

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

NELDA KELLOM Individually and  
as Personal Representative of the Estate  
of TERRANCE KELLOM, Deceased,  
KEVIN KELLOM, individually, and  
TERIA KELLOM, individually

Civil Action No. 17-cv-11084  
Hon. SEAN F. COX  
Mag. ANTHONY P. PATTI

*Plaintiffs,*

vs.

UNITED STATES, MITCHELL QUINN,  
Immigration and Customs Enforcement  
Agent, DARELL FITZGERALD and  
TREVA EATON, in their individual and  
official capacities as Detroit Police  
Officers, the CITY OF DETROIT, and  
James E. Craig, in his official capacity,  
jointly and severally,

*Defendants.*

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**PLAINTIFFS' RESPONSE TO DEFENDANT QUINN'S MOTION FOR  
SUMMARY DISPOSITION**

NOW COMES, Ayad Law by and through its attorneys on behalf of the  
above-named Plaintiffs, and states the following in response to Defendants' above-  
captioned motion:

*(Plaintiffs rely on and incorporate into this Response their Counter-  
Statement of Facts, submitted to this Court on.)*

**PRELIMINARY STATEMENT**

The Defendants have not been forthcoming with the Court as not a single one of Defendants' motions mention the catastrophic reversal of fortune they have had since their key witness and officer whose case the apprehension of Terrance Kellom was, Detroit Police Officer Darell Fitzgerald, has now testified under oath that Terrance Kellom never wielded a hammer. Defendant Fitzgerald's story is now completely the opposite of what he wrote in his incident report, signed 4/29/2015 (two days after the shooting), and matches exactly with what all the non-government witnesses have stated from the time of the incident: that Terrance had nothing in his hands. In 2015, Defendant Fitzgerald wrote an account of the shooting which corroborated Defendant Quinn's account: "When I turned around towards the hallway I could see Terrance with a hammer raised above his shoulder and I believed he was about to strike myself TFO Quinn.... At that time I saw Terrance fall to his knees then fall face down with hammer still in right hand." (Exhibit A pp 3-4).

At his deposition on November 26, 2018, Officer Fitzgerald told a different story:

**Q: ... Did you ever see Terrance Kellom with a hammer in his hand?**

**A: No.**

(emphasis added) (Exhibit B 26).

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This counsel made absolutely certain that Officer Fitzgerald's deposition testimony could not be misunderstood, reminding Defendant twice that he was under oath. Defendant Fitzgerald's sworn testimony is that there was no hammer.

A: [Terrance Kellom] was on his knees when I saw him.

Q: Okay. And when he was on his knees, did you see him holding anything?

A: No, I did not.

Q: And did you see him fall forward?

A: Yes.

Q: To the ground?

A: Yes, I did.

Q: Okay. Now after you seen him fall forward to the ground did you see anything in his hands then?

A: No, I didn't.

Q: Or anything near his hand?

A: No.

\* \* \* \*

Q: Did you see any hammer that evening at the house?

A: No.

*Id.*, 26-28.

It is now ultimately clear that a cover-up has occurred here, as Defendant Fitzgerald has changed his testimony when placed under oath. Defendant Fitzgerald initially took the position that Terrance Kellom had a hammer. Yet, in his deposition, miraculously, he remembered that Terrance did not have a hammer. Defendant Fitzgerald's story now disagrees with the other government witnesses and completely matches what this plaintiff and all witnesses that were not law enforcement have been alleging all along: that there was never a hammer. Not only did Defendant Fitzgerald say this in his deposition, but this is the second time he

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said there was no hammer under oath. His answers to interrogatories exactly match his new version. Now, when Officer Fitzgerald is placed under-oath with the prospect of criminal charges against him for perjury, he unequivocally tells the truth: There was no hammer in Terrance Kellom's hand when he was shot.

