

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

ASHTON R. O'DWYER, JR. * **CIVIL ACTION**
*
VERSUS * **NO. 06-7280**
*
THE STATE OF LOUISIANA, ET AL * **SECTION "C"**
* **JUDGE HELEN G. BERRIGAN**
*
* **MAG. DIV. (5)**

AFFIDAVIT OF DAVID R. KENT, M.S., CPP

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME this day personally appeared

DAVID R. KENT

who, upon being first duly sworn, states that he is over the age of 21 and is competent to make this affidavit, which is based upon personal knowledge, and states the following:

1.

I am a board-certified Protection Professional and public-safety, security and crime-risk mitigation consultant with 46 years of practitioner equity in the field of criminal justice. I have been engaged as a retained subject-matter expert in this

case. Attached hereto is my *curriculum vita*, which fairly and accurately summarizes my professional experience and training.

2.

In connection with my work in this file there have been three client conferences, six client telephone conversations, one telephonic witness interview, and one each daylight and nighttime site visits at the O'Dwyer's St. Charles Avenue residence. I have received and analyzed numerous file materials, statements, pleadings, public-document requests, hearing transcript, defense responses and miscellaneous documents related to the wrongful arrest of Ashton R. O'Dwyer, Jr. (Mr. O'Dwyer) by three or more Troopers of the Louisiana State Police (LSP) and the subsequent brutal aggression directed against him by several detention officers with the Louisiana Department of Corrections (DOC) stationed at the Union Passenger Terminal / Greyhound Bus Station in New Orleans at Loyola Ave. and Earhart Blvd., where following Hurricane Katrina, City, State and presumably Federal officials had a temporary holding facility. The LSP and DOC are two principal operational law-enforcement agencies (LEA) organized within and under the Department of Public Safety and Corrections (hereinafter referred to sometimes as "DPS" for simplicity).

3.

For reasons that can not be presently understood, several Troopers of the Louisiana State Police (LSP) exited a marked LSP vehicle (SUV) parked blocking his driveway at 6034 St. Charles Ave. near Webster St.¹ Attired in dark, SWAT/BDU's, the group entered uninvited by hurriedly rushing up the driveway towards the Plaintiff's residence shortly after midnight on September 20, 2005. Mr. O'Dwyer, who was seated watching television in his driveway adjacent to the rear patio, challenged their presence by stating, "Halt; get off my property; you're not authorized to be on this property, unless you're coming to make an arrest or serve a warrant." Nevertheless, one Trooper continued approaching Mr. O'Dwyer very closely, whispering into his ear "Sir, you're coming with us; either you're going to come voluntarily or we're going to remove you from your property by force; now what's it going to be?" O'Dwyer's verbal response to the Trooper was, "I will not resist, but you are going to have to remove me from my property by force."

4.

O'Dwyer's hands were then restrained behind his back, and he was physically lifted up off the ground by two Troopers, and carried parallel to the

¹ One witness reported observing two (2) LSP vehicles arrive and saw four well-armed Troopers clad in battle dress utilities (BDU's) rush towards the house.

ground, towards the street, where he was violently thrown face down into the ground cover adjacent to his driveway, suffering injury to his right rib cage.

As there was clearly no past or present exigent circumstances or illegality, O'Dwyer repeatedly questioned the Trooper's purpose, who had sent them to his property, and the alleged offenses which precipitated his mistreatment, but was not informed of anything. As far as he could determine at the time, he was being kidnapped.

5.

O'Dwyer was taken to 1001 Loyola Avenue where he was turned over to the custody of uniformed individuals thought at the time to be LSP Troopers, but later identified as Angola Prison Guards – "Correctional Officers" from the DOC. While inside the terminal he was pepper-sprayed between 30 and 40 times and shot between 4 and 6 times in the thighs with 12 gauge beanbag projectiles. After this mistreatment, O'Dwyer was placed into a metal cage towards the end of a line of outside cages, curiously alone, and far away from other prisoners. Here he was continually attacked by two DOC detention officers with more Pepper Spray bursts and two shotgun hits containing beanbag 'stun' projectiles. He was shot and sprayed repeatedly without being told the nature of any charges against him! At no time did the Plaintiff actively or forcefully resist, assault or hit these individuals although he continued to verbalize his revulsion of their gratuitous abuse and

unprovoked, unnecessary aggression. Mr. O'Dwyer was not afforded even a telephone call!

