

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

SUSAN DOXTATOR, et al.,

Plaintiffs,

v.

Case No. 19-C-137

ERIK O'BRIEN, et al.,

Defendants.

**DECISION AND ORDER GRANTING PLAINTIFFS'
MOTION TO COMPEL AND FOR SANCTIONS**

Plaintiffs Susan Doxtator, Arlie Doxtator, and Sarah Wuderlich filed this action pursuant to 42 U.S.C. § 1983 in their capacities as the special administrators of the Estate of Jonathon C. Tubby, seeking damages against Defendants for the fatal, officer-involved shooting of Tubby. Presently before the court is Plaintiffs' motion to compel and for sanctions. Department Officer Scott Salzmann, an eyewitness to the shooting of Tubby, was deposed on December 20, 2019. Counsel for Plaintiffs observed at the deposition that Officer Salzmann had several tattoos with red dots within golden eagle feathers. Based on prior experience, Plaintiff's counsel believed that this type of tattoo signifies that the person with the tattoo has killed an enemy and asked Officer Salzmann questions about the meaning or significance of his tattoos. Without any objections or instructions from his counsel, Officer Salzmann stated that the tattoos have a "personal and symbolic meaning" and that he was not going to "tell you any more than that." Salzmann Depo. 141:1–25, Dkt. No. 74-2 at 5. Plaintiffs' counsel sought the City of Green Bay's agreement to have Officer Salzmann reproduced for a deposition in light of his refusal to answer the questions related to his tattoos, but the City refused. Plaintiffs request that the court issue an order

compelling Officer Salzmänn to continue his deposition and answer questions regarding his tattoos and sanctioning Officer Salzmänn and the City for their refusal to cooperate in the discovery process. For the following reasons, Plaintiffs' motion will be granted.

Rule 37 of the Federal Rules of Civil Procedure states that "a party seeking discovery may move for an order compelling an answer . . . if . . . a deponent fails to answer a question." Fed. R. Civ. P. 37(a)(3)(B)(i). A witness may only refuse to answer a deposition question "when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3)." Fed. R. Civ. P. 30(c)(2). He may not simply refuse to answer questions he believes are improper during depositions. *See Redwood v. Dobson*, 476 F.3d 462, 467–69 (7th Cir. 2007); *see also Patterson v. Burge*, No. 03 C 4433, 2007 WL 1317128, at *3 (N.D. Ill. May 4, 2007) ("Deposition questions are to be answered notwithstanding an objection, unless the objection is to preserve a privilege.").

Defendants argue that, as a non-party fact witness, any discovery regarding the significance of Officer Salzmänn's tattoos is irrelevant to the issues in this case. Regardless of whether the line of questioning concerning the significance of Officer Salzmänn's tattoos goes to the ultimate issues of whether the City has a policy of excessive force or whether the City adequately supervises its police officers, it may be relevant to Officer Salzmänn's credibility and bias as a witness. Salzmänn did not object to the relevance of the questions regarding his tattoos or move for a protective order during his deposition; he simply refused to answer those questions. In other words, Salzmänn failed to offer any legally supportable basis for refusing to answer the questions regarding the meaning of his tattoos. Absent a claim of privilege or other lawful basis to refuse to answer deposition questions, Salzmänn must continue his deposition and answer the questions posed regarding his tattoos. Accordingly, Plaintiffs' motion to compel is granted.

After granting a motion to compel, “the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion . . . to pay the movant’s reasonable expenses incurred in making the motion, including attorney’s fees.” Fed. R. Civ. P. 37(a)(5)(A). Under the circumstances presented here, an award of attorney’s fees and costs is appropriate. Officer Salzmann and the City must therefore pay Plaintiffs’ reasonable expenses, including attorney’s fees, incurred in making their motion to compel. Plaintiffs also request that the court require Officer Salzmann and the City to pay for the costs associated with continuing Salzmann’s deposition. Because Officer Salzmann’s conduct during the first deposition is the reason a second deposition is necessary, Officer Salzmann and the City are ordered to bear the costs of the continued deposition.

For the reasons set forth above, Plaintiffs’ motion to compel and for sanctions (Dkt. No. 71) is **GRANTED**. Officer Scott Salzmann is ordered to answer the questions posed at his continued deposition regarding the tattoos on his forearm. Officer Salzmann and the City of Green Bay are ordered to pay Plaintiffs’ expenses, including attorney’s fees, in bringing the motion to compel and for the costs associated with continuing Salzmann’s deposition.

SO ORDERED at Green Bay, Wisconsin this 21st day of February, 2020.

s/ William C. Griesbach
William C. Griesbach, District Judge
United States District Court