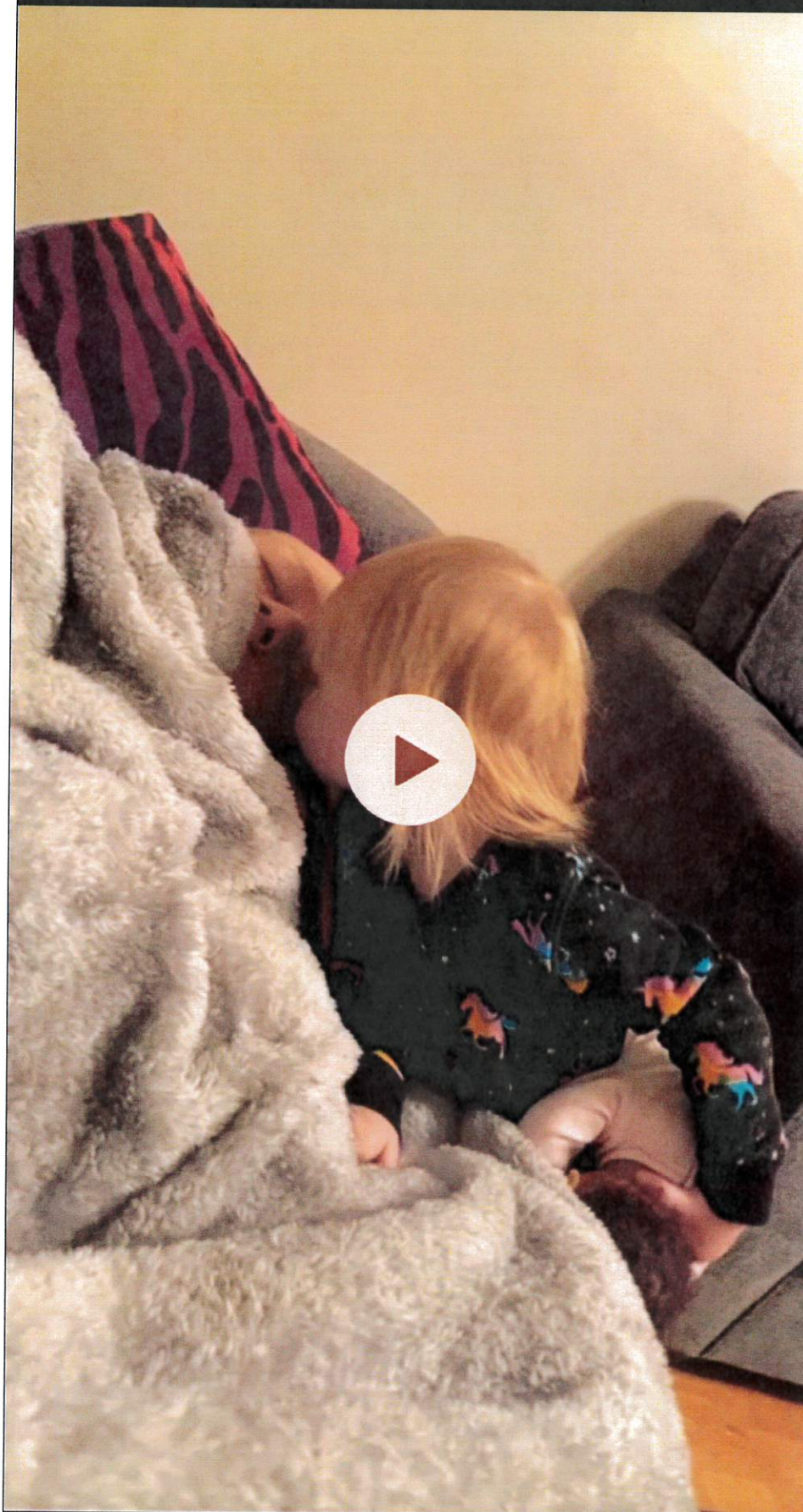




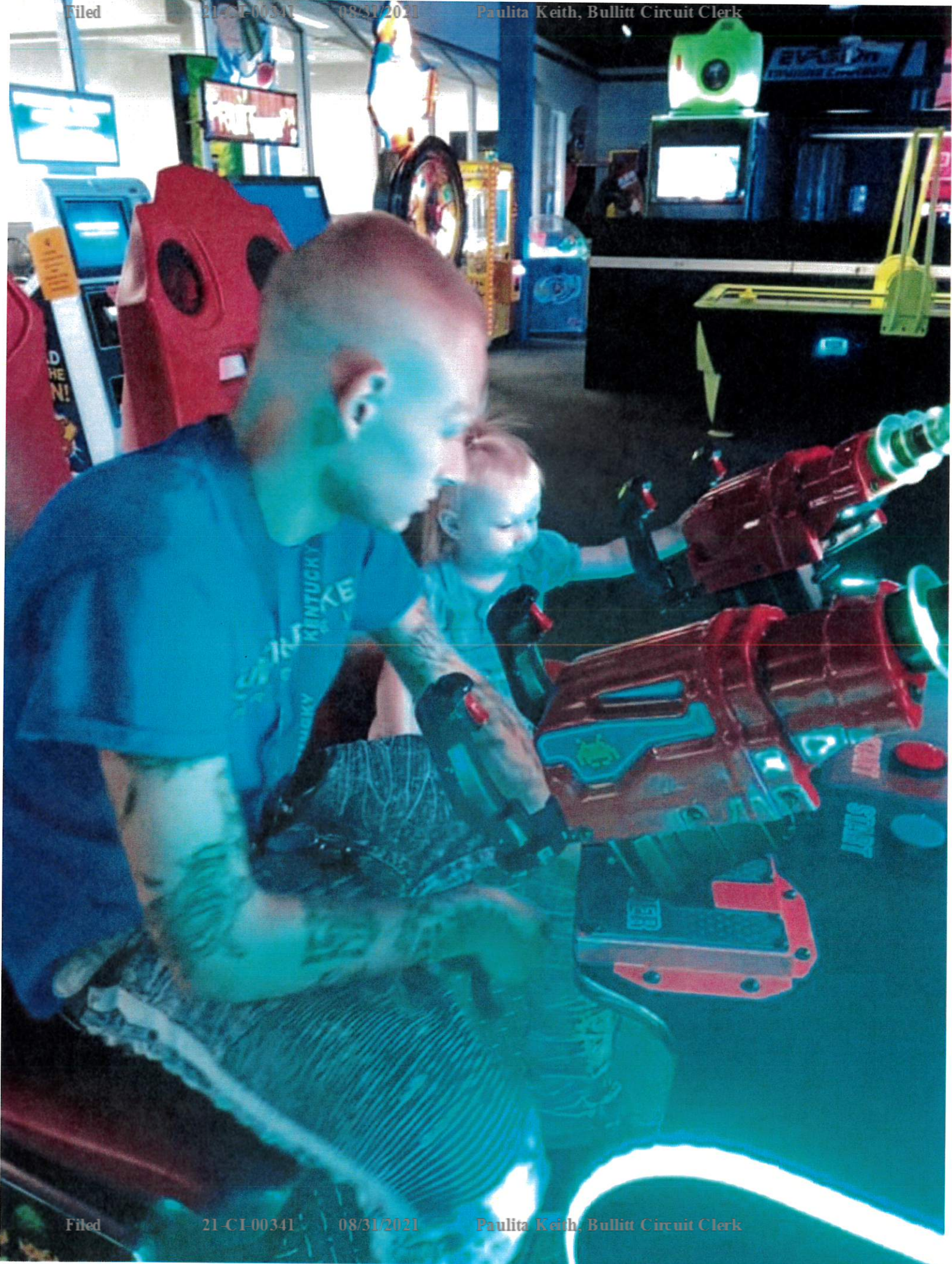


9:09











12:14

LTE



WDT_MOMMY_BOYS

Posts



wdt_mommy_boys

Louisville, Kentucky



Liked by thats__leigha and 11 others

wdt_mommy_boys RIP My heart ❤️ is broken 💔😭
My cousin got shot & killed this morning by deputy
sheriff N bullitt co.. He was so young 20 year's... more

View all 9 comments

tinaatbabygirl So sorry girl .



