

# 2015-2016

# Wisconsin High School

# Mock Trial Tournament

# Case Materials

Revised: December 1, 2015

**Sammie Smid v. Robin O'Reilly, et. al.**

Plaintiff Witnesses:

Sammie Smid

Bo Marks

Axel Foley

Defense Witnesses:

Robin O'Reilly

Francis Underwood

Carter Marcus

### **Stipulations for Trial**

1. All of the exhibits are authentic and the authenticity of an exhibit is never at issue. Authentic exhibits are not necessarily admissible at trial.
2. All witness affidavits have been properly signed and notarized. A copy of any affidavit which does not bear a signature or is not notarized is to be treated as though it is signed and notarized. This stipulation does not apply to exhibits. Names of the notary publics are not relevant to the presentation of the case.
3. Each witness affidavit/report is intended to be gender-neutral and should be interpreted as such.
4. Each witness has reviewed his or her affidavit the morning of trial, attested that it was true and accurate, and attested that there was nothing that he or she had forgotten or wanted to add.
5. This case is bifurcated as to liability and damages. Liability is being tried in this case; if Smid is successful, damages will be tried on a later date.
6. While certification pages were not provided, both sides agree that Exhibit D (ambulance report), Exhibit E (hospital report), and Exhibit F (prior medical report) were properly certified. Additionally, both parties provided proper pretrial notification regarding the use of Exhibits D, E, and F under Rule 803(6m).
7. Both sides have agreed that Officer O'Reilly was acting under the color of law at the time of the encounter with Smid. The Plaintiff does not need to prove this element at trial, and the Defense does not need to put forth a defense on this element.
8. Defense counsel in this case is representing both Officer O'Reilly individually, and the City of Clearwater. Any conflicts of interest were waived prior to trial.
9. Sammie Smid does in fact weigh 180 pounds at the time of trial, and the actual weight of any individual playing Sammie Smid is irrelevant.
10. Both parties agree that Sammie Smid does have an almost constant left-side twitch. Whether any individual playing Sammie Smid has acted out a left-side twitch while on the stand or in the courtroom is irrelevant.

## **Disclaimer**

The 2015-2016 mock trial case is a hypothetical case. All names used in the mock trial case are fictitious and were created to be gender-neutral. Any similarity to an actual event or to the name of an actual person is strictly coincidental.

## **Exhibits**

Please note that exhibits, including affidavits, are pre-marked. The pre-marking of exhibits is solely a convenience. It is not intended to suggest the order in which exhibits should be used nor is it intended to suggest anything about their admissibility. In addition, the pre-marking of exhibits is not intended to suggest that all exhibits must or should be used.

## **Background**

This case involves a lawsuit filed by the Plaintiff, Sammie Smid, alleging that Officer Robin O'Reilly used excessive force on July 20, 2014. Smid was a homeless 20-year-old sitting on a park bench in Clearwater, when Officer O'Reilly approached. O'Reilly contends that s/he had reason to believe that Smid had committed a crime and might be armed. Smid, who has suffered from a seizure disorder since s/he was three years old, alleges that s/he intended to cooperate with O'Reilly, but began having a seizure, at which point O'Reilly began striking Smid. Smid alleges that s/he suffered serious injuries as a result of O'Reilly's actions.

While typically a plaintiff has to prove both liability and damages at trial, in this case the parties have agreed to bifurcate the trial. The only issue that will be tried in this case is whether Officer O'Reilly and the Clearwater Police Department should be held liable for O'Reilly's actions, or whether O'Reilly was acting reasonably.

STATE OF WISCONSIN : CIRCUIT COURT : CLEARWATER COUNTY

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SAMMIE SMID,

Plaintiff,

v.

CITY OF CLEARWATER, et al.,

Case No. 2015-cv-12345

Defendants.