6.

O'Dwyer was finally processed for release at 5:p.m. - over sixteen hours after being abducted from his front yard driveway in the presence of a house guest, one Gerald P. Guice, who witnessed some of the events upon being awakened by one of the supervisory troopers. Upon his release, O'Dwyer learned from a paper copy of a municipal affidavit form that he had been charged with public intoxication, having been arrested by LSP Trooper John Nelson, Badge 2227, who was sworn by Sgt. Christopher Ivey, Badge 1139, presumably with LSP. No other officer's names were provided. He was simply allowed to go home where he was finally able to wash the pepper spray from his skin and contacted his physician.

7.

Having been falsely arrested and wrongfully accused of public intoxication O'Dwyer has been unable to obtain any meaningful information about his appalling experiences at the hands of LSP and DOC, even after filing this lawsuit and subsequent unanswered public records act requests.

8.

The bewildered plaintiff was selectively targeted for special harassment by persons unknown who logically recruited, and/or ordered the participants in these

hurtful assaultive sequences which form the basis of this litigation alleging uniquely individual and collectively illegal actions under color of law by sworn, state law-enforcement authorities for presently unknown reasons. The substantive bad faith complained of in connection with the initial abduction at plaintiff's residence is simple battery (14:35), 2nd degree kidnapping (14:44.1), simple kidnapping (14:45), false arrest and imprisonment and false imprisonment by an armed offender(s) (14:46 and 14.46.1), and criminal trespassing (14.63.3). Additionally, once plaintiff was delivered to the custody of the DOC Correctional Officers, more bad faith was directed at plaintiff in the form of second degree battery (14:34.1), aggravated second degree battery (14:34.7), simple assault (14:35); aggravated assault with a firearm (14:37.4), and negligent injury (14:39). The accused defendants are one – J. Nelson –and several unknown LSP and DOC troopers and correctional officers whose identities are still being sought at this writing. As part of the cumulative conspiratorial enterprise, two (Nelson and Ivey) or more law enforcement officers are also believed to be implicated in false swearing and the filing of falsified public records of alleged crimes into the DPS's various public-record repositories.

9.

Mr. O'Dwyer has filed the appropriate Internal Affairs complaints with DPS agencies, Attorney General, FBI, and DOJ to uncover the origin, nature and extent

of the conspiracy to silence and/or hurt his person and his professional stature. Your affiant has studied the file materials and reached a number of preliminary opinions and conclusions from the facts and circumstances presently available.

10.

At the time of his midnight abduction O'Dwyer was watching television and sipping wine seated in his driveway-patio vicinity, well within the property line boundaries of his home which was in near total darkness on September 20, 2005, in the Katrina storm aftermath and curfew period. He had a gas-powered, portable generator that supplied electricity to one table lamp in the kitchen and the portable TV he was viewing when the unwelcome offenders appeared.

O'Dwyer was not only not inebriated, but was violating no ordinances, criminal or civil statutes, laws or covenants of decency, health or sanitation. His house guest (Mr. Guice) had retired and he was preparing to do the same. Virtually no private or public disorder was or had occurred when he was confronted, thrown to the ground, handcuffed and subsequently forcibly kidnapped by three to four uniformed officers believed to be LSP Troopers by vehicle markings affixed to the side of their SUV. These events transpired without any grounds for reasonable suspicion, much less, a requisite threshold of probable cause to arrest. The troopers had been ordered from his property and asked

repeatedly who has sent them to his home and why, and what charges, if any, they were making against him.

The troopers were clad in black/navy blue Swat/BDU's and carried assault rifles and sidearms. O'Dwyer wore topsiders and white cotton shorts with no shirt, and was obviously not holding or hiding dangerous instrumentalities on or about his person. Being secure in his conviction that no possible law violation was breached at or within his property, he verbally objected, complained and demanded to know what was happening and why? The troopers had no ostensible reason to manhandle and abduct this citizen, nor did they even have the cover of service of a search and/or arrest warrant to legitimize their presence on his driveway behind his fence line.