The above statement should be enough for this counsel to end their response and show that an absolute issue of material fact exists for the jury. Here, a defendant who is being sued<sup>2</sup> for wrongful death of an individual changes his story and admits the decedent was unarmed when shot. If Terrance Kellom was unarmed, there was excessive force used. If there was excessive force, then Plaintiffs' rights were violated. All of Defendants should be thanking their lucky stars that they are not being criminally charged and put in jail at this time for conspiring to cover up the unlawful killing of an unarmed African-American young man. Although the testimony of Defendant Fitzgerald is enough to defeat the Motion for Summary Disposition, Plaintiffs will elaborate further with the following incredible and undeniable evidence that makes clear that Defendants' motion should be denied. Even without Defendant Fitzgerald's admission, the other evidence is overwhelming in Plaintiffs' favor.

This counsel and associate counsel William Savage saw Defendant Fitzgerald wipe a tear from his eye, twice, during his deposition when he was discussing the shooting of Terrance Kellom. It could very well be that when he was holding Kevin Kellom back, he was thinking about his own 20-year-old African-

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American son. Whether it be guilt or the fear of being criminally prosecuted for perjury, Defendant Fitzgerald blew the lid off of this cover-up. As any practicing attorney would know, it is not every day that law enforcement have the courage to come forward and speak the truth as to what transpired in a situation like this. As anyone with common sense can see, it is clear what could happen to this individual in his every-day employment with the department. *E.g.*, isolation, stigma, harassment, hostility, and possibly even violence. The magnitude of this statement alone speaks volumes. This honorable Court, I am sure, will see the gravity of this statement in and of itself.

Finally, if this defendant lied about the killing, how can this Court accept their statements about the supposed entry into the house with consent?

### **BACKGROUND AND ARGUMENT**

#### ***1. Preparation the Morning of April 27, 2015.***

Armed only with information that Terrance Kellom lived at his girlfriends house, which was not the Evergreen address in which the shooting took place, DFAT went to the girlfriend's house and spoke with Terrance's girlfriend and her mother. There, Defendant Fitzgerald spoke with Terrance's girlfriend who supposedly told him that Terrance may be staying with his father at the Evergreen address. (**Exhibit A** pp 2). Defendant Eaton spoke with Terrance's girlfriend's mother, who supposedly stated that Terrance lived at the Evergreen address. (**Exhibit C** pp 1). Defendant Eaton then travelled to 9543 Evergreen, where she

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began surveilling the house. She then summoned the other members of DFAT to the house. Defendant Eaton had ample time to get a search warrant while surveilling the house but she did not. "Is there any reason why you didn't just sit there and wait until the judge or magistrate entered a search warrant?" Answer: "There is no reason." (Exhibit D 36: 24-25; 37: 5). Once the other DFAT members arrived at the Evergreen location, DFAT officers surrounded the house. Defendant Fitzgerald was in the front of the house, Defendant Eaton was on the side, and Defendant Quinn was also on the side.

*2. Entry into Kevin and Teria Kelloms Home.*

The apprehension of Terrance Kellom was Defendant Fitzgerald's case. Terrance was wanted for a warrant out of Detroit for allegedly robbing a pizza delivery person and for a violation of his probation which was near over.

Since this was Defendant Fitzgerald's case, he knocked on the front door and was supposed to be equipped with the warrant. "...[P]rimarily [it] would be the officer whose case it was [that] would knock on the door." *Id.*, 36: 12-13. It is absolutely undisputed that there was no search warrant to search the house. Instead, there was only an arrest warrant. The law is ultimately clear as to when one can enter a home equipped with only an arrest warrant. It is clearly established that the only way to enter a home with an arrest warrant for a non-resident, is 1) consent, 2) exigent circumstances, or 3) hot pursuit.

a. Hot pursuit:

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Hot pursuit is not at issue as a possible method of lawful entry for the DFAT officers as no party contends that DFAT was in hot pursuit of Terrance Kellom. DFAT members had been able to surveil Terrance at length. They observed him talking on his phone in front of the house, searching for something in front of the house, and even allowed him to leave his home and go to the gas station and then return home before making their move.