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### **JURY INSTRUCTIONS**

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#### **1.1 Unreasonable Seizure of Person – Excessive Non-Deadly Force**

Sammie Smid claims that Officer Robin O'Reilly used excessive force in arresting him/her on July 20, 2014. To establish this claim, Sammie Smid must prove all of the following by a preponderance of the evidence:

1. That Officer Robin O'Reilly used force in arresting Sammie Smid;
2. That the force used by Officer Robin O'Reilly was excessive;
3. That Officer Robin O'Reilly was acting or purporting to act in the performance of his/her official duties;
4. That Sammie Smid was harmed; and
5. That Officer Robin O'Reilly's use of excessive force was a substantial factor in causing Sammie Smid's harm.

Force is not excessive if it is reasonably necessary under the circumstances. In deciding whether force is reasonably necessary or excessive, you should determine, based on all of the facts and circumstances, what force a reasonable law enforcement officer on the scene would have used under the same or similar circumstances. You should consider the following:

- a. Whether Sammie Smid reasonably appeared to pose an immediate threat to the safety of Officer Robin O'Reilly or others;
- b. The seriousness of the crime at issue; and
- c. Whether Sammie Smid was actively resisting arrest/detention or attempting to avoid arrest/detention by flight or other means.

If you find the plaintiff has proved each of elements 1-5, above, your verdict should be for the plaintiff, Sammie Smid. If, on the other hand, the plaintiff has failed to prove any one or more of these elements, your verdict should be for the defendant, Officer Robin O'Reilly.

## **1.2 Local Government Liability – Failure to Train**

Sammie Smid also claims that he/she was deprived of his/her civil rights as a result of the City of Clearwater's failure to train its police officers. To establish this claim, Sammie Smid must prove all of the following by a preponderance of the evidence:

1. That the act[s] of Officer Robin O'Reilly deprived Sammie Smid of his/her particular rights as explained in Instruction 1.1 [Unreasonable Seizure of Person – Excessive Non-Deadly Force];
2. That Officer Robin O'Reilly acted under color of law;
3. That the training policies of the defendant the City of Clearwater were not adequate to train its police officers to handle the usual and recurring situations with which they must deal;
4. That the defendant the City of Clearwater was deliberately indifferent to the obvious consequences of its failure to train its police officers adequately; and
5. That the failure of the defendant the City of Clearwater to provide adequate training cause the deprivation of the plaintiff Sammie Smid's rights by Officer Robin O'Reilly; that is, the City of Clearwater's failure to train is so closely related to the deprivation of Smid's rights as to be the moving force that caused the ultimate injury.

A person acts "under color of law" when the person acts or purports to act in the performance of official duties under any state, county, or municipal law, ordinance, or regulation.

The parties have stipulated that the Officer Robin O'Reilly acted under color of law.

“Deliberate indifference” is the conscious choice to disregard the consequences of one’s acts or omissions. The plaintiff may prove deliberate indifference in this case by showing that the defendant the City of Clearwater knew its failure to train adequately made it highly predictable that its police officers would engage in conduct that would deprive persons such as the plaintiff of his/her rights.

If you find the plaintiff has proved each of these elements, and if you find that the plaintiff has proved all the elements he/she is required to prove under **Instruction 1.1** [Unreasonable Seizure of Person – Excessive Non-Deadly Force], your verdict should be for the plaintiff, Sammie Smid. If, on the other hand, the plaintiff Sammie Smid has failed to prove any one or more of these elements, your verdict should be for the defendant, the City of Clearwater.

#### **1.27 Burden of Proof**

When I say a particular party must prove something by “a preponderance of the evidence,” or when I use the expression “if you find,” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

STATE OF WISCONSIN : CIRCUIT COURT : CLEARWATER COUNTY

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SAMMIE SMID,

Plaintiff,

v.

OFFICER ROBIN O'REILLY  
1234 N. Water Street  
Clearwater, Wisconsin, 53594

Case No. 2015-cv-12345

CITY OF CLEARWATER,

Defendants.

