

**IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

Susan Doxtator, Arlie Doxtator, and
Sarah Wunderlich, as Special
Administrators of the Estate of Jonathon
C. Tubby,

Case No. 1:19-cv-00137-WCG

Plaintiffs,

vs.

**TAHDOOAHNIPPAH
DECLARATION IN SUPPORT OF
PLAINTIFF'S MOTION TO COMPEL**

Erik O'Brien, Andrew Smith, Todd J.
Delain, Heidi Michel, City of Green
Bay, Brown County, Joseph P. Mleziva,
Nathan K. Winisterfer, Thomas Zeigle,
Bradley A. Dernbach, and John Does 1-
5,

Defendants,

I, Forrest Tahdooahnippah, state and declare as follows:

1. I am an attorney licensed to practice law in this District. I am a Partner in the law firm of Dorsey & Whitney LLP, and am one of the attorneys representing Plaintiffs in the above captioned action. I submit this Declaration in support of Plaintiffs' Motion to Compel and For Sanctions. I have personal knowledge of the matters set forth in this Declaration, and if called to testify in this case I would and could competently testify as to such matters.

2. On December 20, 2019, I deposed Green Bay Police Officer Scott Salzmann in connection with the above-captioned case. Attached hereto as **Exhibit A** is a true and correct copy of the Notice of Deposition of Officer Scott Salzmann, served upon the Green Bay Police Department on November 19, 2019.

3. Attached hereto as **Exhibit B** is a true and correct copy of excerpts of the transcript of the December 20, 2019 deposition of Officer Scott Salzmann.

4. During the deposition of Officer Salzmann, I observed that Officer Salzmann has tattoos on his forearm including a stylized American flag and golden eagle feathers each containing a red dot.

5. I am aware that the generally accepted significance of an eagle feather with a red dot is that the wearer killed a foe.

6. I have reviewed documents produced by Green Bay in the course of this case showing that Officer Salzmann has shot and killed at least two people while on duty as a Green Bay police officer.

7. Attached hereto as **Exhibit C** is a true and correct copy of an excerpt of the transcript of the January 9, 2020 deposition of Green Bay Police Officer Allen, confirming that Officer Salzmann did not have tattoos at the time he accepted a position with the Green Bay Police Department.

8. Prior to filing the January 13, 2020 Motion to Compel, I attempted in good faith to obtain Officer Salzmann's responses to the questions regarding the meaning of his tattoos via correspondence with counsel for the Green Bay Defendants in this action. The Green Bay Defendants refused to produce Officer Salzmann for a continued deposition.

I declare under the penalty of perjury that the foregoing is true and correct. Executed on January 14, 2020 in Minneapolis, Minnesota.

/s/ Forrest K. Tahdooahnippah
Forrest K. Tahdooahnippah

EXHIBIT A

**NIN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

Susan Doxtator, Arlie Doxtator, and
Sarah Wunderlich, as Special
Administrators of the Estate of Jonathon
C. Tubby,

Plaintiffs,

Case No. 1:19-cv-00137-WCG

**NOTICE OF DEPOSITION OF
SCOTT SALZMANN**

vs.

Erik O'Brien, Andrew Smith, Todd J.
Delain, Heidi Michel, City of Green
Bay, Brown County, Joseph P. Mleziva,
Nathan K. Winisterfer, Thomas Zeigle,
Bradley A. Dernbach, and John Does 1-
5,

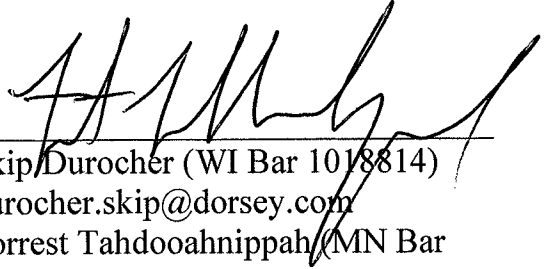
Defendants,

PLEASE TAKE NOTICE that, pursuant to Fed. R. Civ. P. 30, Plaintiffs will take the deposition of Scott Salzmann on December 20, 2019 at 9:00 a.m. at Green Bay City Hall, 100 North Jefferson St., Green Bay, WI 54301. The deposition will be taken by oral examination before a qualified court reporter or other person authorized to administer oaths, will be recorded by stenographic means, and will continue by adjournment until completed.

