

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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

Plaintiffs,

Case No. 19-CV-137

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.

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**DEFENDANTS ERIK O'BRIEN, ANDREW SMITH AND  
CITY OF GREEN BAY'S PROPOSED FINDINGS OF FACT IN SUPPORT OF  
THEIR SUMMARY JUDGMENT MOTION**

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Defendants, Erik O'Brien, Andrew Smith and the City of Green Bay, by their attorneys,  
Gunta Law Offices, S.C., submit the following Proposed Findings of Fact in support of their motion  
for summary judgment.

**The Parties**

**Plaintiffs**

1. At the time of his death on October 19, 2018, Jonathon Tubby was an adult resident of  
the City of Green Bay, Wisconsin. (Dkt. 83, ¶ 5)

2. Plaintiffs Sue Doxtator, Arlie Doxtator, and Sarah Wunderlich are adult residents of the State of Wisconsin and were appointed Special Administrators of Mr. Tubby's estate on December 7, 2018 in the probate matter captioned *In the Matter of the Estate of Jonathon C. Tubby*, 2018-PR-000428, in Brown County Circuit Court. (Dkt. 83, ¶¶ 6-8)

#### **City of Green Bay Defendants**

3. Defendant City of Green Bay ("Green Bay") is a municipal corporation located in Brown County with its principal office located at 100 North Jefferson Street, Green Bay, Wisconsin 54301. (Dkt. 83, ¶ 13)

4. Defendant Erik O'Brien is a City of Green Bay Police Officer, and was so employed on October 19, 2018. (Dkt. 83, ¶ 9; Baynard Decl. ¶ 2, Ex. A, O'Brien dep. p. 24)

5. Defendant Andrew Smith is the Chief of Police for the City of Green Bay Police Department and has been employed since February 1, 2016. (Dkt. 83, ¶ 10; Baynard Decl. ¶ 3, Ex. B, Smith dep. p. 7)

#### **Brown County Defendants**

6. Defendant Brown County ("Brown County") is a municipal corporation with its principal office located at 305 E. Walnut Street, Green Bay, Wisconsin 54301. (Dkt. 83, ¶ 14)

7. Brown County maintains jurisdiction over and operates the Brown County Sheriff's Office and the Brown County jail. (Dkt. 83, ¶ 14)

8. Defendant Todd J. Delain is the Sheriff of Brown County and was so employed on October 19, 2018. (Dkt. 83, ¶ 11)

9. Defendant Heidi Michel is the Jail Administrator for the Brown County Jail and was so employed on October 19, 2018. (Dkt. 83, ¶ 12)

10. Defendant Joseph P. Mleziva is a Brown County Sheriff's Deputy and was so employed on October 19, 2018. (Dkt. 83, ¶ 15)

11. Defendant Nathan K. Winisterfer is a Brown County Sheriff's Deputy and was so employed on October 19, 2018. (Dkt. 83, ¶ 15)

12. Defendant Thomas Zeigle is a Patrol Lieutenant for the Brown County Sheriff's Office and was so employed on October 19, 2018. (Dkt. 83, ¶ 16)

### **Jurisdiction and Venue**

13. This action arises under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. The Court has jurisdiction over the Plaintiffs' federal claims pursuant to 28 U.S.C. §§ 1331 and 1343. The Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367. (Dkt. 83, ¶ 2)

14. The Eastern District of Wisconsin is the proper federal venue for this action pursuant to 28 U.S.C. § 1391(b) because it is where all acts alleged in the Complaint occurred. (Dkt. 83, ¶ 4)

### **Traffic Stop of Tubby's Vehicle: 7:42 p.m. - 8:22 p.m.**

15. On Friday, October 19, 2018 at approximately 7:24 p.m., Green Bay Police Department ("GBPD") Officer Colton Wernecke and his field training officer, Officer Erik O'Brien, were on patrol in the City of Green Bay when Officer Wernecke observed a vehicle with an unregistered license plate drive through a red light. Officer Wernecke decided to initiate a traffic stop and activated his overhead lights and followed the vehicle. (Baynard Decl. ¶ 4, Ex. C, Squad 42 exterior video at 46:20-46:21; Baynard Decl. ¶ 5, Ex. D, Wernecke dep. pp. 12, 22, 48-49, 118; Baynard Decl. ¶ 2, Ex. A, O'Brien dep. pp. 24, 27-30)

16. The vehicle did not stop and instead turned into the parking lot of the Hyatt Regency hotel. The vehicle continued to drive through the parking lot despite Officer Wernecke turning on the squad's overhead lights, shining a spotlight at the vehicle, and blipping the squad's siren. (Baynard Decl. ¶ 4, Ex. C, Squad 42 exterior video at 46:40-48:24)

17. The occupants of the vehicle were later identified as Jonathon Tubby, who was driving, and his aunt, Theresa Rodriguez, who was in the passenger seat. (Baynard Decl. ¶ 5, Ex. D, Wernecke dep. p. 54; Baynard Decl. ¶ 6, Ex. E, Rodriguez dep. pp. 30, 36)

18. Prior to encountering Officers O'Brien and Wernecke, Tubby had picked Rodriguez up from a friend's house and was driving her back to her home. Rodriguez noted that when she got into the car, Tubby appeared upset and had been in an argument with his girlfriend. (Baynard Decl. ¶ 6, Ex. E, Rodriguez dep. pp. 18-21)

19. Rodriguez noticed that the cops were following Tubby's vehicle and told Tubby to pull over. Tubby did not pull over and continued to drive through the parking lot while he attempted to call his girlfriend. Tubby drove around the parking lot for about a minute while he spoke to his girlfriend. (Baynard Decl. ¶ 4, Ex. C, Squad 42 exterior video at 47:28-48:24; Baynard Decl. ¶ 6, Ex. E, Rodriguez dep. pp. 26-30)

20. Officer O'Brien requested a second squad to provide cover for the officers and GBPD Officer Tyler Haack responded. GBPD Officer Haack and Officer O'Brien approached the passenger side of the vehicle while Officer Wernecke approached the driver's side. (Baynard Decl. ¶ 4, Ex. C, Squad 42 exterior video at 50:48-51:02; Baynard Decl. ¶ 2, Ex. A, O'Brien dep. p. 27; Haack Decl. ¶¶ 2-7)