wdt_mommy_boys @tinaatbabygirl thank you



10 hours ago



wdt_mommy_boys

Fairdale



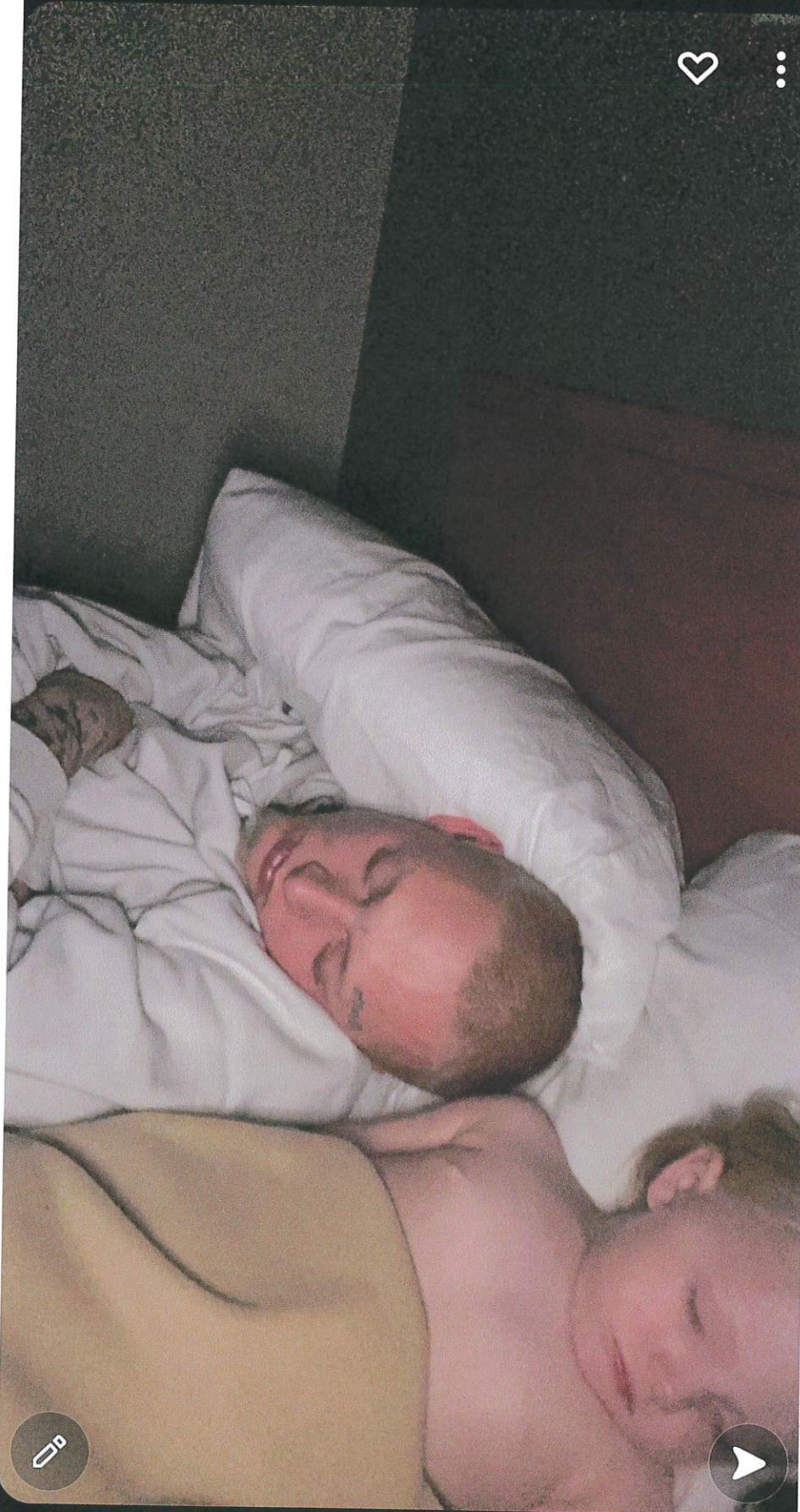