The deposition may be recorded by videotape, and Plaintiffs reserve the right to use any videotaped portion of the deposition testimony at a hearing or at trial in this matter.

Dated: November 19, 2019

By


Skip Durocher (WI Bar 1018814)
durocher.skip@dorsey.com
Forrest Tahdooahnippah (MN Bar
0391459)
forrest@dorsey.com

DORSEY & WHITNEY LLP
Suite 1500, 50 South Sixth Street
Minneapolis, MN 55402-1498
Telephone: (612) 340-2600
Facsimile: (612) 340-2868

David R. Armstrong (WI Bar 1070205)
david.armstrong4@gmail.com
8975 Westchester Dr.
Manassas, VA 20112

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of November, 2019, I caused to be served the foregoing NOTICE OF DEPOSITION OF SCOTT SALZMANN via email on the following attorneys/parties:

GUNTA LAW OFFICES SC

Ann C. Wirth

acw@guntalaw.com

Gregg J. Gunta

gig@guntalaw.com

Jasmyne M. Baynard

Jmb@guntalaw.com

John A. Wolfgang

jaw@guntalaw.com

9898 W. Bluemound Rd.

Suite 2

Wauwatosa, WI 53226

Attorneys for Green Bay Defendants

CRIVELLO CARLSON SC

Benjamin A. Sparks

bsparks@crivellocarlson.com

Samuel C. Hall, Jr.

SHall@CrivelloCarlson.com

Jose Antonio Castro

jcastro@crivellocarlson.com

The Empire Building

710 N. Plankinton Ave

Suite 500

Milwaukee, WI 53203

Attorneys for Brown County Defendants

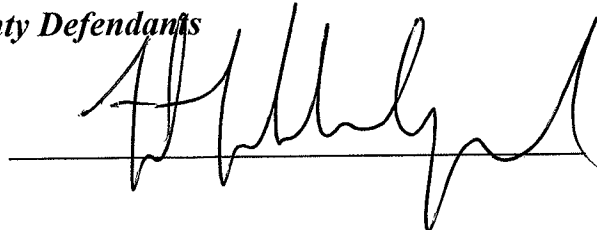
A handwritten signature in black ink, appearing to be "H. H. H. H. H.", written over a horizontal line.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

SUSAN DOXTATOR, ARLIE DOXTATOR,
and SARAH WUNDERLICH, as Special
Administrators of the
Estate of Jonathon C. Tubby,

Plaintiffs,

vs.

Case No. 1:19-cv-00137-WCG

ERIK O'BRIEN, ANDREW SMITH,
TODD J. DELAIN, HEIDI MICHEL,
CITY OF GREEN BAY, BROWN COUNTY,
JOSEPH P. MLEZIVA, NATHAN K. WINISTERFER,
THOMAS ZEIGLE, BRADLEY A. DERNBACH,
and JOHN DOES 1-5,

Defendants.

Deposition of SCOTT SALZMANN

Friday, December 20, 2019

9:04 a.m. to 12:29 p.m.

Reported by Jennifer M. Steidtmann, RPR, CRR, CRC

1 pull Tubby backwards, he's falling to the ground. I
2 see him tense up as shots are being fired. When he
3 goes to the ground, he's on his stomach; and with me
4 still back pressure and the K-9 on lead, Pyro pulls
5 Tubby from his stomach to his back, at which point I
6 can still see his hands are still up under his shirt.

7 I move closer to release K-9 Pyro from
8 engagement, and I can see blood near Tubby, and his
9 hands still concealed under his shirt with his hands
10 up to his chest, not visible due to the shirt.

11 Q All right. Did you actually observe Jonathon Tubby
12 getting shot?

13 A Yes.

14 Q All right. You saw -- you saw the rounds hit him?

15 A I did not see rounds hit him. I saw behaviors
16 consistent with what I believe to be being hit.

17 Q Okay. And that was the tensing of the body?

18 A Yes.

19 Q Okay. So you didn't actually -- from your vantage
20 point, you couldn't see the rounds enter his body?

21 A No.

22 Q Could you see any sort of blood splatter or anything
23 like that?

24 A I did not.

25 Q But you specifically saw him tense up?

1 Q And why is that?

2 A The only reason I smirk is the best way I can
3 describe it is it's like asking a fireman to leave
4 without a fire extinguisher. This is -- at any point
5 in time in my life or my career I could be called to
6 service or called to duty, or unfortunately in
7 today's day and age we could have an active shooter
8 right here in this building right now and it would be
9 my job to go and stop it. I can't do that without
10 the tools given to me.