He was taken to and delivered into the hands of DOC detention officers from Angola at the Union Passenger Terminal/Greyhound Bus Terminal at 1001 Loyola adjacent to the Post Office / Federal Building at 701 Loyola Ave. in the CBD. Here he was further abused for not acquiescing to the Gestapo-like tactics evolving from his initial abduction into false imprisonment. His questions and protests were also ignored here and vocal protests resulted in repeated applications of pepper spray initially, which then turned into six or so gunshot wounds (GSW) by beanbag (stun) rounds fired from conversational ranges onto his upper thighs – the last two of which occurred while he was locked inside the portable metal capture cages

where the last two beanbag projectiles were found on the ground after daylight the next morning inside of the cage.

At no time did Mr. O'Dwyer actively resist, attempt or complete an assault, make any threatening gestures or batterment against any of his tormentors that could even remotely be interpreted as flight or assaultive resistance. He was, however, profuse in his verbal castigation against this maniacal goon squad by orally informing them of the error of their ways should he be further injured by their continued, unprovoked assaults against him. His most animated arm movements were probably reaching his hands towards his crotch while the principal thug and his main accomplice joked about trying to hit him in the groin with the 12 gauge beanbag projectiles. By the time he was uncuffed and caged, both thighs had been contused and badly bruised. His injuries were further aggravated when the extremely hot daylight sun made the cement so hot that he was forced to stand up much of the day because it was far too uncomfortable to sit down on the concrete. Mr. O'Dwyer was blessed that he suffered no fatal blood-clot related embolism from the painful injuries to his upper thigh areas. I find this total abuse of authority comprising deliberate bad faith denial of due process by insensitive, under supervised and poorly trained and remorseless correctional officers to be immoral, unnecessary, without justification or cause and sickening. I

have my doubts that the Angola Camp J residents – the baddest of the bad – don't even experience this sort of insane and unprovoked treatment from the guard staff.

Furthermore, corrections professionals of course recognize their duty to provide medical services, which were offered. What apparently was not in place was a form of magistrate hearing capacity that could have helped reduce the detainee population to relieve the stresses on both sides of the wire. Just an eight-hour rotation could have bumped Mr. O'Dwyer out of the system much earlier.

11.

This consultant must ask what could Mr. O'Dwyer have possibly done to trigger the events precipitating this sort of intentional brutality three-week's after the Nation's worst "unnatural" disaster? Whatever happened to give rise to such mean-spirited, willful misconduct on the part of DPS troopers and detention officers needs to be thoroughly and objectively investigated and punished so that it will not recur ever again. These egregious acts cannot be ignored or swept beneath the rug until they go away. They constitute individual breaches of their oaths of office; violations of state and federal laws, as well as the ethical standards of their respective departments. While he is thankful to be still alive without permanent physical effects, it is still hard to appreciate that only non-lethal dangerous weapons were used against him.

12.

My rationale for the above finding is found in the basic premise that the first duty of any public-safety officer - including law enforcement personnel – is at all times, life safety. Not that available police resources shouldn't be attentive to "quality-of-life" issues in a proportional scheme of descending priorities. As a former police executive I find it hard to justify expending precious protective resources (many on loan from generous outside agencies at that) in a devastated urban environment where looting and predatory violence is more easily discovered than public intoxication in private residential settings at midnight in otherwise "low crime environments." They had only to cruise the Vieux Carre if they were really searching for drunk arrests or curfew violations that were attendant in and around the two or three bars that were open 24-7 and, like numerous recurring news stories, were featured daily on television.

Mr. O'Dwyer certainly had no known enemies in the DPS. These troopers could have been booking traffic violations on St. Charles Ave. if they needed enforcement entries onto their daily activities sheets.

My questions to LSP would be how could any LSP field supervisor authorize or endorse – much less, tolerate - such unnecessarily intrusive compliance activity outside of their ordinary scope of duty and jurisdiction, unless the assignment was delivered down from substantially higher authority? Was there

nothing of a more constructive nature to occupy the minds or energies of three or four troopers on patrol in the least crime-ridden section of New Orleans and the most heavily trafficked east/west thoroughfare in the City at the time? The index of suspicion at this juncture is incredibly high. It is entirely possible under the circumstances that these troopers, or others in league with them, would have conducted some nighttime surveillance of the residence with night-vision equipment to aid the successful execution of the mission to capture O'Dwyer.

13.