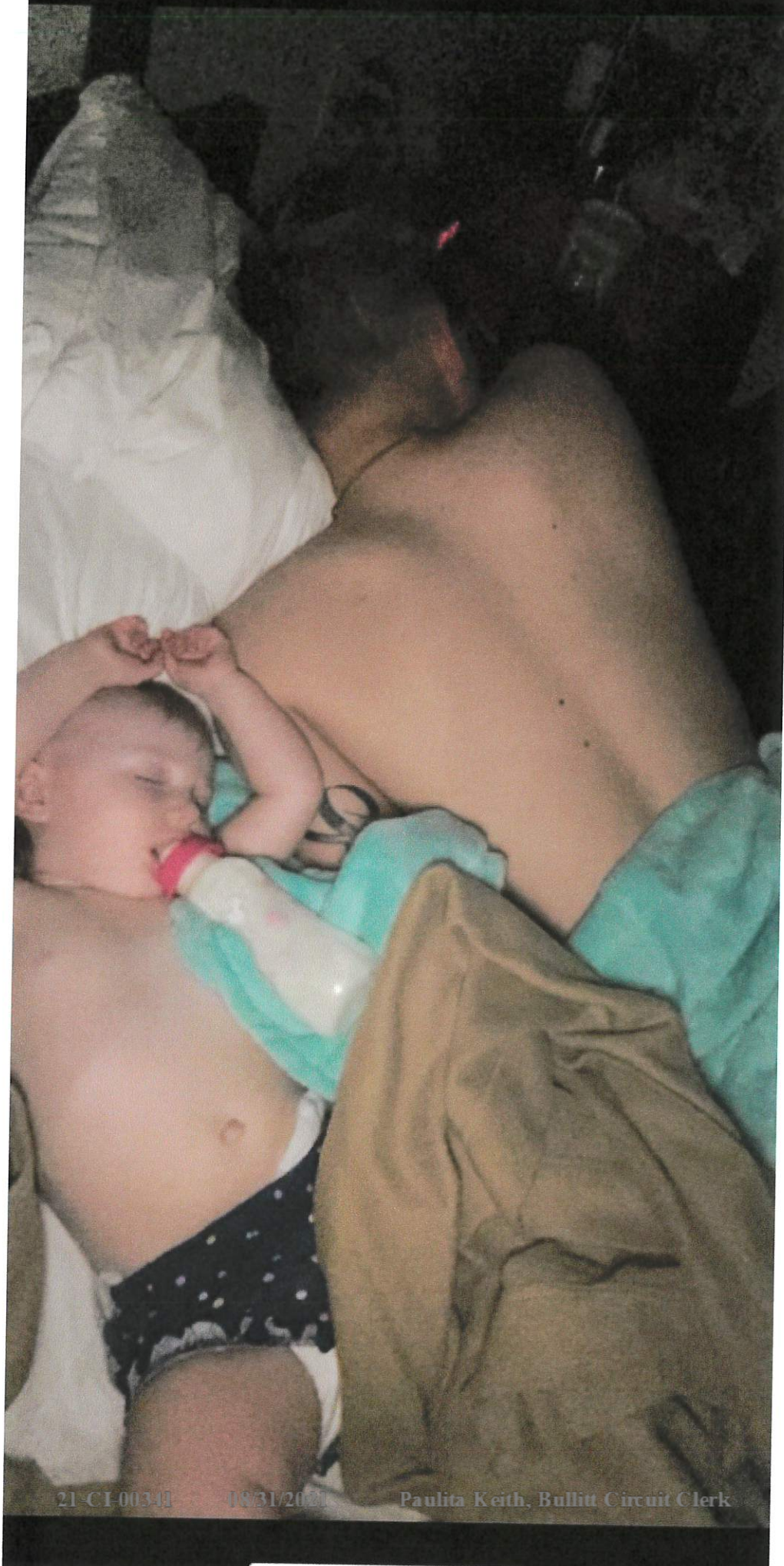


9:09



9:10







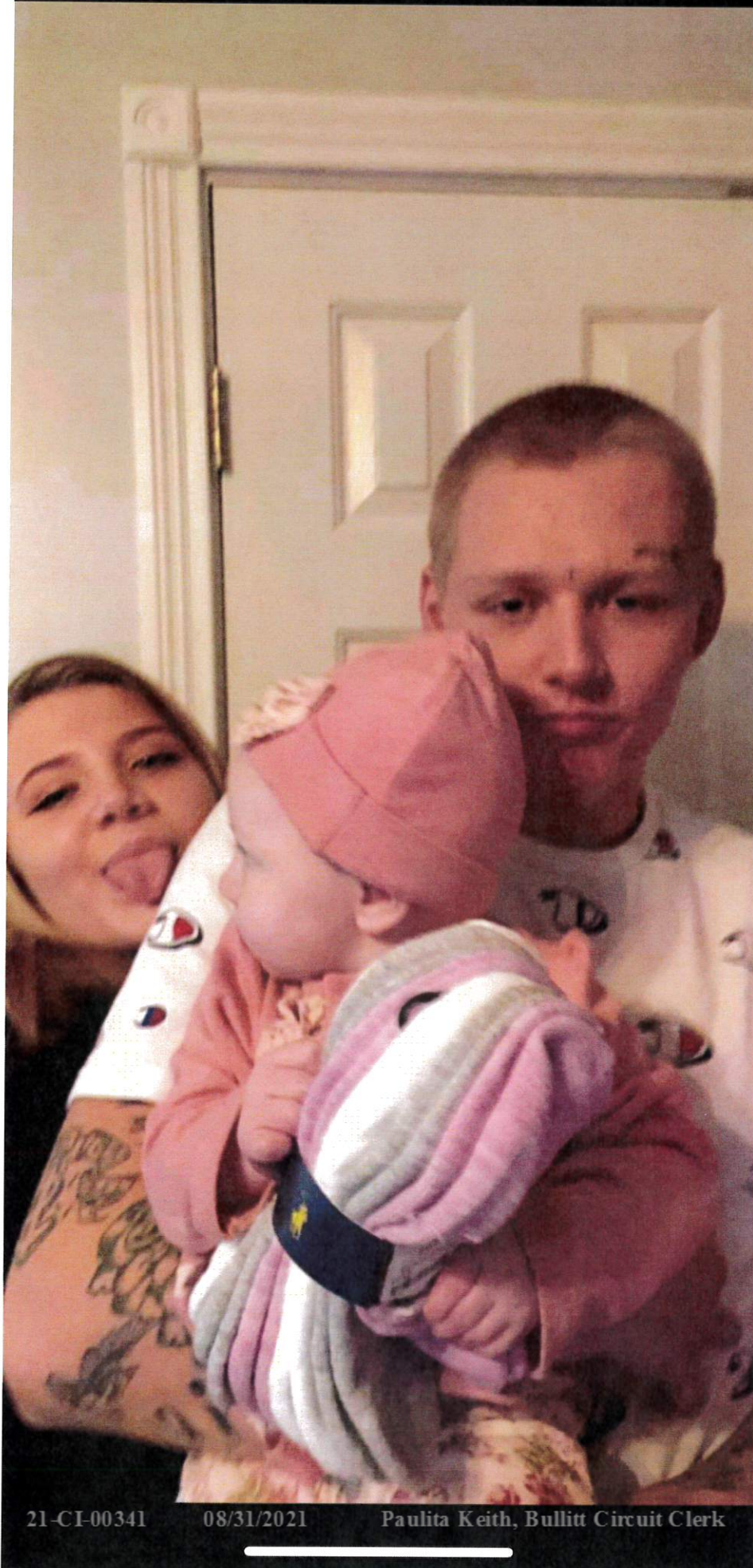
D5A4E000-6725-46E7-BBF4-8FA5ZC6BF509 : 000064 of 000091