b. Consent:

It is without doubt that there is a genuine issue of material fact as to how the DFAT team entered that house. Each witness that had personal knowledge as to entry into that house say the following: Kevin Kellom, the owner of the house, has maintained that officers told him they had a warrant to enter his home but refused to show it, threatened him to let them in, and rushed past him after forcing their way in. Teria Kellom, who also resided at the Evergreen house and was also at the front door when her father was talking to DFAT, has maintained the same story as her father. Defendant Fitzgerald, the only of Defendants' witnesses that has personal knowledge that Mr. Kellom supposedly consented (the other DFAT officers, Defendants Eaton and Quinn, came in on the assumption that because they saw Defendant Fitzgerald in the house they could enter), is not to be believed on the issue of consent, considering that he obstructed justice and lied on his statement regarding the killing.

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Even if one assumes that Defendant Fitzgerald was given consent to enter the home, that entry would not have given DFAT permission to search the entire house. Defendant Fitzgerald is unaware of this fact. "Once we found out that he was over on Evergreen, it was more of a just knock, knock and announce and see if we can get him into custody." (**Exhibit B** 12: 21-23). According to Defendant Fitzgerald, the fact that they had seen Terrance at the house and had only an arrest warrant would be enough to legally enter the house without consent. "Like I say, we had the arrest warrant that was there so -- and plus we saw him." *Id.*, 13: 3-14.

Defendant Fitzgerald, the officer knocking on the door, did not know who lived in the house. *Id.*, 14: 20-22. Yet, not knowing who else lived in the house, he felt he had consent to search throughout the house, not just in the houses common areas. *Id.*, 15: 2-7; 32: 10-13. At the house, in addition to Terrance's father Kevin, his sister Teria who resided at the house, also asked Officer Fitzgerald to see a search warrant. Officer Fitzgerald refused to show her a search warrant. *Id.*, 15: 8-24. According to Officer Fitzgerald, he had a conversation at the door with Kevin Kellom, where he told him that he had an arrest warrant for his son Terrance, and Officer Fitzgerald asked only if Mr. Kellom would consent to officers coming into his house to speak with him about the warrant; not to search the house. According to Officer Fitzgerald:

A: We had a conversation at the door, I advised that I had a arrest warrant, arrest warrant for his son and [asked] could I come in to explain what was going on.



Q: Okay. So he allowed you in the house to explain what was going on?

A: Yes.

*Id.*, 17: 9-14.

Inside the house, according to his deposition testimony, Officer Fitzgerald supposedly showed the arrest warrant to Kevin Kellom, but still refused to show it to Teria Kellom. *Id.*, 17: 22-25; 18: 1-8. In the same deposition, after Officer Fitzgerald was then shown a copy of his own incident report from two days after the shooting and which makes no mention of any showing of any warrant to anyone, he remembered that he, in fact, did not show any warrant. "Right, okay. No, it doesn't say that I showed. It says that I, that I have an arrest warrant, that was it." *Id.*, 19: 15-25; 20: 1. Further, Officer Fitzgerald acknowledged that he would be required to show a warrant to a homeowner. *Id.*, 20: 2-9. Officer Fitzgerald testified under oath that Teria Kellom continuously argued with him about not having seen a warrant, but that he refused to show her one. *Id.*, 21: 3-7. Upon further inquiry, Officer Fitzgerald changed his story again regarding an arrest warrant, confirming that he never showed any warrant to anyone, because he was going to show the arrest warrant to Mr. Kellom only after the house was "clear" but before that could happen, other officers had apparently made their way into the attic where they began shouting at Terrance Kellom. *Id.*, 21: 25; 22: 1-8.

**Officer Fitzgerald's ultimate testimony is that he asked the Kellom's if he could come in to speak with them, and then other officers began searching the**

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**house while the residents were still demanding to see a warrant which he did not show them.**

Both Defendants Eaton and Quinn only assumed that they could enter the house because the other officers were already in the home.

