

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

SUSAN DOXTATOR, et al.,

Plaintiff(s),

v.

**ORAL ARGUMENT: Re: Defendants' Motions for
Summary Judgment**
Case No. 19-C-137

ERIK O'BRIEN, et al.,

Defendant(s).

HONORABLE WILLIAM C. GRIESBACH presiding
Proceeding Held: February 4, 2021
Deputy Clerk: Cheryl

Time Called: 10:00 a.m.
Time Concluded: 12:03 a.m.
Tape: Zoom
020421

Appearances:

Plaintiff(s): Forrest K. Tahdooahnippah (main argument) and Jack Huerter

Defendant(s): Jasmyne M. Baynard (main argument), Gregg Gunta, Vanessa Chavez on behalf of City of Green Bay Defendants
Samuel C. Hall (main argument), Benjamin Sparks on behalf of Brown County Defendants

Clerk's Note: The parties will submit a reference to the exhibits shown during the hearing that are already part of the record with the related docket number. Mr. Tahdooahnippah will file a motion for admission of any exhibits not already part of the record and provide a copy of the exhibits to the court.

Ms. Baynard presents argument in support the motion. Ms. Baynard explains video with hands under the shirt. Mr. Tubby did not show hands and it was undetermined what object was under his shirt.

10:11 a.m. - Mr. Hall presents defense as to each claim with respect to each defendant.

10:22 a.m. - Mr. Tahdooahnippah presents argument. This is not a summary judgment case. The parties mostly agree on the applicable law so this is mainly a factual dispute. The discovery supports the Plaintiffs' case. Plaintiff presents photo of Mr. Tubby, video of sally port-shooting, jury instruction, photo of trajectory of bullet entries, video of back of squad car, O'Brien employment application, depositions, swat policy and training, video of Tubby in back of squad stating "I'm sorry" and "Help me", Photo of Tubby at Oneida Pow-Wow. Mr. Tahdooahnippah presents argument as to failure to intervene, Monell claim, duty to intervene, deliberate indifference, state law claims, and expropriation issues. Mr. Tahdooahnippah states this matter should be decided by a jury.

11:19 a.m. - Ms. Baynard responds. Defendant presents photo and sally port diagram.

11:31 a.m. - The court inquires as to time of the shooting, the factual dispute and the video of the shooting. Ms. Baynard responds that Tubby was not subdued on ground as the time of the shooting.

11:35 a.m. – Mr. hall responds and addresses the training argument, duty to intervene, qualified immunity, and deliberate indifference.

11:45 a.m. – Ms. Baynard comments on interpretation of the evidence in the video and presents deposition of Wernecke. The shooting is as Tubby is falling to the ground not on the ground.

11:50 a.m. – Mr. Tahdooahnippah responds.

12:03 p.m. – The Court takes the matters under advisement. Hearing concluded.