EXH.: 000019 of 000040



EXH.: 000020 of 000040

D5A4E000-6725-46E7-BBF4-8FA57C6BF509_000065 of 000091





T-Mobile

7:29 PM

4%



7:53



September 27, 2019 8:46 AM

Kevin Gates · Betta For You



Who I do everything I'm
doing for 💜👉



Betta For You
Kevin Gates



Share

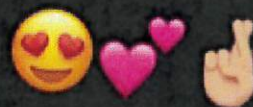


Highlight



More



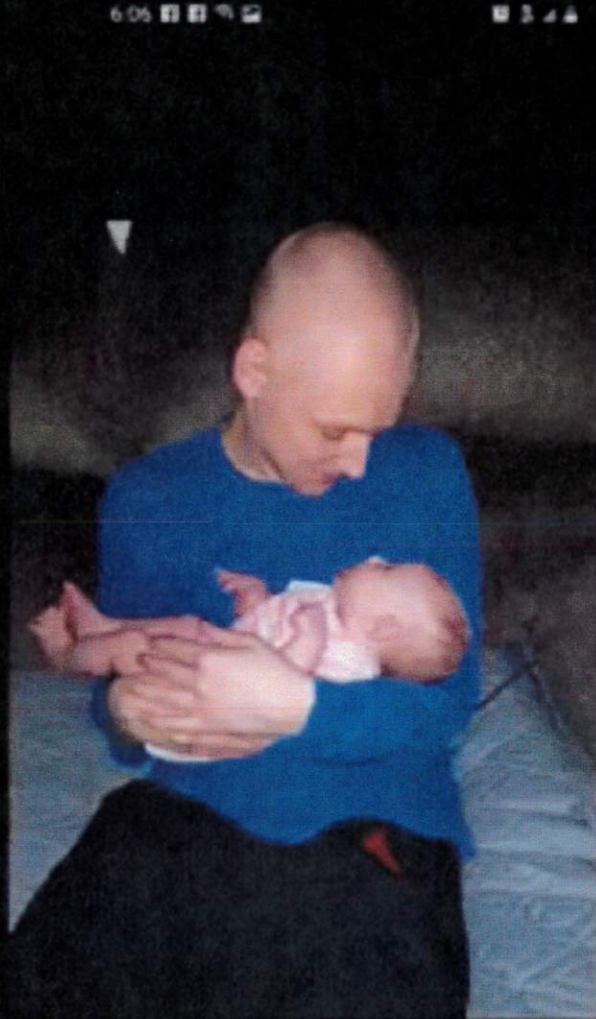




D5A4E000-6725-46E5-B86A-8F4F7C0B1E503 072 of 00991

EXH : 000027 of 000040





Like

Comment





3:29



why r they so perfect 🥰🥰🥰

2:43



Done

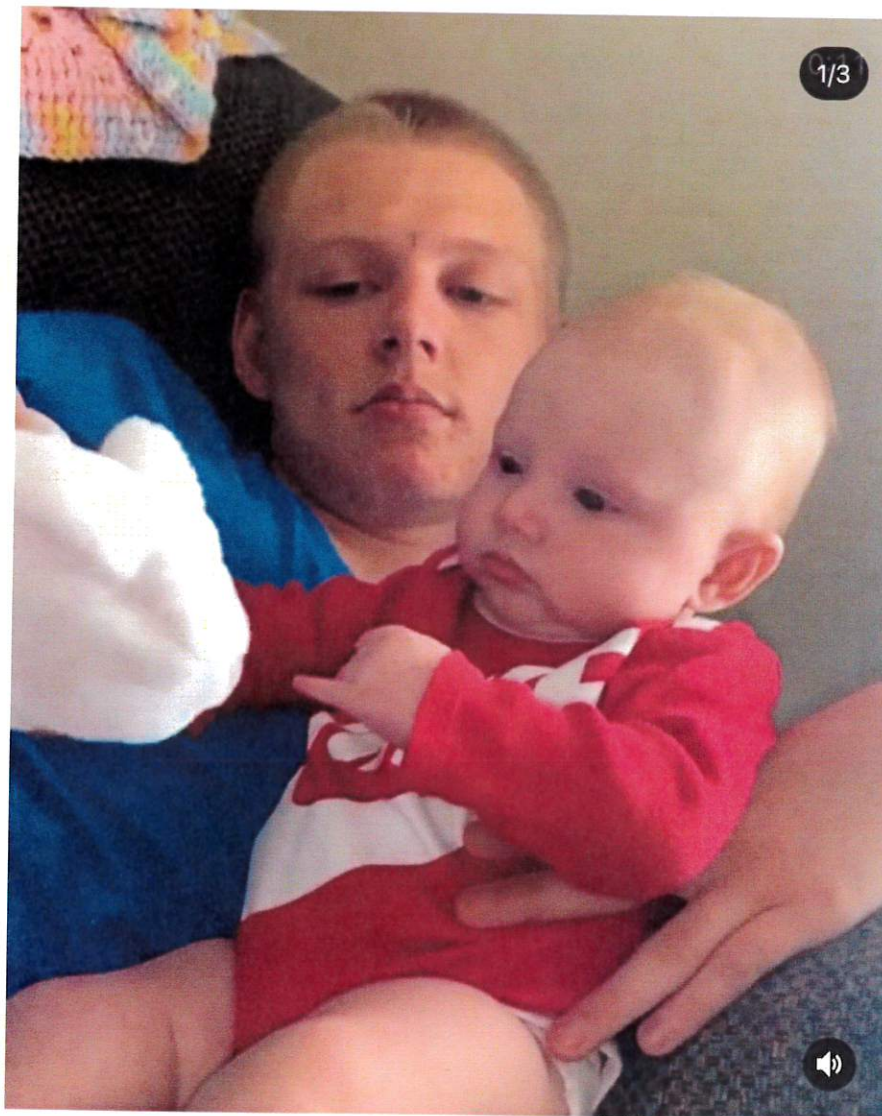
16 of 18



Posts



alyssabryant



[View Insights](#)

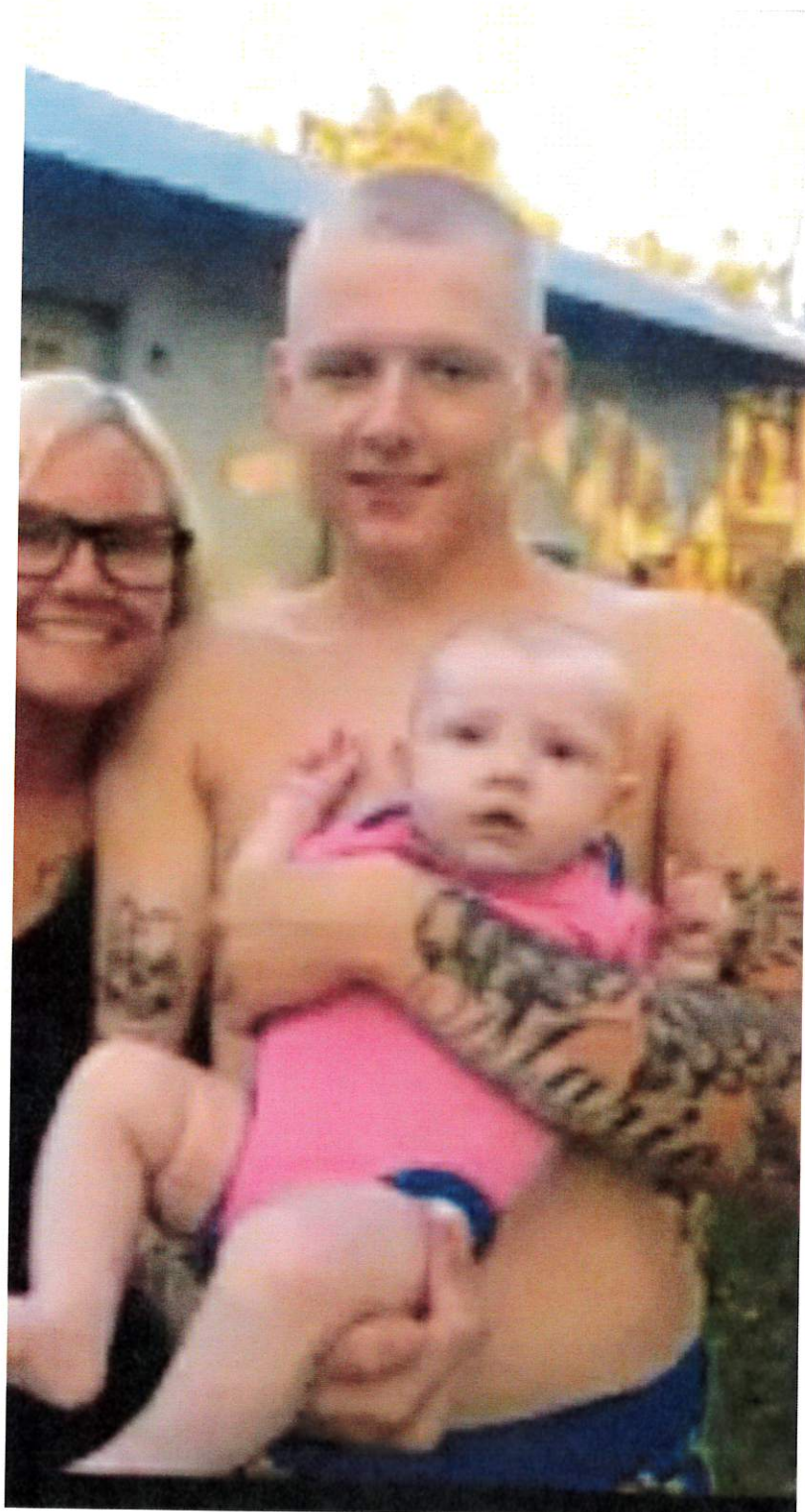
[Promote](#)