11 Q All right. Are you a veteran?

12 A No.

13 Q Have you ever served in the military?

14 A No.

15 Q All right. And, you know, don't mean to pick on you,
16 truly don't, but the only reason I ask that is
17 because I saw that you had some tattoos on your
18 forearm, like the American flag and some feathers and
19 stuff.

20 A Uh-huh.

21 Q And so that's in my training and experience something
22 that is often associated with people that are
23 veterans, and particularly people that have killed
24 someone in the line of duty. So is that the
25 significance of those tattoos?

1 A These tattoos, I'm very patriotic and they have
2 personal symbolic reason or meaning to me, and that's
3 all I'm going to tell you on that.

4 Q All right. I don't want to pry into your personal
5 life, but I just want to -- does it mean you killed
6 someone?

7 A These tattoos have symbolic meaning to me that mean
8 something personal, and that's all I can testify to.

9 Q So you can't say whether or not it means that you
10 killed someone?

11 A I can. I won't.

12 Q Okay. You refuse to answer the question?

13 A I'm answering that these tattoos have symbolic
14 meaning to me that's personal in nature, and that's
15 what I will tell you.

16 Q I'm not trying to pry into your personal life at all.
17 I just want to know whether or not it means you
18 killed someone.

19 A But you are.

20 Q Okay. But can you at least tell me whether or not it
21 means you killed someone?

22 A These tattoos have some personal and symbolic meaning
23 to me, and that's what they're at.

24 Q And you refuse to say anything beyond that?

25 A I'm not going to tell you any more than that.

1 A No.

2 Q It was just back pressure on Pyro?

3 A Yes.

4 MR. TAHDOOAHNIPPAH: I'm done with my
5 questions. I'm going to make a note for the record,
6 however, that I'm not adjourning the deposition.
7 I'm not agreeing to adjourn the deposition today
8 unless I receive the answers to the questions I
9 posed about Officer Salzman's tattoos.

10 It's nothing personal against you. I know
11 that if you were in the field and you asked a
12 question, you'd expect it to be answered. I expect
13 the same thing. So I'm going to leave the
14 deposition open so that I can decide whether or not
15 I want to go seek an order to compel answers to
16 those questions from the magistrate judge.

17 Go ahead.

18 MR. GUNTA: That's fine. Thank you.
19 Should I go or you want to go?

20 MR. CASTRO: You can go first.

21 EXAMINATION

22 BY MR. GUNTA:

23 Q All right. You were asked some questions, Officer
24 Salzman, in regard to the issue of fleeing versus
25 the -- versus other circumstances that you could

EXHIBIT C

UNITED STATES DISTRICT COURT
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and Sarah Wunderlich, as Special
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Case No.

1:19-cv-00137-WCG

Erik O'Brien, Andrew Smith, Todd
J. Delain, Heidi Michel, City of
Green Bay, Brown County, Joseph P.
Mleziva, Nathan K. Winisterfer,
Thomas Zeigle, Bradley A.
Dernbach, and John Does 1-5,

Defendants.

DEPOSITION OF: ERIC ALLEN

TAKEN AT: GREEN BAY CITY HALL

LOCATED AT: 100 North Jefferson Street
Green Bay, Wisconsin
January 9, 2020

1:50 p.m. to 5:12 p.m.

REPORTED BY: VICKY L. ST. GEORGE, RMR.

JOB NO. 3786670

1 lawsuit?

2 A. Nothing that I've ever been told it has, so I don't
3 know.

4 Q. So it's not one of the depositions you sat for?

5 A. It's not.

6 Q. All right. How many of these was Officer Salzman
7 involved in?

8 A. The Sonnenberg one.

9 Q. Any others?

10 A. No.

11 Q. How long have you known Officer Salzman?

12 A. Since shortly after he got hired. I don't know what
13 year that was. Probably 15 years ago give or take.

14 Q. Do you socialize with him outside of work?

15 A. No.

16 Q. How about Officer O'Brien?

17 A. No.

18 Q. Have you ever seen the feather tattoos that Officer
19 Salzman has on his arm?

20 A. Yes.

21 Q. Do you know when he first got those?

22 A. No.

23 Q. Did he have them when you first met him when he joined
24 the force?

25 A. I don't believe so, no.