21. GBPD Officer Haack observed marijuana in the vehicle and Tubby and Rodriguez were ordered to exit the vehicle. (Baynard Decl. ¶ 4, Ex. C, Squad 42 exterior video at 51:16-21; Baynard Decl. ¶ 5, Ex. D, Wernecke dep. p. 54; Baynard Decl. ¶ 2, Ex. A, O'Brien dep. p. 28; Baynard Decl. ¶ 6, Ex. E, Rodriguez dep. p. 39; Haack Decl. ¶¶ 9-10)

22. Officer Wernecke handcuffed Tubby behind his back and searched him while Officer O'Brien observed. Officer Wernecke did the same procedure on Tubby's left side. The search of Tubby was completed at about 7:34 p.m. (Baynard Decl. ¶ 4, Ex. C, Squad 42 exterior video at 52:35-56:53; Baynard Decl. ¶ 5, Ex. D, Wernecke dep. pp. 54-61; Baynard Decl. ¶ 2, Ex. A, O'Brien dep. p. 85)

23. While Officer Wernecke searched Tubby, GBPD Officer Haack searched Rodriguez. (Baynard Decl. ¶ 4, Ex. C, Squad 42 exterior video at 51:53-52:43; Haack Decl. ¶ 11)

24. Tubby was not truthful about his identity to the officers. (Baynard Decl. ¶ 6, Ex. E, Rodriguez dep. p. 39)

25. Rodriguez had also originally lied about her identity due to active arrest warrants, but ultimately identified herself and Tubby to GBPD Officer Haack. A warrant check determined that both Tubby and Rodriguez had active arrest warrants. (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 55:15; Haack Decl. ¶ 12)

26. At some point, GBPD Officer Joe Merrill joined GBPD Officers O'Brien, Wernecke and Haack and a search of Tubby's vehicle was conducted. (Baynard Decl. ¶ 4, Ex. C, Squad 42 exterior video at 1:00:13-1:24:06)

27. GBPD Officer Haack left the scene of the arrest approximately 10-15 minutes prior to Officers O'Brien and Wernecke because they were standing by with Tubby's vehicle waiting for a tow truck. GBPD Officer Haack transported Rodriguez to the Brown County Jail to be booked into the jail on possession of marijuana and obstructing charges, and for the active warrant. (Haack Decl. ¶¶ 13-14)

28. At 7:35 p.m., Tubby was placed in the back of Officer Wernecke's squad car and seat belted in with his hands handcuffed behind his back. (Baynard Decl. ¶ 2, Ex. A, O'Brien Dep. p. 35; Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 55:15-55:25)

29. At 7:40:36, while cuffed and secured by the seat belt in the back of the squad, Tubby can be seen on the interior squad camera moving his hands under his butt behind his bent legs as he remains seated. (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 1:00:50-1:01:37)

30. At 7:41:54, Tubby appears to be physically struggling. He gets one leg through his handcuffed arms and starts putting his right hand up under his shirt. Tubby keeps manipulating and moving his right hand up under shirt farther, up closer to his face. Tubby's body is turned away from the camera view. Tubby reaches with his hand down into his pants. (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 1:01:58-1:03:02)

31. At 7:43:43, Tubby gets the seatbelt off. (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 1:03:02-1:03:50)

32. At 7:43:49, Tubby gets his other leg out from under his handcuffed arms. At this time, both of Tubby's hands are in front of his body, still handcuffed together. Tubby's right hand is back up under his shirt. Tubby bends forward and keeps manipulating his hand up under his shirt. Tubby keeps moving, with both his hands up under his shirt, and his body bent forward. (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 1:03:50-1:03:59)

33. At 8:10:56, Officer Wernecke departed the scene of the arrest and began the transport of Tubby to the Brown County Jail to be booked on possession of marijuana and obstructing charges, as well as for the active warrant. (Baynard Decl. ¶ 4, Ex. C, Squad 42 exterior video at 1:32:59; Baynard Decl. ¶ 5, Ex. D, Wernecke dep. p. 54)

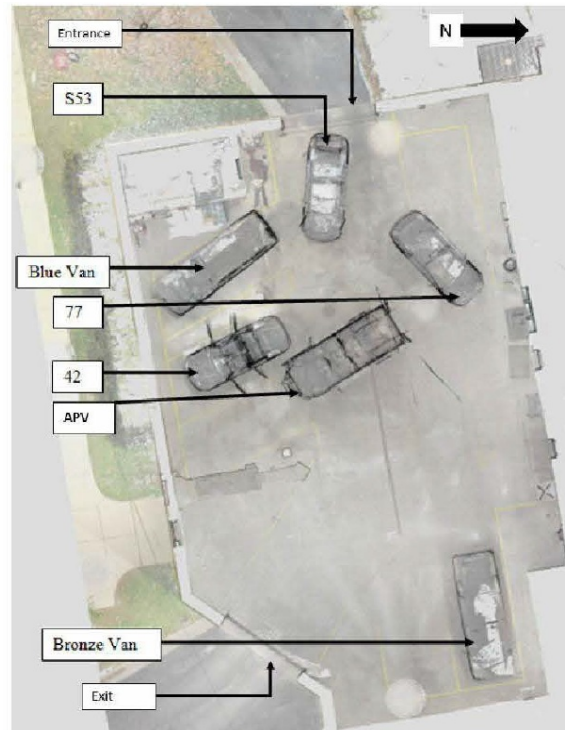
34. The transport to the Brown County Jail took approximately twelve minutes. (Baynard Decl. ¶ 4, Ex. C, Squad 42 exterior video at 1:32:59-1:44:57)

35. Officer O'Brien reported that Tubby remained quiet during the transport to the County Jail. (Baynard Decl. ¶ 2, Ex. A, O'Brien dep. pp 34-36). The squad's rear-facing camera depicts Tubby in a hunched forward position with his hands in front of his body, underneath his shirt during the transport. (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 1:27:42-1:31:02)

**Events at the Brown County Jail Sally Port: 8:22 p.m.-9:02 p.m.**

36. At approximately 8:22 p.m. Officers Wernecke and O'Brien entered the sally port of the Brown County jail. Before the squad is parked, Officer O'Brien asked Tubby if he had anything on him. Tubby responded no. (Baynard Decl. ¶ 4, Ex. C, Squad 42 exterior video at 1:44:35; Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 1:42:33-1:42:50)