Liked by wdt_mommy_boys and 66 others

alyssabryant they're seri -00:24 : best thing that's ever happened to me! 💕💕



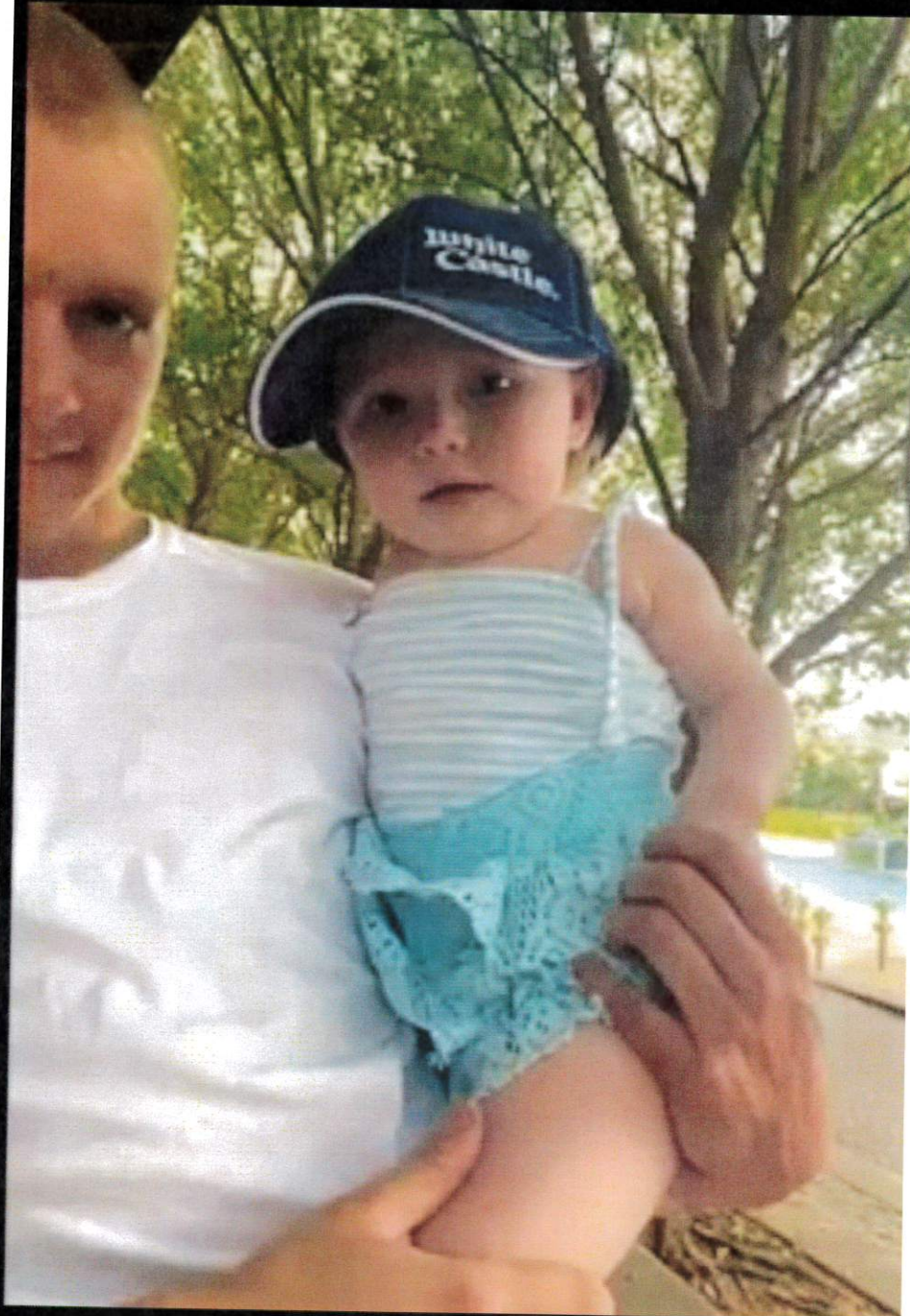






Like

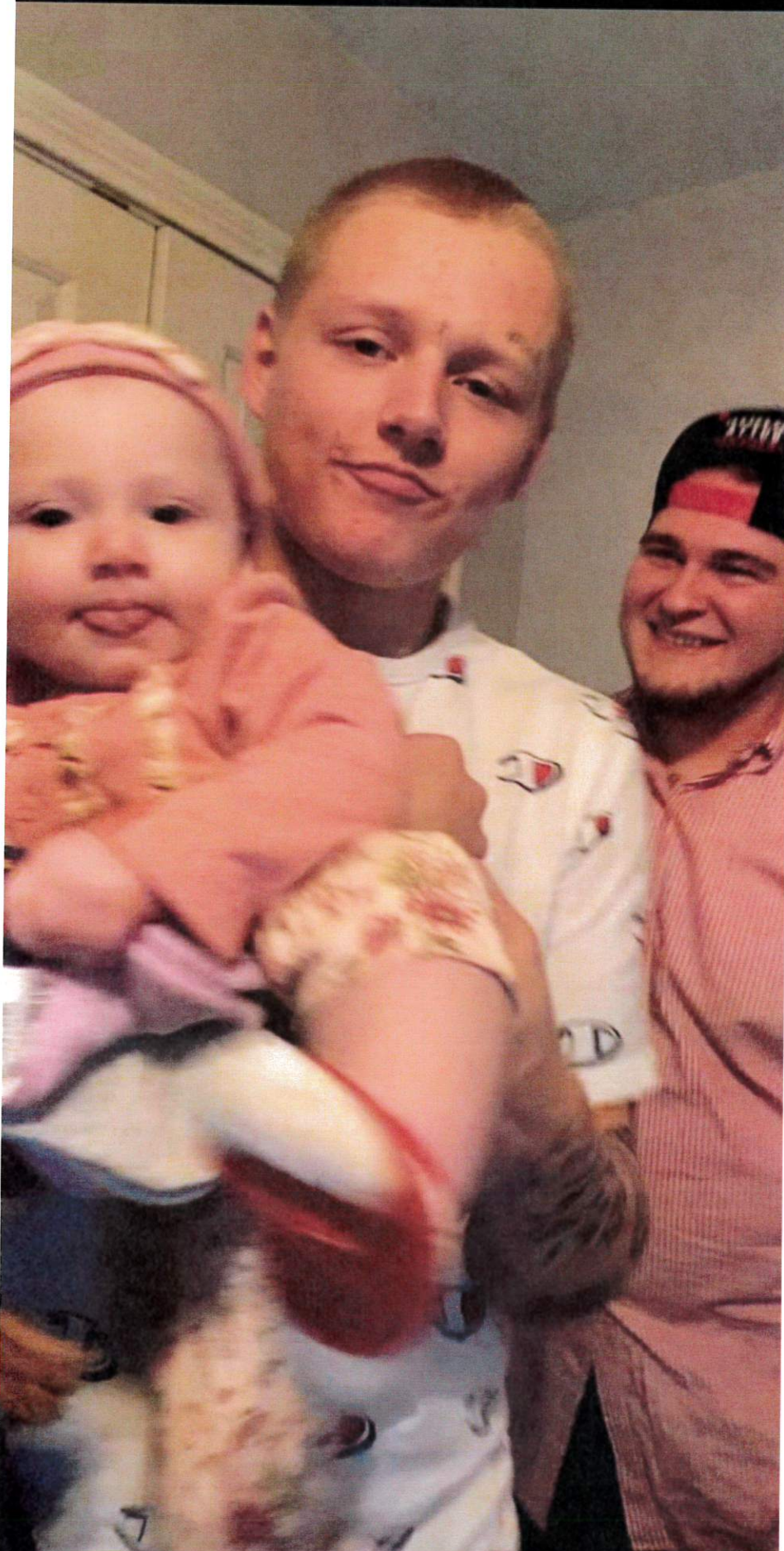
Comment



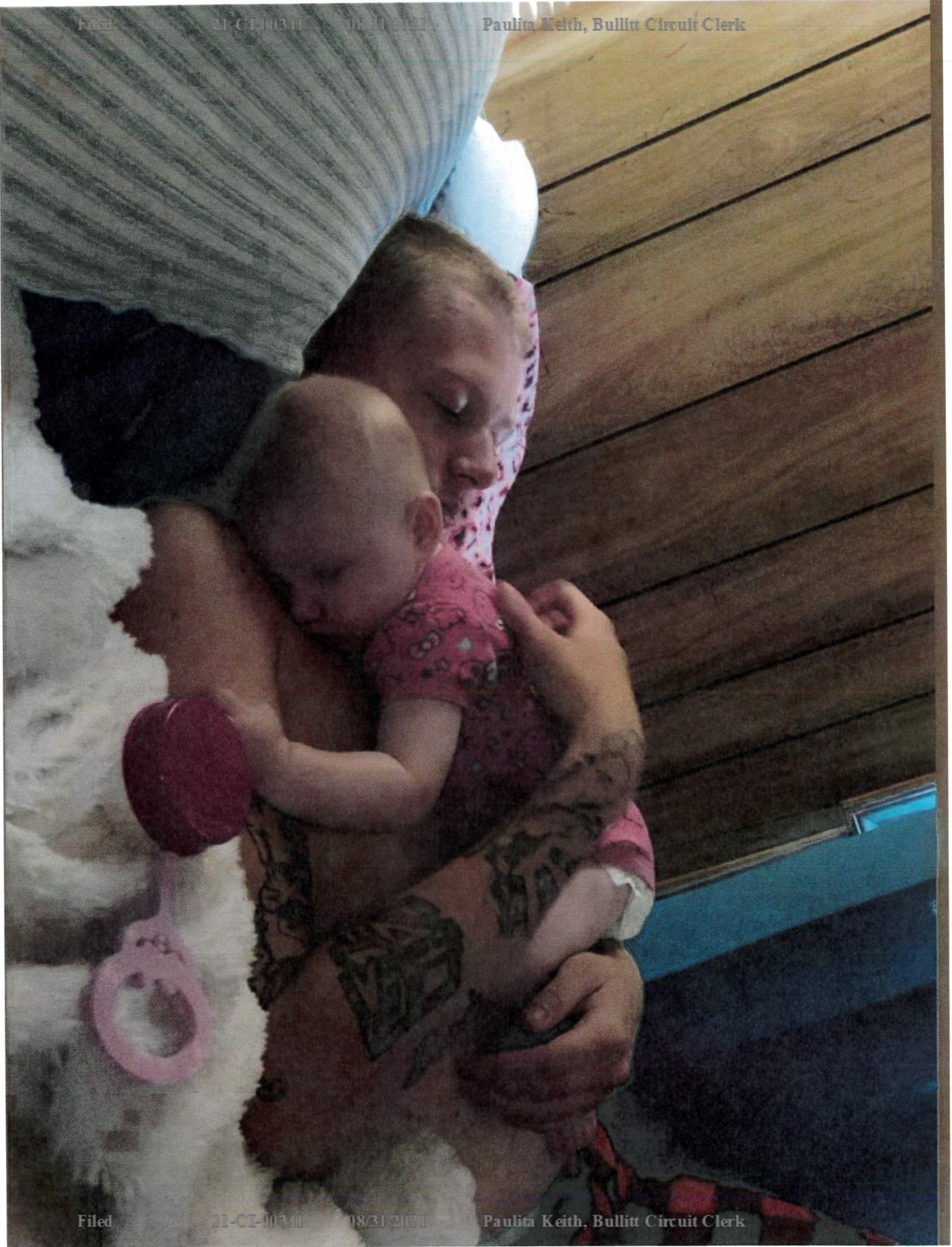


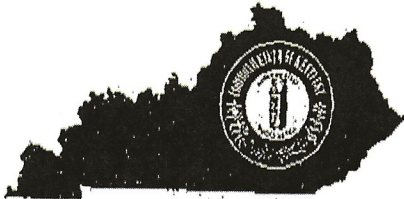
K;











Pioneer Village Police Department

4700 SUMMITT DRIVE LOUISVILLE, KY 40229

OFFICE: 502-957-6548 – FAX: 502-957-3815

December 21st, 2020

To: Chief Reynolds, Mayor Hatcher

Dear Chief Reynolds and Mayor Hatcher,

The purpose of this letter is to inform you both, and the City of Pioneer Village that I have accepted a position with the Bullitt County Sheriffs Office. My last day of employment with the Pioneer Village Police Department will be December 31st, 2020.

This decision did not come easy for me. I would like to thank both of you and the City of Pioneer Village for the opportunity to serve the citizens of this fine city. Pioneer Village Police department gave me my start into my dream career and I will forever be thankful. I can not thank either of you enough for the time spent at this department.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick Hibbs".