A: I'm assuming that they were granted permission to enter the house since they were already in the house. I had no transactions with the people at the door, so, I don't know.

**Q: So, that's why you entered the home? You assumed that they had permission to enter the house?**

**A: Yes.**

(emphasis added)(Exhibit E 97: 11-25).

**Q: So you assumed because other officers were inside the house that they had permission to be in the house?**

**A: That's correct.**

(emphasis added) (Exhibit D 40: 15-17; see also 39: 11-25).

However, even the entry itself is not as Defendants portray it. Plaintiffs' under oath testimony clearly shows that they were going to break down his door if he did not open it. Plaintiffs are shocked at the misleading partial quotations in Defendant Quinn's Motion for Summary Disposition. Defendant Quinn argues that Kevin Kellom consented to officer's entering his home, and 'supports' this argument by quoting two partial-statements to purposefully take the them out of context. On the very day of his son's killing and while still emotionally shaken, Kevin Kellom was interviewed by police and stated the following in regard to the encounter he had through his screen door with officers standing on his porch:

A: And he said, "Open your door." I said, "Open my door for what?" I said, "What's the problem?" I said, "I didn't call the police." And the other guy said, "Open the motherfucking door or I'm going to tear it down." I opened the door and I let them in. I ain't got nothing to hide from the police. I let them in. I mean my –

(emphasis added)(Exhibit E transcript page 10).

Defendant's quotation begins with "I opened the door...," excluding the threat made by police immediately preceding it to purposefully mislead this Court into thinking Kevin Kellom consented to entry into or a search of his home. Kevin Kellom has admitted to being afraid of police and having a distrust of them. And when two large, armed and armored, police threaten to break your "motherfucking door" down, it is implied that legal formalities have 'gone out the window' and that non-compliance will result in brutality, violence, or (as was the case here) worse. Opening one's door under the threat of violence or duress is not consent.

Another quote by Defendants is similarly misleading. Defendant simply quotes a partial sentence from Kevin Kellom's interview to make it seem as if he went down stairs to let the police in. But the whole sentence makes clear Kevin Kellom was going to let who he mistook for roofers into his house, not police.

And I'm thinking that it was the -- because I was supposed to have some roof work done on my house. So I'm thinking maybe, you know, it's the guy that come to do my roof. I'm coming down, you know, so I can let them in.

*Id.* at transcript page 11.

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The portion of that paragraph that Defendant Quinn quotes is: “you know, so I can let them in.” Defendant is indisputably trying to mislead the Court in their Statement of Undisputed Facts and Motion. Kevin Kellom has consistently told the truth: that he did not consent to the officers entering his home.

c. Exigent circumstances:

Hot puruit is not in question, Consent is at issue, and the only other legal avenue for entry (exigent circumstances) is ruled out for a number of reasons. First, they had all the time in the world to surveil the house and get a search warrant. Terrance had not been convicted of his alleged crime of robbing a pizza delivery person. Such a robbery would likely not have been for more than \$100 and there is no justification for comparing Terrance to the ‘worst of the worst’ fugitives that may be DFAT’s normal activity. Defendant Eaton, the officer who arrived first on the scene and surveilled the Evergree house, even admits that DFAT could have surrounded the house and gotten a search warrant. When asked: “Is there any reason why you didn’t just sit there and wait until the judge or magistrate entered a search warrant?” Defendant Eaton testified: “There is no reason.” (Exhibit D 36: 25; 37: 1-5). Defendant Eaton, who has an extensive disciplinary record, even wrote search warrants for a time.

So Defendants violated Plaintiffs’ Fourth Amendment rights by entering into that house, and then claim that the exigent circumstance of officers inside the house calling for undefined assistance is an exigent justification for entry. “I

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cannot tell you what was exactly said over the radio. What I can tell you is they asked for an additional person for assistance.” (Exhibit E 92: 17-20).