37. The sally port is an enclosed area in the jail that provides the secure transition of inmates from the custody of police officers to the intake area of the jail. The sally port overhead door is controlled by the jail's master control. (Baynard Decl. ¶ 8, Ex. G, Marked as Exhibit 5 during the deposition of Charles Nelson; Dkt. 82, Third Amended Complaint ¶ 21; Baynard Decl. ¶ 9, Ex. H, Logan Rose dep. p. 15)



38. After parking the squad and turning off the engine, Officer O'Brien and Officer Wernecke exited the squad and placed their gear and weapons in the trunk pursuant to the jail's policy that officers are to not bring weapons into the jail. (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 1:43:59-1:44:35; Baynard Decl. ¶ 5, Ex. D, Wernecke dep. pp. 62-63)



### ***Tubby Refuses to Exit Squad 42***

39. When Officer Wernecke went to open the rear driver's side door of the squad to remove Tubby, he observed that Tubby's hands were not behind him and were instead in front and balled up under his shirt. Tubby had repositioned himself in the back seat so that his upper body was positioned away from the door. (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 1:44:51-1:45:22; Baynard Decl. ¶ 5, Ex. D, Wernecke dep. pp. 65-66)

40. Officer Wernecke asked Tubby to get out of the squad car, but Tubby refused to exit, saying "No." (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 1:44:44- 1:44:49; Baynard Decl. ¶ 5, Ex. D, Wernecke dep. p. 65)

41. Officer Wernecke told Tubby to "Step out," but Tubby remained in the squad with his hands up under his shirt. Officer Wernecke again stated, "Stepping out?" and instructed "come on, bring your foot out," as he reached into the back seat to attempt to guide Tubby out. Tubby flinched back further into the squad, still bent forward. (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 1:44:51-1:45:01; Baynard Decl. ¶ 5, Ex. D, Wernecke dep. p. 66)

42. Officer O'Brien heard Officer Wernecke issue commands for Tubby to exit the vehicle, but Tubby had not exited. (Baynard Decl. ¶ 2, Ex. A, O'Brien dep. p. 40)

43. Officer O'Brien came around from the back of squad 42 and looked in the open door. Officer O'Brien immediately noticed that Tubby's hands were no longer behind his back. Officer O'Brien observed that Tubby was bunched forward, which he found unusual. Officer O'Brien observed that Tubby was leaned back in a reclined position away from the open squad 42 door, leaning back away from the Officers. (Baynard Decl. ¶ 2, Ex. A, O'Brien dep. pp. 40-42)

44. At that time, Officer O'Brien observed what he believed to be the barrel of a gun protruding from Tubby's shirt underneath his clothing. It was pressed up creating tension in the clothing. It appeared cylindrical in nature, and it was flat on top. It immediately appeared to Officer O'Brien to be the barrel of a gun. It did not appear to Officer O'Brien to be a finger or other instrument. (Baynard Decl. ¶ 2, Ex. A, O'Brien dep. pp. 42-43)

45. At 8:25:08, Officer O'Brien ordered, "Jonathon, bring your foot out," but Tubby refused to do so. Tubby then stated, "I'll fucking do it." (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 1:45:05-1:45:21; Baynard Decl. ¶ 2, Ex. A, O'Brien dep. pp. 42, 60)



46. Officer O'Brien believed Tubby to be an armed and suicidal subject, and therefore posed a deadly threat. (Baynard Decl. ¶ 2, Ex. A, O'Brien dep. pp. 60-63)

47. Officer O'Brien was trained that there are three criteria for assessing whether a suspect poses a deadly threat: weapon, intent, and delivery system. Intent can be inferred. (Baynard Decl. ¶ 2, Ex. A, O'Brien dep. pp. 60-63)

48. Officer O'Brien slammed squad 42's door with Tubby still inside and told Officer Wernecke, "I think he's got a gun." (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 1:45:22; Baynard Decl. ¶2, Ex. A, O'Brien dep. p. 58-60; Baynard Decl. ¶ 5, Ex. D, Wernecke dep. pp. 68-71)

49. Officer O'Brien asked Officer Wernecke what he was thinking and Officer Wernecke told Officer O'Brien that he thought he must have missed something in searching Tubby. (Baynard Decl. ¶ 5, Ex. D, Wernecke dep. p. 75)

50. Officer Wernecke ran to the booking window to alert jail staff that something was wrong. (Baynard Decl. ¶ 5, Ex. D, Wernecke dep. p. 71)

51. Officer O'Brien retrieved his handgun from the trunk of squad 42 and he and Officer Wernecke retreated behind the transport van parked next to squad 42. (Baynard Decl. ¶ 2, Ex. A, O'Brien dep. p. 58; Baynard Decl. ¶ 5, Ex. D, Wernecke dep. pp. 71-74)

52. Officer O'Brien radioed dispatch that Tubby had something in his hand and was refusing to exit squad 42, and requested back up because he believed Tubby had a firearm. (Baynard Decl. ¶ 2, Ex. A, O'Brien dep. p. 67)

53. BCSO Jail Corporal Kevin Smith and BCSO Correctional Officer Charles Nelson were in the area near the sally port intake. Officer O'Brien told BCSO Cpl. Smith that he believed Tubby had a knife and/or a handgun. (Baynard Decl. ¶ 3, Ex. B, Smith dep. p. 51)

54. The windows of squad 42 began to fog up and the officers could not really see anything inside the squad car except some vague movement in the back seat. (Haack Decl. ¶ 23) The interior squad camera from that time demonstrates that at 8:26 p.m., Tubby was looking around the squad car, with a large bulge under his shirt. Tubby kept moving and manipulating his hands. (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 1:45:58-1:48:19)

55. At 8:28 p.m., officers yelled something to Tubby along the lines of, “Jonathan, put it down,” and Tubby replied, “Fuck you. I’ll do it.” At this time, Tubby turned around and was sitting backwards in the seat facing towards the rear window. (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 1:48:19-1:48:26)

56. At 8:29 p.m., Tubby stated, “I’ll fuckin’ do it at the first fuckin’ person to open this door,” and then, “I’m not goin’.” (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 1:49:14-1:49:25)

57. At approximately 8:30 p.m., GBPD Sergeant Denney drove into the entrance of the Brown County Jail sally port and parked just inside the entrance. Soon after, GBPD Officer Walvort respond to the scene and parked his squad directly outside the sally port entrance. (Baynard Decl. ¶ 10, Ex. I, Squad 53 video at 42:12)