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### **COMPLAINT**

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NOW COMES Plaintiff Sammie Smid, as and for his/her Complaint against Defendants Officer Robin O'Reilly and the City of Clearwater, alleges and shows to the Court as follows:

1. Plaintiff Sammie Smid is an adult citizen of the State of Wisconsin. Smid is homeless, but spends the majority of his/her time in Clearwater, Wisconsin.
2. Smid has a medical condition that can cause him/her to suffer seizures. Smid used to take prescription drugs that mostly controlled his/her condition, but since he/she lives on the streets, he/she cannot afford the medication. Smid's seizures worsen when he/she is under stress.
3. Usually, Smid can feel a seizure just before it happens, due to unusual tastes and aromas, followed by uncontrollable jerking and stiffening of his/her arms and legs. While Smid can feel a seizure just before it happens, he/she cannot control it or prevent it from happening.
4. On July 20, 2014 Smid was sitting on a bench in Knudson Park.

5. While Smid was sitting in Knudson Park, Defendant Officer Robin O'Reilly approached Smid and yelled at him/her.

6. Smid and O'Reilly know each other. O'Reilly has arrested Smid in the past.

7. As O'Reilly yelled at Smid, he/she began to feel a seizure beginning to start.

8. As O'Reilly came closer, Smid tried to tell O'Reilly he/she was having a seizure.

O'Reilly did nothing to help Smid. Instead, O'Reilly yelled at Smid to freeze.

9. As Smid began to shake and his/her arms stiffened, O'Reilly threw Smid off the park bench and onto the sidewalk. Once on the ground, O'Reilly hit Smid and slammed his/her head into the sidewalk. These actions worsened Smid's seizure symptoms. Before O'Reilly stopped his attack, Smid lost consciousness.

10. O'Reilly's actions caused Smid significant harm. Smid has lost most of his/her memories and struggles to remember new things. Smid's seizures are more frequent and more violent since the July 20th incident, and Smid's left side twitches constantly. Smid also suffered bruises and scrapes to his/her entire body.

**COUNT I – Unreasonable Seizure of Person – Excessive Non-Deadly Force**  
**(Alleged Against Officer Robin O'Reilly)**

11. Smid realleges and incorporates by reference each and every one of the foregoing allegations as if stated herein.

12. Robin O'Reilly is a Police Officer for the City of Clearwater.

13. On July 20, 2014 O'Reilly arrested Smid.

14. When O'Reilly arrested Smid he/she was acting under color of law.

15. During his/her arrest of Smid, O'Reilly used excessive non-deadly force.

16. O'Reilly's excessive force caused Smid damages.



**COUNT II – Failure to Train**  
**(Alleged Against City of Clearwater)**

17. Smid realleges and incorporates by reference each and every one of the foregoing allegations as if stated herein.

18. During his/her July 20, 2014 arrest of Smid, O'Reilly was acting under color of law.

19. O'Reilly's arrest violated Smid's rights under the United States Constitution, the Wisconsin Constitution, the laws of the United States, and/or the laws of the State of Wisconsin.

20. The training policies of the Defendant City of Clearwater were not adequate to train its police officers to handle the usual and recurring situations with which they must deal.

21. The Defendant City of Clearwater was deliberately indifferent to the obvious consequences of its failure to train its policies officers adequately.

22. The failure of the Defendant City of Clearwater to provide adequate training caused the deprivation of Smid's rights by O'Reilly.

23. O'Reilly's actions caused Smid damages.

WHEREFORE, Plaintiff Sammie Smid respectfully requests this Court enter judgment against Defendants Officer Robin O'Reilly and the City of Clearwater:

- a) For damages to be determined at trial;
- b) For all court costs, pre- and post-judgment interest and fees, including attorneys' fees as permitted by law; and
- c) For such other relief as this Court deems just and proper or to which Smid is otherwise legally or equitably entitled.

Dated this 1<sup>st</sup> day of July, 2015.

By: /s/Sammie Smid  
Sammie Smid

STATE OF WISCONSIN : CIRCUIT COURT : CLEARWATER COUNTY

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SAMMIE SMID,

Plaintiff,

v.

Case No. 2015-cv-12345

OFFICER ROBIN O'REILLY  
CITY OF CLEARWATER,

Defendants.