My force evaluation tells me that Mr. O'Dwyer was manhandled by three or possibly four troopers in his private, off-street driveway. It is always nice to have manpower sufficiency to insure that resistance would be foolish in addition to unsuccessful. Three on One under almost any unarmed encounter scenario is adequate to escort a 57year-old, handcuffed behind-the-back, male prisoner, 20 to 30 feet to the transport vehicle – especially when the degree of negative cooperation is measured in vocalized decibels only, and not fighting and kicking.

Nowhere in the law does verbal complaining, name-calling, outspokenness or profanity warrant an escalation of physical force sufficient to overcome oral obstinance. If raw force was permissible to silence a detainee, then they could have knocked his teeth out and stuffed a gag in his mouth. The Troopers surely knew at this point - if they didn't know beforehand – that the more force deployed

would probably result in a legal response later on, assuming of course that the suspect could survive what was to come later. As did their DOC comrades, these Troopers opted to ignore the “sticks and stones” paradigm and proceeded with an accelerated and unnecessary force elevation. In this day and age law enforcement officers know that they simply can’t retaliate with brute force against loud-mouthed subjects without the threat of professional consequences.

LSP Troopers I’ve worked with over the years were all outstanding law enforcement professionals. During the 1978-79 police strike and over successive Mardi Gras details, I was always impressed by their social graces and professionalism. Any officer who can befriend a citizen while writing a speeding ticket deserves my admiration for their courteousness and people-friendly skills. Though anecdotal, this is another reason that I am both saddened and suspicious of what happened to Mr. O’Dwyer at the hands of LSP personnel.

14.

Sadly, this odious case smacks of more than individual intemperance or simply a sick appetite for a power/control rush that so frequently seems to accompany police brutality. The excessive force is patently obvious, even though not severe or permanently disabling. But what is not so discernable behind this willful abuse of authority is what sort of fiend conceived, organized and executed such a plan? There is more to this case than just a few cops leaving roll call

looking for somebody to beat up simply because they could get away with it under the circumstances of “anything goes” in the Big Easy. I reject the notion that State Cops from Monroe (Troop K) just don’t get a chance to ‘kick ass’ every day, and that they volunteered to have a little fun at the expense of an outspoken local lawyer. Now, a worse-case scenario that would have Mr. O’Dwyer “disappear” would mean that the perpetrators would have had to do “in” Mr. Guice in like fashion. It would have been easy to stage a home invasion and/or carjacking that looked like both victims were taken out during a robbery-related homicide – events that are fairly common in the Crescent City.

15.

A more studied analysis of the continuum of force and its “objectively reasonable” test implies that a responsible/reasonable level of force in one context may be entirely unreasonable in another. Objectively viewed in light of situational circumstances, courts in southeast Louisiana will weigh: (i) the character of the arrestee; (ii) risks and dangers faced by the officer(s); (iii) the nature of the offense involved; (iv) the relative likelihood of the arrestee’s escape if particular measures are not employed; (v) the existence of alternative measures of arrest; (vi) the physical size, strength and weaponry of the officers as opposed to the arrestee, and (vii) the exigency of the moment. [Kyle v. City of New Orleans; 353 So.2nd 969

(LA 1977); Ross v. City of New Orleans; 808 So2d 751(LA CT APP 4th Cir. 2001)]

My risk-assessment grading of the objective reasonableness demonstrated at 12:10 a.m. by LSP Troopers on September 20, 2005 in pairing the threat level faced in the person of Mr. O'Dwyer according to the above metric is as follows:

- (i) Good character and reputation of arrestee; no prior criminal history scores a low threat;
- (ii) LSP faced zero physical harm from arrestee (3 to 1) scores a low to moderate threat, only because of boasting; never exhibited violence
- (iii) The 'public intoxication' charge suggests a low threat;
- (iv) The need to defend against escape was a low threat; no flight risk;
- (v) The alternative to arrest was summons which is low threat;
- (vi) The physical strength advantage of 3 or 4 to 1 combat is low threat
- (vii) The exigency nature of enforcement is also low to no threat;

Having been involved in serving hundreds of search and arrest warrants – many involving forcible entry - it is my opinion that the overall threat assessment for active physical or armed engagement was objectively quite a low risk to the three or four-officer raiding party, all of whom were carrying side arms and assault rifles and enjoyed the element of surprise.