58. At 8:31:22, Tubby stated, “Fuck you. I’ll fuckin’ do it.” At 8:31:33, Tubby stated, “Fuck you.” Tubby was moving in the back seat. At 8:31:45, Tubby stated, “Shut the fuck up.” At 8:32:26, Tubby stated, “I can fuckin’ hear you.” At 8:35:09, Tubby stated, “...the fuck away from me.” (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 1:51:32-1:55:20)

59. At 8:42:49, Officer O’Brien instructed, “Jonathon, wipe the windows so they’re clean.” Officer O’Brien told Tubby to wipe the windows several times. At one point, Tubby did wipe the window down. This signaled to Officer O’Brien that Tubby could hear him, and he continued to give commands to Tubby to wipe the windows. (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 2:02:57-2:11:25; Baynard Decl. ¶ 2, Ex. A, O’Brien dep. pp. 89-91)

**Additional BCSO and GBPD Law Enforcement Officials Respond to the  
Sally Port and BCSO Lt. Thomas Ziegle's Develops an Extraction Plan**

60. While this back and forth was occurring between Tubby and the officers on scene, numerous law enforcement officers from GBPD and BCSO responded to the sally port. (Baynard Decl. ¶ 11, Ex. J, Jail exterior video beginning at 30:30)

61. BCSO Lt. Thomas Ziegle was notified that there was an incident occurring in the sally port of the jail involving an individual who was refusing to exit squad 42 and saying he had a gun. BCSO Lt. Zeigle responded to the jail and radioed BCSO Sgt. Jason Katers and requested that he respond to the sally port. (Baynard Decl. ¶ 12, Ex. K, Zeigle dep. pp. 14-19)

62. GBPD Lt. Nate Allen was a supervisor that night, and responded to the sally port in response to the radio traffic from Officer O'Brien that Tubby had his hands underneath his shirt pointed at his chin, and stating that "he would do it," or "I'll do it." (Baynard Decl. ¶ 13, Ex. L, N. Allen dep. pp. 16-19) Officer O'Brien had taken over the emergency radio traffic, which lead GBPD Lt. Allen to believe that Tubby had a weapon. (Baynard Decl. ¶ 13, Ex. L, N. Allen dep. pp. 29-30)

63. While en route to the sally port, GBPD Lt. Allen began developing a plan to extract Tubby from squad 42. GBPD Lt. Allen authorized the deployment of the BearCat armored vehicle to provide cover and requested additional pieces of equipment including the 40 millimeter munitions to fire wooden dowels, and a glass breaking implement. (Baynard Decl. ¶ 13, Ex. L, N. Allen dep. pp. 31-32)

64. Upon arriving in the sally port, GBPD Lt. Allen met with GBPD Sgt. Denney and GBPD Officer Eric Allen and called GBPD SWAT commander Lt. Gering to discuss options for removing Tubby from squad 42. (Baynard Decl. ¶ 13, Ex. L, N. Allen dep. pp. 44-56)

65. Lt. Allen's plan was to drive the BearCat within a few feet of the squad car, have a shield team with lethal cover open the rear door of the squad, and give Tubby commands to exit the vehicle. If Tubby did not exit the vehicle, they would send a K-9 to extract him. (Baynard Decl. ¶ 13, Ex. L, N. Allen dep. pp. 44-56)

66. GBPD Lt. Allen called BCSO Lt. Ziegle and informed him that there was a subject in the back of squad 42 with his hands and arms up in his shirt with an unknown possible weapon, threatening to harm himself. (Baynard Decl. ¶ 13, Ex. L, N. Allen dep. pp. 59-60; Baynard Decl. ¶ 12, Ex. K, Zeigle dep. p. 18)

67. BCSO Lt. Ziegle arrived on scene shortly after and GBPD Lt. Allen informed him of the extraction plan he and GBPD Lt. Gering and GBPD Officer E. Allen had developed. (Baynard Decl. ¶ 13, Ex. L, N. Allen dep. p. 61; Baynard Decl. ¶ 12, Ex. K, Zeigle dep. pp. 19-20 )

68. BCSO Lt. Ziegle told GBPD Lt. Allen that he did not like their plan. BCSO Lt. Zeigle thought the GBPD plan could be a contingency plan, but was not the primary plan for extracting Tubby. (Baynard Decl. ¶ 12, Ex. K, Zeigle dep. p. 20, 46)

69. BCSO Lt. Ziegle indicated that he was in charge of the Tubby response because it occurred at a County facility and thus, was under the jurisdictional control of the County. (Baynard Decl. ¶ 12, Ex. K, Zeigle dep. pp. 46-50; Baynard Decl. ¶ 13, Ex. L, N. Allen dep. pp. 61-62 )

70. BCSO Lt. Ziegle developed a different extraction plan. (Baynard Decl. ¶ 12, Ex. K, Zeigle dep. pp. 19-20, 46-49; Baynard Decl. ¶ 13, Ex. L, N. Allen dep. pp. 58, 61-62; Baynard Decl. ¶ 14, Ex. M, E. Allen dep. pp. 49-51)

71. BCSO Lt. Zeigle's plan was for officers to surround the squad car, break out the back window and to try to communicate with Tubby. The next step in the plan was to introduce OC spray into the rear window of the squad. It was BCSO Lt. Zeigle's goal to have Tubby exit the rear window and surrender after using the OC spray. (Baynard Decl. ¶ 12, Ex. K, Zeigle dep. pp. 19-20, 46-55)

72. GBPD Lt. Allen informed GBPD Officer Eric Allen of BCSO Lt. Zeigle's plan, and GBPD Officer Eric Allen followed orders. (Baynard Decl. ¶ 13, Ex. L, N. Allen dep. p. 67; Baynard Decl. ¶ 14, Ex. M, E. Allen dep. pp. 48-51)

73. In an attempt to respect the BCSO jurisdiction and wishes, GBPD Lt. Allen instructed GBPD Officer E. Allen to break out the window, give commands, and deploy OC if appropriate. (Baynard Decl. ¶ 13, Ex. L, N. Allen dep. pp. 66-71)

74. BCSO Lt. Zeigle observed the implementation of his plan from outside the sally port. (Baynard Decl. ¶ 12, Ex. K, Zeigle dep. p. 53)