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**DEFENDANT OFFICER ROBIN O'REILLY'S ANSWER TO THE COMPLAINT**

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Defendant Officer Robin O'Reilly Answers the Complaint as follows:

1. Admits.
2. Lacks information sufficient to for a belief and therefore, denies.
3. Lacks information sufficient to for a belief and therefore, denies.
4. Admits.
5. Denies
6. Admits.
7. Lacks information sufficient to for a belief and therefore, denies.
8. Denies.
9. Denies.
10. Denies.

**COUNT I – Unreasonable Seizure of Person – Excessive Non-Deadly Force**  
**(Alleged Against Officer Robin O'Reilly)**

11. O'Reilly realleges and incorporates by reference each and every one of the foregoing allegations as if stated herein.

- 12. Admits.
- 13. Admits.
- 14. Admits.
- 15. Denies.
- 16. Denies.

**COUNT II – Failure to Train**  
**(Alleged Against City of Clearwater)**

17. O'Reilly realleges and incorporates by reference each and every one of the foregoing allegations as if stated herein.

- 18. Admits.
- 19. Denies.
- 20. Denies.
- 21. Denies.
- 22. Denies.
- 23. Denies.

WHEREFORE, Defendant Officer Robin O'Reilly respectfully requests this Court:

- d) Dismiss the Complaint with prejudice; and
- e) Award O'Reilly such other relief as this Court deems just and proper or to which O'Reilly is otherwise legally or equitably entitled.

Dated this 17<sup>th</sup> day of August, 2015.

By: /s/Robin O'Reilly  
Officer Robin O'Reilly

SAMMIE SMID,

Plaintiff,

v.

Case No. 2015-cv-12345

OFFICER ROBIN O'REILLY  
CITY OF CLEARWATER,

Defendants.

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**DEFENDANT THE CITY OF CLEARWATER'S ANSWER TO THE COMPLAINT**

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Defendant the City of Clearwater Answers the Complaint as follows:

1. Admits.
2. Lacks information sufficient to for a belief and therefore, denies.
3. Lacks information sufficient to for a belief and therefore, denies.
4. Lacks information sufficient to for a belief and therefore, denies.
5. Lacks information sufficient to for a belief and therefore, denies.
6. Lacks information sufficient to for a belief and therefore, denies.
7. Lacks information sufficient to for a belief and therefore, denies.
8. Lacks information sufficient to for a belief and therefore, denies.
9. Lacks information sufficient to for a belief and therefore, denies.
10. Lacks information sufficient to for a belief and therefore, denies.

**COUNT I – Unreasonable Seizure of Person – Excessive Non-Deadly Force**  
**(Alleged Against Officer Robin O'Reilly)**

11. The City of Clearwater realleges and incorporates by reference each and every one of the foregoing allegations as if stated herein.

- 12. Admits.
- 13. Admits.
- 14. Admits.
- 15. Denies.
- 16. Denies.

**COUNT II – Failure to Train**  
**(Alleged Against City of Clearwater)**

17. The City of Clearwater realleges and incorporates by reference each and every one of the foregoing allegations as if stated herein.

- 18. Admits.
- 19. Denies.
- 20. Denies.
- 21. Denies.
- 22. Denies.
- 23. Denies.

WHEREFORE, Defendant City of Clearwater respectfully requests this Court:

- f) Dismiss the Complaint with prejudice; and
- g) Award the City of Clearwater such other relief as this Court deems just and proper or to which the City of Clearwater is otherwise legally or equitably entitled.

Dated this 17<sup>th</sup> day of August, 2015.

By: /s/Peter Russo  
Peter Russo  
CLEARWATER CITY ATTORNEY

STATE OF WISCONSIN : CIRCUIT COURT : CLEARWATER COUNTY

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SAMMIE SMID,

Plaintiff,

v.

CITY OF CLEARWATER, et al.,

Defendants.

Case No. 2015-cv-12345

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**SPECIAL VERDICT**

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**QUESTION NO. 1:** Did Officer Robin O'Reilly use force in arresting Sammie Smid?