Reliance on presently known facts and circumstances indicates to me

that the Troopers issued no loud, verbal commands, which is the first rung on the force-continuum ladder. In fact the opposite was true. Mr. O'Dwyer's very first verbal knowledge was, he thought quite peculiar, when one of the lead Troopers whispered in a low voice directly in his ear "Sir, you're coming with us!" I must admit that not only do I too find this bizarre, but it directly contradicts the very first principal objective of getting the immediate attention and compliance of suspects with loud, clear, brief and simple commands issued by law enforcement authority, i.e.: lie face down on ground; step out of car; place hands behind your head; kneel down, etc, etc. "Sir, you're coming with us" just doesn't sound like the kind of command appropriate to achieving the minimization of subject resistance. Truth be told, the most probable male response "under the circumstances existing at the time" to that statement is "Like Hell I am!" and fist-city from here on. And if this was the desired outcome hoped for by unethical Troopers, their target flatly refused to take the bait and they had to maliciously initiate a calculated escalation to justify putting the hurt on their subject. Such a cruel scheme further elevates the index of suspicion that there is more here than meets the eye – especially since all this happened within 12 hours of Mr. O'Dwyer filing a Baton Rouge lawsuit against the Governor and other high officials!

Fortunately for Mr. O'Dwyer, (and the Troopers) he had a houseguest asleep – but within hearing distance - on his porch hammock and he had the good sense to inform the Troopers of same by directing their attention to Mr. Guice to go into the kitchen to get his wallet and ID for the officers. The revelation of Mr. Guice's presence was probably the saving grace that forestalled a more punishing encounter for Plaintiff Mr. O'Dwyer. In addition to being hot inside the house, the outside porch was still in total darkness and Mr. Guice, an older gentleman, was spared witnessing perhaps a far more terrifying incident.

By any reasonable-man standard for objective reasonableness – or even for reasonable suspicion and probable cause – virtually nothing that occurred on this hot September evening/early morning appears to me to be even remotely reasonable, sensible, responsible or appropriate to the circumstances. POST certified peace officers are supposed to be trained in conflict resolution, defensive tactics and de-escalation techniques for dispute resolution alternatives. None of this training is evident to me in this file at the present time.

Vociferousness and profanity are not objectively threatening to three or four tactically equipped, young troopers when the opposition is one lone shirtless, 57-year-old man in shorts and topsiders standing in his front yard (which happens to be a paved driveway).

At some point in time there needs be thorough federal and state investigations (both criminal and administrative) of these events and others not herein addressed because it is my belief that the police and prison guards are mere instruments of orchestrated persecution or retaliation for someone and/or something that has yet to surface in this abnormal case.

I attest for the record that I have never been, and am not at this writing, a conspiracy theorist. UFO's and alien invaders don't exist in my mind. I like to believe that my forensic practice is one that, just like most professional investigators, follow where the evidence leads. I respectfully submit that what is necessary in this matter is some access, transparency and accountability, without which an explanation of relevant facts and circumstances will remain buried in some bureaucracy and probable cover-up which appears to thwart any hope for an objective review of the patently illegal and immoral conduct and the reasons therefor.

The recurring behaviors demonstrated by rogue DPS officers need to be exposed, punished and remediated so that peace officers will learn and be deterred from future temptations to exceed their vast coercive authority. The unfortunate recent history in the New Orleans Police Department is, for example, one presently devoid of any measure of confidence and respect from the citizens. There is a wide credibility gap that fuels disrespect of law enforcement authority such that the

NOPD enjoys virtually no cooperation from its constituents. This is what will befall the LSP if dishonorable behaviors are allowed to continue unabated.

17.

The only known perpetrator identifiable in the contemptible chain of events resulting in the injuries to plaintiff Mr. O'Dwyer is one Trooper, John Nelson, Badge 2227, who signed the affidavit alleging public intoxication against Mr. O'Dwyer. He must have been present to perfect the affidavit. It is believed that his supervisor is a possible Sergeant, Christopher Ivey, Badge # 1139, who signed the administration of TPR Nelson's oath on the affidavit. This does not mean that Sgt. Ivy was, however, necessarily present when the raid went down. It is, however, likely.