Regardless if Defendants Eaton and Quinn were summoned by other DFAT officers over the radio (in and of itself an issue of material fact for the jury as Defendant Quinn was already in the house when he heard the request for a shield. And even if this Court finds that they were summoned, it still should not absolve them of their Violation of Plaintiffs’ Fourth Amendment rights to be free from unlawful searches and warrantless entries.

d. The Law of Warrantless Entry:

**Defendants’ caselaw does not dispute Plaintiffs’ legal claims at all.** All

Defendants agree that *Steagald v. U.S.*, 451 U.S. 204 (1981) is still good law and still controls when, as here, police enter a third-party’s home with merely an arrest warrant for a non-resident. “The issue in this case is whether, under the Fourth Amendment, a law enforcement officer may legally search for the subject of an arrest warrant in the home of a third party without first obtaining a search warrant.” *Id.*, 205–06. The very next line concludes: “[A] search warrant must be obtained absent exigent circumstances or consent[.]” *Id.*

**3. *The Shooting of Terrance Kellom.***

When the shooting occurred, there were five non-government witnesses present in the Evergreen house: Kevin Kellom; Teria Kellom; Yvette Johnson; Anthon Coleman; and Cheffon Jones.

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a. Location:

Kevin Kellom and Teria Kellom where in an area where they could see the hallway and they could see Defendant Quinn. "I seen my son [step down from the] last stair on the floor, he's in the hallway right where I could see him. "...[an officer]'s trying to get me up in the dining room, but I grabbed my wall to keep from pulling me all the way up in the dining room, I grabbed my wall and held onto my wall (indicating)...<sup>2</sup> Yes. We all saw him when they brought him down the stairs." (Exhibit F 29: 13-16; 30: 8-9):Likewise, Teria Kellom stated under oath

Q: Did you see when your brother made it to the hallway?

A: Yes, I seen him, yes.

Q: Where were you standing when he was in the hallway?

A: [By t]he door, [by] the door.

Q: The doorway to the dining room? I know you can't see it in the pictures. Were you standing in the doorway between the living room and the dining room?

A: Yes.

(Exhibit G 17: 1-8).

b. The Shooting:

The non-gov witnesses testified that Terrance was brought down the stairs. "Yes. We [Kevin, Teria, and Cheffon Jones] all saw him when they brought him down the stairs." (Exhibit F 30: 9-9). Question: "How did your brother come downstairs?" Answer: "He walked." (Exhibit G 15: 22-23). "They went down[ the ]stairs because that was really the only way for them to get down." (Exhibit I 15:

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6-7). “It sounded like they were coming down the stairs from upstairs” (Exhibit J 19: 17-18). No one heard either the banging of a hammer in the crawl-space and ll testified that he did not come down a hole in the attic to the bedroom. And most importantly all testified that there was no weapon or hammer with Terrance Kellom “I know for a fact he didn't have a hammer in his hands.” (Exhibit F 100: 9). Question: “Did you ever see a hammer in the house?” Answer: “No.” (Exhibit H 18: 9-10). “The hammer was not there [in the house] before Terrance's killing.” (Exhibit I 24: 14-15). “Did you see a hammer?” Answer: “No.” (Exhibit J 22: 6-7). Cheffon Jones, who was unable to be deposed, also states there was no hammer in an investigative report. And there was also testimony that he was not in handcuffs, and that could very well be due to the mere impracticality of trying to handcuff him in the tiny and overstuffed upstairs hallway.

When Terrance meets his unfortunate fate of being executed by Agent Quinn. Agent Quinn shoots once or twice and then, it is undisputed that, there was a pause before the next six or seven rounds were fired. All of the Defendants' testimony is that Defendant Quinn shot while facing west, meaning his bullets would have travelled east-to-west. Terrance was shot at the bottom of the stairs, in a narrow hallway running east-west. No Defendants' testimony ever puts Defendant Quinn closer that several feet east of Terrance Kellom. Defendant Quinn's own testimony is that every shot he fired travelled east to west, that **Terrance was still standing when he fired his last shot, and that Terrance fell**