ANSWER: Yes\_\_\_\_\_ No\_\_\_\_\_

If you answered "no" to Question No. 1, **STOP** you are finished. If you answered "yes" to Question No. 1, then answer the following question:

**QUESTION NO. 2:** Was the force used by Officer Robin O'Reilly during the arrest of Sammie Smid excessive?

ANSWER: Yes\_\_\_\_\_ No\_\_\_\_\_

If you answered "no" to Question No. 2, **STOP** you are finished. If you answered "yes" to Question No. 2, then answer the following question:

**QUESTION NO. 3:** Did Officer Robin O'Reilly's use of excessive force cause Sammie Smid harm?

ANSWER: Yes\_\_\_\_\_ No\_\_\_\_\_

If you answered "no" to Question No. 3, **STOP** you are finished. If you answered "yes" to Question No. 3, then answer the following question:

**QUESTION NO. 4:** Was Officer Robin O'Reilly's use of excessive force a substantial factor in causing Sammie Smid's harm?

ANSWER: Yes\_\_\_\_\_ No\_\_\_\_\_

If you answered “no” to Question No. 4, **STOP** you are finished. If you answered “yes” to Question No. 4, then answer the following question:

**QUESTION NO. 5:** Were the training policies of the City of Clearwater adequate to train its police officers to handle the usual and recurring situations with which they must deal?

ANSWER: Yes\_\_\_\_\_ No\_\_\_\_\_

If you answered “yes” to Question No. 5, **STOP**, you are finished. If you answered “no” to Question No. 5, then answer the following question:

**QUESTION NO. 6:** Was the City of Clearwater deliberately indifferent to the obvious consequences of its failure to adequately train its police officers?

ANSWER: Yes\_\_\_\_\_ No\_\_\_\_\_

If you answered “yes” to Question No. 6, **STOP**, you are finished. If you answered “no” to Question No. 6, then answer the following question:

**QUESTION NO. 7:** Did the failure of the City of Clearwater to provide adequate training cause the deprivation of Sammie Smid’s rights by Officer Robin O’Reilly?

ANSWER: Yes\_\_\_\_\_ No\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
JURY FOREPERSON

DISSENTING JURORS:

QUESTION NUMBER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## AFFIDAVIT OF SAMMIE SMID

Sammie Smid, being first duly sworn upon oath, states as follows:

- 1 1. My name is Sammie Smid. I am twenty years old and live in Clearwater, Wisconsin. I do not  
2 have a current permanent address. I used to live with my parents, Pat and Jo Smid, at 811 Pine  
3 Street here in Clearwater, but my mom kicked me out of the house when I turned eighteen. I  
4 have been living on the streets, in shelters, and occasionally in the homes of friends ever since.  
5 I have to rely on the kindness of strangers.
- 6 2. I don't work and have never really been able to hold down a job. I think I have a learning  
7 disorder, but I'm not sure and no doctor has ever said I do. Some of my teachers thought I have  
8 a learning disability, but my parents never wanted to have me tested, so I just struggled on my  
9 own. Things got messed up when I was young—about six—when my older brother Lee was  
10 killed under strange circumstances. Lee was the oldest and I was the youngest of the four of us.  
11 Some said that Lee died playing Russian Roulette with friends, but others said Lee intentionally  
12 shot himself. I still can't believe that Lee would have shot himself and left me and our family.  
13 We were a happy family, but after Lee died our family fell apart. My dad blamed my mom,  
14 there was lots of yelling, and then eventually dad left home. I rarely see him anymore. Johnny  
15 and Joey also started arguing with each other—so much for the happy family.
- 16 3. I think mom got some money for Lee's death, but she spent half of it on alcohol and drugs. My  
17 dad also said she was doing crack when she was pregnant with me. My other two sibs—Johnny  
18 and Joey—seemed to manage okay after Lee's death, maybe because they were older or maybe  
19 because they had more friends. As for me, I looked up to Lee and had no one to help me out  
20 anymore after Lee died and dad split. I struggled through school, barely passing classes, and  
21 eventually dropped out of high school at 17. I had issues with the law just because I dressed  
22 funny (for some reason they really seem to hate my red shorts), dyed my hair, and did the same  
23 drugs mom did, and eventually my mom kicked me out a year later. What a hypocrite.
- 24 4. I also have had a seizure disorder since I was young. It is worse when I'm under stress. It  
25 started to occur a lot after Lee's death, but the doctors gave me medicine that mostly controlled  
26 it. Since I've been on the street, however, I have not been able to afford the medication—it's  
27 really expensive and without a job or insurance I don't have the money for it. Maybe I should  
28 have moved to Canada where they provide health insurance and medication. The seizures make  
29 it even harder to keep a job since I could have a seizure without any notice and therefore I also  
30 cannot drive. When I can get some weed, it helps the seizures by calming me down, but I don't  
31 have money for that either. Maybe I should move to Colorado.
- 32 5. Often when I get a seizure, I can feel it coming on shortly before it happens—it's so frightening  
33 having that feeling and not being able to do anything about it. Oddly, one of the early signs is I  
34 get this strange taste in my mouth, sort of like sucking on a penny, and I can smell a sweet  
35 aroma. I often have tried to place the aroma, walking around candle shops and incense shops  
36 (before they kick me out) smelling everything to see if it is familiar. Although it sometimes  
37 changes, it's often lilac, sage, or cinnamon. The aroma is followed by uncontrollable jerking  
38 and then stiffening of my arms and legs; then I lose consciousness. Sometimes I cry out, other  
39 times I don't. The most embarrassing thing, as if the rest wasn't bad enough, is that sometimes I  
40 wet myself. My friends know about it and try to help me out when it occurs—I don't know