**Execution of Lt. Zeigle's Extraction Plan: 9:02 p.m. - 9:10 p.m.**

75. At approximately, 9:02 p.m., GBPD Officer Joseph Merrill drove the BearCat armored vehicle into the sally port. BCSO Sgt. Katers was in the front passenger seat. GBPD Officers Allen, Lynch, Christensen, Salzmänn and K9 Pyro were also inside as the BearCat took position next to the driver's side of squad 42. (Baynard Decl. ¶ 10, Ex. I, Squad 53 video at 1:14:35-1:15:22; Baynard Decl. ¶ 15, Ex. N, Salzmänn dep. pp. 44-45, 49; Baynard Decl. ¶ 14, Ex. M, E. Allen dep. pp. 54, 57-58)

76. GBPD Officers Lynch and Christenson got out of the BearCat with a shield and handguns and approached the back of squad 42 to close the trunk in order to secure the weapons in the trunk. (Baynard Decl. ¶ 10, Ex. I, Squad 53 video at 1:16:12-1:16:28; Baynard Decl. ¶ 15, Ex. N, Salzmann dep. p. 50; Baynard Decl. ¶ 14, Ex. M, E. Allen dep. p. 59)

77. While the BearCat was getting into position Tubby can be seen and heard on squad 42's interior camera. At 9:04 p.m., Tubby still had his hand under his shirt and then put an object in his mouth and stated what sounds like, "I'll fuckin' do it." At 9:05 p.m., Tubby faced the back window and a short time later stated, "I'll fuckin' do it." (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 2:24:37-2:26:12)

78. At approximately 9:06 p.m., GBPD Officer Allen opened the turret on top of the BearCat and directed a spotlight into the back of the squad car. Officer Allen then shot a 44 millimeter wooden dowel into the lower passenger corner of the rear window of the squad, breaking a portion of the rear window. (Baynard Decl. ¶ 10, Ex. I, Squad 53 video at 1:17:44-1:18:36; Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 2:26:50; Baynard Decl. ¶ 14, Ex. M, E. Allen dep. pp. 69-70)

79. Tubby moved away from the breaking glass, and said, "Fuck you." He then appeared to bring the object up to his eye level and point it out the back window for a moment. (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 2:26:54)

80. At 9:07:01, GBPD Officer Allen stated, "Jonathon, put your hands up where I can see them." At 9:07:11, GBPD Officer Allen stated, "Jonathon, put your hands up." Tubby is heard making moaning type sounds. Tubby did not put his hands up. (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 2:27:10-2:27:27)



81. At 9:07:29, GBPD Officer Allen fired a second wooden dowel round at the squad, breaking out a bigger portion of the back window. GBPD Officer Allen retreated back into the BearCat. (Baynard Decl. ¶ 10, Ex. I, Squad 53 video at 1:19:19; Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 2:27:34; Baynard Decl. ¶ 14, Ex. M, E. Allen dep. p. 71)

82. At 9:08 p.m., BCSO Sgt. Katers used a rake tool to clear the remaining glass from the rear window of squad 42. (Baynard Decl. ¶ 10, Ex. I, Squad 53 video at 1:20:03; Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 2:28:18-2:28:28; Baynard Decl. ¶ 16, Ex. O, Katers dep. p. 28; Baynard Decl. ¶ 14, Ex. M, E. Allen dep. p. 71)

83. After breaking out the rear window, GBPD Officer Allen was able to see into the back seat of squad 42. GBPD Officer Allen saw that Tubby was facing back toward the rear window with his hands concealed under his shirt holding something up under his chin. (Baynard Decl. ¶ 14, Ex. M, E. Allen dep. pp. 71-74)

84. GBPD Officer Allen gave Tubby commands to show his hands. Tubby did not comply. (Baynard Decl. ¶ 14, Ex. M, E. Allen dep. pp. 71-74)

85. At 9:08 p.m., GBPD Officer Allen stated, “Put your hands up Jonathon,” and Tubby can be heard making moaning and crying noises. Tubby did not comply and did not show officers his hands. (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 2:28:57; Baynard Decl. ¶ 14, Ex. M, E. Allen dep. pp. 71-74)

86. GBPD Officer Allen used the loud speaker and stated, “Jonathon, put your hands up.” Tubby did not comply and did not show officers his hands. Tubby stated, “What are you guys doing to me?” (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 2:29:02-2:29:07)

87. At 9:09 p.m., GBPD Officer Allen stated, “Jonathon, put your hands up, bud, so I can see them. Come on, Jonathon.” Seconds later, GBPD Officer Allen stated, “Jonathon, we don’t want to hurt you. Put your hands up, bud. Come on, Jonathon.” (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 2:29:17-2:29:43)

88. At some point, GBPD Officer Allen could see Tubby’s left hand outside of his shirt, but Tubby had not complied with repeated orders to show both his hands in order to demonstrate that both his hands were free of a weapon. (Baynard Decl. ¶ 14, Ex. M, E. Allen dep. pp. 78-85; *see also* Haack decl. ¶¶ 25-27)

89. At 9:10 p.m., Tubby looked out the back window and GBPD Officer Allen stated, “Jonathan, put your hands up for me, bud.” Seconds later, GBPD Officer Allen stated, “Put your hands up for me, Jonathon. I can see that one is clear. Let me see your other hand. Let me see your other hand, bud.” Tubby did not comply and did not show both of his hands. (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 2:30:30-2:31:00)

90. GBPD Officer Allen was handed a larger cannister of OC spray because he did not believe the small pepper spray on duty belt would effectively reach Tubby in the back of squad 42. (Baynard Decl. ¶ 14, Ex. M, E. Allen dep. pp. 72, 74-75)

91. At 9:10:51 p.m., GBPD Officer Allen deployed oleoresin capsicum (OC) spray into the back window of the squad. Tubby held his shirt up to deflect the spray. Tubby still did not show both of his hands as instructed. Tubby yelled, “Fuck you, fuck you, fuck you,” and started bouncing up and down in the seat. (Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 2:31:01-2:31:06; Baynard Decl. ¶ 10, Ex. I, Squad 53 video at 1:22:45-1:22:49; Baynard Decl. ¶ 14, Ex. M, E. Allen dep. p. 100)

### **Tubby Erupts From the Rear Window and Rushes Towards the Sally Port Door**

92. Tubby exited the rear window and got onto his knees on the trunk of squad 42. Tubby then got up onto his feet and stood on the trunk of squad 42, facing out towards officers, with his left hand cradled under his right hand, which was up under his shirt. (Baynard Decl. ¶ 10, Ex. I, Squad 53 video at 1:22:56-1:23:04; Baynard Decl. ¶ 17, Ex. P, Denney dep. pp. 146-148)