According to Witness Guice, it was evident even to the untrained eye, that someone of higher power was there and obviously providing direction and/or decision authority over the remaining two or three individuals. It may or may not have been Sgt. Ivey. If however, he was present, Mr. O'Dwyer is presently facing a conspiracy of fictitious swearing and the probable falsification of official records (among at least two of the three or four LSP officers)

In the matter of the bogus charge lodged against him, perhaps this criminal scheme has exemplified the continuing ethical dilemma, and the necessity to peel back the layers of an even more insidious potential cover-up. Were this case to be

brought to trial, the elevated potential for perjured testimony exists. Perhaps this may be the reason that there has never been an arraignment, or that the matter just might have prescribed. Unless, however, the cynical conspirators prefer to let the charge languish in the hope that an attachment will ultimately catch up with the accused and he will then be inconvenienced and/or wrongfully arrested one more time by some other officer checking his operator's license during a routine road block. These are the possible games that some unethical parties could play in their campaign of harassment against Mr. O'Dwyer.

18.

In conclusion, it is the opinion of the undersigned affiant that the foregoing gist of known, unconstitutional civil rights abuses were deliberately carried out under a real or perceived shield of immunity that protects legitimate disaster preparedness activities and personnel. From my experiences with local disasters, the troubling conduct herein described is entirely unrelated to legitimate life-safety improvisations and protective interventions by law enforcement officers pursuing definable loss prevention and property conservation missions following a devastating weather event. Absent any showing of Mr. O'Dwyer's interference with realistic disaster-mitigation pursuits, these DPS or even other government officials – whomever they may all turn out to be – placed their prejudicially injurious actions outside of the normally responsive, discretionary service-delivery

objectives conceived in Louisiana's Homeland Security's disaster enabling legislation. If the Louisiana legislature had the intention to decriminalize abduction, kidnapping and gratuitous violence against the citizenry by any State employee, and particularly public-safety officials (who do know better) under the guise of rendering "emergency services" during disasters, I will be surprised and greatly disturbed and angered by anyone who would take advantage of such an immoral interpretation or legal loophole.

It is my further belief – encouraged by the astute observations of the Senior Judge of the Eastern District - that a full measure of rigorous discovery will be needed to identify participants and explore the origins of their documentable extra-legal behaviors that originated the harm to Mr. O'Dwyer.

To prevent destruction of evidentiary links to official misconduct, it is recommended that the respective DPS custodians of records and information be initially ordered to preserve those materials that are properly subject to examination, such as the affidavit book in which the "public intoxication" charge was recorded; the daily rosters of all DPS personnel deployed and operating in the Metro New Orleans area between 09/17-23/05; the vehicle assignments, as well as the temporal and spatial coverage periods, with particular and detailed patrol patterns assigned to LSP F-60, and any other Troop F personnel and rolling stock; daily activity sheets, dispatch recordings, and written reports prepared by J. Nelson

and C. Ivey and members and/or other team participants; full descriptions of the weaponry carried or accessible to those Troopers; surveillance reports prepared by their unit or team; descriptions of night-vision optics, and; the classification, type and number of other arrests made by the unit members to which Ivy and Nelson were attached and/or working with, along with all names of personnel within their chain(s) of command.

19.

Having been a career municipal employee of twenty-two years, and being accustomed to compliance with the rule of law, I find it very hard to accept that the standard of care for certified law-enforcement service delivery, professional fire suppression, and emergency medical transportation, along with clinical healing performances, could be consciously diminished and even withheld: (i) just because the providers either work for a state government entity; or (ii) the need for the unique emergency services happens to fall within a Declared Disaster timeframe.

In any number of ridiculously extreme, “what if” analogies of situational interpretation, every cop, firefighter, EMT, nurse, doctor and weather forecaster could tell their governor and/or immediate supervisors, “ I’m out of here, see you later”. And maybe, even further down the slippery slope, a governor could then dispatch some prison guards to capture and imprison all of them during the arson and looting that would be certain to occur – at least in New Orleans.

20.

In closing I would respectfully reserve the right to amend, modify or supplement the above-mentioned findings, opinions and conclusions as future information may warrant.

S/David R. Kent

DAVID R. KENT

Sworn to and subscribed before me,
this 20th day of August, 2007.

S/Karl Wiedemann

NOTARY PUBLIC
My commission expires at death.