41 what I'd do without them, especially Bo Marks. Bo and I are really tight—helping each other  
42 out.

43 6. Anyway, for the last couple of years, I've been living in parks, going to shelters, begging for  
44 food, whatever it takes. The business owners and police don't like me or any of my friends  
45 hanging around, but where are we going to go? We need somewhere to sleep, shower, and keep  
46 safe the little that we own. In this town there is no place to really go—wherever you go you get  
47 hassled by someone and occasionally beat up by others. I try to help everyone out, but the  
48 police think I'm trouble because business owners and the "normal" people are always  
49 complaining that I smell, that I am begging, that I am too loud, etc. They always seem to be  
50 busting me for one trumped up charge or another. Disorderly conduct is an easy bust—you  
51 don't have to be doing anything and they can arrest you for it. I also have been arrested for  
52 loitering, littering, underage drinking, and resisting arrest (just for asking the officer why he was  
53 hassling me). And, don't forget the arrests for smoking a joint—what a joke. The police will  
54 use anything as an excuse to hassle us.

55  
56 7. I also have been busted a couple of times for allegedly stealing purses or wallets, but I tried to  
57 explain that I found the one purse on a park bench and was looking through it for identification.  
58 If there was no identification I was going to use any money for food for me and others. I always  
59 share whatever I find with the rest of the homeless. We must help each other out to survive,  
60 because other than a few kind souls, no one will help us. If the city and the rich would help us,  
61 we wouldn't have to scrounge around looking for money, scrap metal to sell, going through the  
62 trash for cans and food, or begging for handouts.

63 8. We're not bad people, just ones who haven't been able to make it in society for one reason or  
64 another. Some of us have mental health issues, but the hospitals won't take us. Others have  
65 addictions and can't get help. Others are just down on their luck. Everyone has a different  
66 story, but most people don't want to hear it. To most people, we are just an embarrassment to  
67 be shuttled off somewhere we won't be seen.