93. As Tubby quickly jumped out of the rear squad window, GBPD Sgt. Denney assessed Tubby's hands to see if they were both visible and free of a weapon. Tubby's hands were not visible and GBPD Sgt. Denney discharged one round from a beanbag gun, which hit Tubby in the lower abdomen. (Baynard Decl. ¶ 17, Ex. P, Denney dep. pp.144-148; Baynard Decl. ¶ 10, Ex. I, Squad 53 video at 1:23:04-1:23:07)

94. The beanbag round caused Tubby to fall off squad 42, but did not stop him. (Baynard Decl. ¶ 17, Ex. P, Denney dep. pp. 148)

95. After falling off the squad Tubby quickly got back on his feet and began to charge towards the open sally port door where Officer O'Brien and other officers were located. (Baynard Decl. ¶ 17, Ex. P, Denney dep. p. 148; *see also* Haack decl. ¶¶ 28-29)

96. Almost simultaneously, GBPD Officer Salzmänn was informed that Tubby was exiting the squad and was instructed by GBPD Officer Allen to deploy police canine Pyro. (Baynard Decl. ¶ 15, Ex. N, Salzmänn dep. p. 82; Baynard Decl. ¶ 14, Ex. M, E. Allen dep. pp. 100-101)

97. GBPD Officer Salzmänn opened the back doors of the BearCat and canine Pyro, who was on a 15-foot lead, immediately jumped out and rounded the corner of the BearCat. As GBPD Officer Salzmänn rounded the corner of the BearCat behind Pyro, he saw Tubby stumbling backwards towards squad 42 with his hands concealed under his shirt. Tubby then started to run towards the blue transport van and towards the entrance of the sally port. (Baynard Decl. ¶ 15, Ex. N, Salzmänn dep. pp. 82-85)

98. As Tubby ran around the transport van towards the sally port entrance, Pyro engaged Tubby in the buttock area. As Pyro engaged Tubby in the buttock area, GBPD Officer Salzmänn pulled back on Pyro's lead to pull Tubby back and stop him from advancing towards the officers near the sally port entrance. (Baynard Decl. ¶ 15, Ex. N, Salzmänn dep. pp. 98-100)

99. GBPD Sgt. Denney fired a second less lethal beanbag round at Tubby. (Baynard Decl. ¶ 17, Ex. P, Denney dep. p. 149; Baynard Decl. ¶ 15, Ex. N, Salzmänn dep. p. 100)

#### **Officer O'Brien Perspective in the Moments Before the Shooting**

100. Shortly after the OC was deployed into the back of the vehicle, Officer O'Brien heard a noise, and then saw Tubby "erupting" from the backseat of squad 42. (Baynard Decl. ¶ 2, Ex. A, O'Brien dep. pp. 129-130)

101. As Tubby came out onto the trunk, Officer O'Brien could see Tubby's left hand, but could not see Tubby's right hand because it was concealed under his shirt behind his left hand. Officer O'Brien realized his position was not safe and retreated back to his position of cover. (Baynard Decl. ¶ 2, Ex. A, O'Brien dep. pp. 129-130)

102. Officer O'Brien peeked back around the corner of the door jamb and saw Tubby in an upright position, leaning slightly forward as he rushed toward the sally port entrance door where Officer O'Brien and the other officers were located. (Baynard Decl. ¶ 2, Ex. A, O'Brien dep. pp. 133-134)

103. Tubby's right hand was still concealed under his shirt and he rushed toward the sally port door. (Baynard Decl. ¶ 2, Ex. A, O'Brien dep. p. 133; Baynard Decl. ¶ 18, Ex. Q, Mleziva dep. pp. 36-37; Baynard Decl. ¶ 19, Ex. R, Winisterfer dep. pp. 48-50; Baynard Decl. ¶ 20, Ex. S, Dernbach dep. pp. 77-81; Haack decl. ¶ 29)

104. Officer O'Brien retreated back to his position of cover, and, simultaneously Tubby came back into Officer O'Brien's line of sight from that position of cover. (Baynard Decl. ¶ 2, Ex. A, O'Brien dep. pp. 133-134, 138-139)

105. Tubby's hands were in front of his body as he rushed towards the sally port door and toward the officers located in the area of the sally port door. This concerned Officer O'Brien, because he believed Tubby was armed and would shoot through his clothing at him or other officers. (Baynard Decl. ¶ 2, Ex. A, O'Brien dep. p. 152)

106. As Tubby was running with his hands concealed under his clothing, Officer O'Brien heard a "pop" sound and believed Tubby shot the gun he was concealing under his clothing. (Baynard Decl. ¶ 2, Ex. A, O'Brien dep. pp. 144-145)

107. Officer O'Brien observed Tubby's body was descending in a downward direction and his right hand was still concealed. (Baynard Decl. ¶ 2, Ex. A, O'Brien dep. pp. 144-145)

108. Tubby's body was twisting to the left and he was looking across his body to the left and toward the officers that were located behind GBPD Sgt. Denney's squad car. Officer O'Brien saw Tubby looking at those officers while his hands were still concealed and pointed right at the officers. Officer O'Brien perceived Tubby to be moving in a target acquisition manner, meaning that he was moving in a manner to acquire a target to shot. (Baynard Decl. ¶ 2, Ex. A, O'Brien dep. pp. 145)

109. The time between Tubby exiting the rear-window of squad 42 and Officer O'Brien shot was approximately 10 seconds. (Baynard Decl. ¶ 10, Ex. I, Squad 53 video at 1:23:02-1:23:17; Baynard Decl. ¶ 7, Ex. F, Squad 42 interior video at 2:31:16-2:31:26)

#### **Officer O'Brien Believed Tubby was Armed**

110. O'Brien believed that Tubby was in possession of a firearm at all times that he was present on the scene. Officer O'Brien never thought that Tubby was just pretending to be armed. Officer O'Brien is trained to err on the side of caution. (Baynard Decl. ¶ 2, Ex. A, O'Brien dep. pp. 67-69, 97 )

111. Because he feared for his safety and the safety of the other officers, Officer O'Brien believed he had no other force options available to him, and discharged his firearm at Tubby, and Tubby fell to the ground.(Baynard Decl. ¶ 2, Ex. A, O'Brien dep. p. 152)

112. Officer O'Brien believed that Tubby posed an imminent threat at the moment he fired at Tubby. (Baynard Decl. ¶ 2, Ex. A, O'Brien dep. p. 143)