Officer Nick Hibbs

Badge #504

Critical Items Report (without values)

CONFIDENTIAL

hibbs, nicholas

Case ID: 89478

Critical Items for nicholas r. hibbs

The following items have been directly linked through research to disciplinary action.

Name	Begin	End	Freq	Detail
Alcohol or drug arrest		8/2004 (Age 20)	1 time(s)	I was arrested by Richmond police department in Madison county Kentucky for alcohol intoxication. I was at a party of some friends, the cops were called due to loud music and I was arrested for alcohol intoxication.
Any Marijuana use	1/2001 (Age 16)	1/2002 (Age 17)	1-5 time(s)	Marijuana
Terminated, asked to resign, or resigned while under investigation			1 time(s)	Position 6 - bullitt county sheriffs office.

Other Negative Indicators for nicholas r. hibbs

The items below are negative background indicators recommended for follow up by investigators.

Name	Begin	End	Freq	Detail
Consumed 6 or more drinks at a time on multiple occasions in the past 12 months			More than 20 time(s)	Alcohol

3/13/20 ~~18~~**COPY**

Letter of Resignation

March 13, 2020

Dear Sheriff Aubrey,

I have decided to resign from the Jefferson County Sheriff's Office. I have accepted a position with the Bullitt County Sheriff's Office.

My last day of employment with the Sheriff's Office will be March 31, 2020.

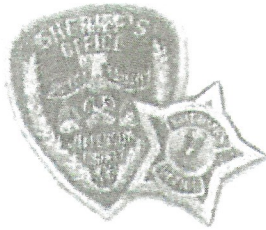
Thank you for the opportunity.

I very much appreciate having worked for you and wish you the very best.

Sincerely,




Deputy Eric W. Burdon



Colonel John Aubrey, Sheriff
Jefferson County Sheriff's Office

531 Court Place, Suite 600, Louisville, Kentucky 40202 • Telephone (502) 574-5400 • Fax (502) 574-6909

TO: DEPUTY ERIC W. BURDON, CODE 3160
CRIMINAL DIVISION-EPO WARRANTS

FROM: COLONEL JOHN AUBREY 
SHERIFF, JEFFERSON COUNTY

DATE: OCTOBER 9, 2019

RE: DISCIPLINARY ACTION

Be advised that the following disciplinary action has been determined to be appropriate based on the charges set forth herein.

CHARGES:

On September 14, 2019, at approximately 3:30 a.m., you were driving a JCSO vehicle with Deputy Francis Gootee riding as a passenger. While the two of you were stopped at a traffic light, you saw a truck pull out of a gas station and drive the wrong way down Bank Street. You activated the vehicle's emergency lights and pulled the truck over. After you retrieved from the truck's driver, who lacked an operator's license, a state-issued ID, the truck pulled away, accelerating at high speed. You followed. The truck reached speeds of over 100 mph on I-64, driving in an extremely reckless manner, then exited onto 9th Street where it continued to drive recklessly on surface streets at speeds up to 90 mph, almost hitting multiple cars, driving on the wrong side of the road, disregarding traffic signals, and otherwise driving in an extremely dangerous manner. Ultimately the truck halted and the occupants were apprehended on foot by you and Deputy Gootee. You continued the pursuit even though you had the ID of the driver of the truck, and at no time had a supervisor approved the pursuit. With the ID of the driver of the truck in your possession a warrant could be taken out, and continuation of the pursuit created grave danger for you, the occupants of the truck, and the general public.

The foregoing actions constitute violations of the following rules and standards of conduct of the Jefferson County Sheriff's Office:

- Rule 1.051, requiring compliance with the JCSO Policy and Procedure Manual, which at Part 17.9 provides that apprehension of occupants of a moving motor vehicle is secondary in importance to public safety, and that deputies making a

Equal Opportunity Employer



decision to engage in a pursuit have the responsibility to immediately notify communications of the pursuit, and to discontinue the pursuit when the circumstances present an extreme safety hazard to the public, the deputy, or the suspect, as well as when no field supervisor or higher authority has been contacted to approve the pursuit.

Your actions could have resulted in injury or loss of life, when the pursuit was unnecessary due to possession of the subject's ID.

It is hereby determined that there is sufficient evidence to warrant sustaining the charges.

DISCIPLINARY ACTION:

Your record and all relevant information have been considered in making the following decision. Your good record, and the fact that fortunately no injuries actually occurred are the reasons this discipline is not more severe.

You shall be suspended without pay for a period of one (1) ~~three (3)~~ Days.

Any further incidents of this type may result in additional discipline up to and including termination.

I consider this action to be both appropriate and necessary to the maintenance of good order and discipline within the Jefferson County Sheriff's Office.

Be advised that you have a right to appeal to the Jefferson County Deputy Sheriff Merit Board by filing with that Board a written statement of your intent to appeal within 10 days of your receipt of this notice, including the grounds of your appeal and any intent to be represented by counsel. See Rule 4.2 of the Merit Board's Rules and Regulations.

Col. John E. Aubrey
Colonel John Aubrey
Sheriff, Jefferson County

SERVED BY: Col. John E. Aubrey DATE: 10/9/19

EMPLOYEE SIGNATURE: Eren W. Bunker DATE: 10/9/19

CC: Sheriff's Merit Board
Commanding Officer

Internal Affairs
Personnel

COMMONWEALTH OF KENTUCKY
BULLITT CIRCUIT COURT
DIV. ONE (1)
CIVIL ACTION NO. 21-CI-00341
—*ELECTRONICALLY FILED*—

A.K. ET AL.

PLAINTIFF

V.

ORDER

NICHOLAS HIBBS ET AL.

DEFENDANT

** ** *

IT IS HEREBY ORDERED that Plaintiff, A.K. is granted leave to file a Second Amended Complaint.

IT IS FINALLY HEREBY ORDERED that the Defendants motion to dismiss is held in abeyance until such time as formal discovery can be completed.

JUDGE
BULLITT CIRCUIT COURT
DIVISION ONE

DATE