113. Officer O'Brien believed that Tubby was armed at the moment he fired at Tubby. (Baynard Decl. ¶ 2, Ex. A, O'Brien dep. pp. 143-144)

114. Officer O'Brien fired at Tubby because he perceived him as posing a deadly threat to himself, the other officers in the sally port and the general public if he were to successfully escape. (Baynard Decl. ¶ 2, Ex. A, O'Brien dep. pp. 143-144)

115. GBPD Sgt. Denney believed that at the moment Officer O'Brien discharged his firearm, Tubby presented an imminent threat of death or great bodily harm to himself and to all the officers in the area of the sally port. (Baynard Decl. ¶ 17, Ex. P, Denney dep. pp. 161-163)

116. GBPD Officer Salzman testified that there was an imminent danger of death or serious bodily harm to the officers standing by the sally port door at the point that Tubby was running towards the sally port door. This was based on the totality of the circumstances indicating that Tubby was armed. (Baynard Decl. ¶ 15, Ex. N, Salzman dep. pp. 89-90, 93)

117. Tubby never did anything to demonstrate that he was not armed. Tubby's behavior and mannerisms when he exited the rear window of squad 42 demonstrated that he was concealing a weapon under his shirt and was running at officers. (Baynard Decl. ¶ 15, Ex. N, Salzman dep. pp. 89-90, 93)

118. BCSO Deputy Joseph Mleziva perceived himself to be in imminent danger of death or seriously bodily harm at the time that Officer O'Brien fired his gun at Tubby. This was due to Tubby aggressively exiting the squad while believed to be possessing a weapon. (Baynard Decl. ¶ 18, Ex. Q, Mleziva Dep. 36-37)

119. BCSO Deputy Nathan Winisterfer perceived himself to be in imminent danger of death or serious bodily harm in the moment before Officer O'Brien stepped in front of him and fired his weapon. This was due to his knowledge that Tubby presented to have a firearm concealed under his shirt, Tubby was running directly at him, and because none of the force applied to that point was successful in stopping Tubby. (Baynard Decl. ¶ 19, Ex. R, Winisterfer dep. pp. 48-50)

120. BCSO Deputy Winisterfer feared that Tubby posed a safety threat to the general public because he was the last line of defense as exterior scene security, and if Tubby got past him then other individuals or citizens in the community could also be in danger. He feared that other law enforcement officers in the area were also in imminent danger of death or serious bodily harm. (Baynard Decl. ¶ 19, Ex. R, Winisterfer dep. pp. 49-51)

121. BCSO Deputy Bradley Dernbach perceived himself to be in imminent danger of death or serious bodily harm at the time that Officer O'Brien fired his weapon. This was based on Tubby running toward Deputy Dernbach, who believed that Tubby possessed a gun. (Baynard Decl. ¶ 20, Ex. S, Dernbach dep. pp. 77-81)

122. BCSO Deputy Dernbach testified that would have shot Tubby if Officer O'Brien had not shot first. (Baynard Decl. ¶ 20, Ex. S, Dernbach dep. pp. 77-78)

123. GBPD Sgt. Denney, GBPD Officer Merrill and GBPD Officer Christensen approached Tubby with a shield. Tubby still posed a threat even as he lay motionless on the ground because his hand was concealed under his shirt and he was believed to still be armed. (Baynard Decl. ¶17, Ex. P, Denney dep. pp. 153-155)



124. GBPD Sgt. Denney, GBPD Officer Merrill and GBPD Officer Christensen used the shield to pin Tubby's hands to his chest so they could pull Tubby's hands down. (Baynard Decl. ¶ 17, Ex. P, Denney dep. pp. 153-155; Baynard Decl. ¶ 10, Ex. I, Squad 53 Video at 9:12:59 - 9:13:39)

125. It was not until this time that officers determined that Tubby did not have a gun. (Baynard Decl. ¶ 17, Ex. P, Denney dep. pp. 153-155)

126. After making sure Tubby was no longer a threat and was not armed, the officers conducted a pat down search. The jail nurse arrived and started performing CPR while GBPD Sgt. Denney and GBPD Officer Christensen took turns doing chest compressions until the rescue team responded. (Baynard Decl. ¶ 17, Ex. P, Denney dep. pp. 155-157)

#### **Investigation into the Tubby Shooting Incident**

127. As is required in officer-involved shootings, investigators from Wisconsin Department of Justice Division of Criminal Investigation (DCI) arrived to the sally port within hours of the shooting to conduct an investigation. (Baynard Decl. ¶ 21, Ex. T, Brown County DA Report and Conclusions, p. 1)

128. The Dane County Medical Examiners Office took custody of Tubby's body from the sally port, and on October 20, 2018, Chief Medical Examiner Dr. Vincent Tranchida conducted Tubby's autopsy. (Baynard Decl. ¶ 22, Ex. U, Vincent Tranchida dep. pp. 13-20)

129. The toxicology screening of Tubby's femoral blood and urine indicated positive for the presence of Methamphetamine, THC, Methadone, Nicotine, Cotinine, Amphetamine, Alprazolam, Fentanyl, Norfentanyl, Morphine, Codeine, and Hydromorphone. (Baynard Decl. ¶ 22, Ex. U, Vincent Tranchida dep. pp. 42-47; 49-50; Baynard Decl. ¶ 23, Ex. V, Medical Examiner's Report pp. 5, 9-10.)

130. Dr. Tranchida concluded that Tubby's cause of death was "gunshot wounds of head, neck and torso and manner of death was "homicide (shot by police while resisting custody)." (Baynard Decl. ¶ 22, Ex. U, Vincent Tranchida dep. pp. 56-57; Baynard Decl. ¶ 23, Ex. V, Medical Examiner's Report p. 10)

131. Dr. Tranchida noted an "acute intoxication due to the combined effects of methamphetamine and methadone." Dr. Tranchida also noted signs of acute marijuana use and recent ingestion of Alprazolam, Fentanyl, morphine, codeine, and hydrocodone/hydromorphone. (Baynard Decl. ¶ 23, Ex. U, Tranchida dep. pp. 60-63; Baynard Decl. ¶ 23, Ex. V, Medical Examiner's Report pp. 9-10)

132. The WI DCI concluded its investigation on November 16, 2018 and turned its investigative file over to the Brown County District Attorney David Lasee to determine if any criminal charges would be filed against Officer O'Brien. (Baynard Decl. ¶ 21, Ex. T, Brown County DA Report, p. 1)

133. The Brown County District Attorney investigated the shooting and concluded in part that Officer O'Brien did not commit any criminal wrongdoing and was justified in using deadly force when he shot Tubby. (Baynard Decl. ¶ 21, Ex. T, Brown County DA Report, p. 27)

### **Plaintiffs Policy and Practice Claims**

#### **GBPD Officer Training**

134. All Wisconsin certified sworn police officers, including all Green Bay Police Officers, are trained on the Wisconsin DAAT Manual. (Baynard Decl. ¶ 24, Ex. W, Knetzger dep. p. 38)

135. At that time of the October 19, 2018 Tubby incident, the Green Bay Police Department had a policy and trained its officers on constitutional uses of force. (Baynard Decl. ¶ 25, Ex. X, Warych dep. pp. 105-120; Baynard Decl. ¶ 26, Ex. Y, Use of Force Procedures from the Green Bay Police Department Policy Manual; Baynard Decl. ¶ 27, Ex. Z, Green Bay Police Department Policy No. 300 - Use of Force; Baynard Decl. ¶ 24, Ex. W, Knetzger dep. pp. 43-44)

136. At that time of the October 19, 2018 Tubby incident, the Green Bay Police Department Policy 303.4 trained officers that the use of deadly force is justified in the following circumstances:

(a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.

(b) An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the subject is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes any of the following:

1. The person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the officer or another.
2. The person is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the person intends to do so.

With a subject presenting an imminent threat of great bodily harm or death to the officer or others and other intervention options being exhausted or clearly ineffective, the Green Bay Police Department directs its officers to stop the subject's actions by using deadly force.

(Baynard Decl. ¶ 27, Ex. Z, Green Bay Police Department Policy No. 300, Section 300.4)

137. At the time of the October 19, 2018 Tubby incident, the Green Bay Police Department had a policy and trained its officers on scenarios involving barricaded subjects. (Baynard Decl. ¶ 24, Ex. W, Knetzger dep. p. 28; Baynard Decl. ¶ 25, Ex. X, Warych dep. pp. 76-79; Baynard Decl. ¶ 28, Ex. AA, Green Bay Police Department Policy No. 409 - Hostage and Barricade Incidents)

138. At the time of the October 19, 2018 Tubby incident, the Green Bay Police Department trained its officers on scenarios involving armed individuals in confined spaces and tactics related to isolating the potential threat, setting up perimeters and in order to minimize harm to everybody involved within the area. (Baynard Decl. ¶ 24, Ex. W, Knetzger dep. pp. 25-28)

139. At the time of the October 19, 2018 Tubby incident, the Brown County Sheriff's Department had jurisdictional control over the sally port of the Brown County Jail. (Baynard Decl. ¶ 3, Ex. B, Smith dep. p. 14; Baynard Decl. ¶ 29, Ex. BB, Green Bay Police Department Operation Division Memorandum regarding County owned property; Baynard Decl. ¶ 30, Ex. CC, Green Bay Police Department Memorandum; Baynard Decl. ¶ 12, Ex. K, Zeigle Deposition p. 172)

### **GBPD Use of Force Complaints**

#### ***September 6, 2010***

140. The Green Bay Police Department received a use of force complaint regarding a September 6, 2010 incident involving Officer Brad Strouf. (Baynard Decl. ¶ 3, Ex. B, Smith dep. p. 17)

141. The September 6, 2010 incident was investigated by the Green Bay Police Department Professional Standards Division and former Chief of police James Arts issued Officer Strouf a 10-day unpaid suspension. (Baynard Decl. ¶ 3, Ex. B, Smith dep. pp. 21-25)

***April 19, 2014***

142. The Green Bay Police Department received a use of force complaint regarding an April 2014 incident involving Officer Derek Wicklund. (Baynard Decl. ¶ 3, Ex. B, Smith dep. pp. 67-69)

143. The April 2014 incident was investigated internally by the Green Bay Police Department and externally by the State of Wisconsin Department of Criminal Investigations. The investigations concluded that Officer Wicklund's use of force was not excessive or improper. (Baynard Decl. ¶ 3, Ex. B, Smith dep. pp. 68-69)

***February 26, 2017***

144. The Green Bay Police Department internal affairs department investigated the matter a use of force complaint relating to a February 26, 2017 incident, which involved a high-risk traffic stop initiated by former Green Bay Police Officer Michael Rahn. (Baynard Decl. ¶ 3, Ex. B, Smith dep. p. 31- 33; Baynard Decl. ¶ 31, Ex. D, Internal Investigation - Use of Force Administration Investigation Case No. 17I-000005)

145. As a result of the investigation, two Green Bay Police Officers who were on scene during the high-risk stop and one Patrol Lieutenant were also disciplined relating the February 26, 2017 incident. (Baynard Decl. ¶ 3, Ex. B, Smith dep. pp. 36)

146. Michael Rahn, the former Green Bay Police officer who initiated the high risk traffic stop, resigned during the investigation. (Baynard Decl. ¶ 3, Ex. B, Smith dep. pp. 31- 32, 36)

***November 5, 2017***

147. Chief Smith was made aware of a use of force complaint that occurred December of 2017 that involved Officer Alex Carlson. The complaint was investigated and it was determined that Officer Carlson acted reasonably in detaining a highly intoxicated subject and using a minor level of force. (Baynard Decl. ¶ 3, Ex. B, Smith dep. pp. 73-75)

*January 15, 2018*

148. Chief Smith was made aware of a use of force complaint relating to a January 15, 2018 incident involving Captain Florence, Lieutenant Belanger, and Lieutenant Brester. The Green Bay Police Department's internal affairs department investigated the matter. (Baynard Decl. ¶ 3, Ex. B, Smith dep. pp. 55-63, Baynard Decl. ¶ 32, Ex. EE, Internal Investigation - Public Recording of Law Enforcement Investigation Case No. 18-000001)

149. As a result of the investigation, Lieutenant Belanger received a letter of reprimand, Lieutenant Brester received a 1-day unpaid suspension, and Captain Florence received an oral warning. (Baynard Decl. ¶ 3, Ex. B, Smith dep. pp. 58-62, ; Baynard Decl. ¶ 33, Ex. FF, Belanger Discipline Letter and Brester Discipline Letter, pp. 55-59, 59-63, 63-68)

Dated at Wauwatosa, Wisconsin, this 2nd day of November, 2020.

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