68 9. On July 20, 2014, I was sitting on a park bench in Knudson Park soaking up the sun and  
69 minding my own business. It was a splendid summer day—sunny, warm, and a light breeze. I  
70 was wearing my usual red shorts and some t-shirt. I can't recall what the t-shirt was, but I know  
71 I had on red shorts. I saw a person walk by with a puppy. I smiled and said hello, but he/she  
72 didn't say anything—just walked on by ignoring me as usual. Suddenly, I saw Officer O'Reilly  
73 approaching me and he started yelling something that I couldn't quite understand. Officer  
74 O'Reilly is always hassling me and makes me nervous. He/she busted me a few times before.  
75 As he got closer, I could feel myself losing control and a possible seizure coming on. I think  
76 he/she said something and I said "whatever, I got nothing to hide." I was just trying to hold it  
77 together, but like has happened sometimes in the past, I smelled an odd smell like sage and  
78 cinnamon, and a got strange metallic taste in my mouth. My stomach started tightening into  
79 knots and I could feel my bowels and bladder start to loosen.

80 10. As Officer O'Reilly got closer, it got worse, and I yelled to him/her that I was having a seizure.  
81 Yet, he/she kept on coming and coming and coming. Suddenly he/she was on top of me  
82 screaming at me to freeze. How was I supposed to freeze with a seizure starting? That's when

the seizure really started. My whole body started twitching, spasming, and jerking. I was shakin' like a leaf on a tree. Officer O'Reilly, however, kept coming at me and grabbed me. He/she then threw me off of the bench onto the sidewalk without reading me my rights or telling me why he/she was arresting me. He/she kept hitting me, slamming my head into the walk, and the twitching got worse. I don't really know what happened after that. Everything went black and cold and silent.

11. The next thing I remember is waking up in a hospital. My head was bandaged. I had bruises and scrapes all over. I couldn't remember anything that happened. Even worse, I can't remember lots of things anymore. I know who I am, but not a lot else. My seizures are worse, most of the time my left side twitches constantly. I suppose that I should be happy that I wasn't killed like others have been, but there was no reason for Officer O'Reilly to attack me. He/she knew who I was and that I've never hurt anybody. I think he/she just wanted an excuse to beat me up. I heard that they were looking for a purse snatcher and Officer O'Reilly knows full well that I never steal from anyone. If he/she thought I had someone's lost purse, he/she could have just asked me nicely and I would have answered him/her.

12. It was bad enough before not being able to work a steady job and trying to get by. Now, I am even worse off than I was before Officer O'Reilly went all nuts on me. I had to struggle to survive back then, but now there is no way that I can survive on my own even with a little help from my friends. I'd be a burden even to kind hearted people like Bo Marks. If Clearwater supervised and trained its officers better, I wouldn't be like this. I'd be better off dead just like Lee.

FURTHER AFFIANT SAYETH NOT

By: /s/Sammie Smid  
Sammie Smid

Subscribed and sworn to before me  
this 26<sup>th</sup> day of September, 2015

/s/ Kevin Lonergan  
Notary Public, Clearwater County, WI  
My Commission expires: permanent

## AFFIDAVIT OF BO MARKS

Bo Marks, being first duly sworn upon oath, states as follows:

- 1 1. My name is Bo Marks. I am 21 years old, but I'm told I have an old soul. I am a good friend of  
2 Sammie Smid. Sammie is good people! I don't know how I'd keep up my good attitude  
3 without Sammie setting such a good example.
- 4 2. My mom re-married when I was a junior in high school, and I did not get along with my step-  
5 father at all. He moved in and set all of these new rules, and I just wouldn't stand for it!  
6 Dishes, mowing the lawn, doing the family laundry (even his—gross!)
- 7 3. I am really into my music. It has always been my passion and my way of life. The worst part is  
8 my step-dad was ignorant about really good music and had no appreciation for what it meant to  
9 me. He didn't get my music at all, so I wasn't allowed to practice at home. My mom was such  
10 a push-over and even enforced that stupid rule.
- 11 4. I couldn't be parted from my music and the stifling of my creative process for long. I moved  
12 out right after high school graduation. It started out great. I was independent, got my own place  
13 and played or listened to music whenever I wasn't working the hot dog stand.
- 14 5. But the good times didn't last too long. My roommate moved out and I got stuck paying the full  
15 rent. My job at the hot dog stand didn't pay well. It would've been great if I got more cash and  
16 not all the hot dogs I could eat.
- 17 6. Right now I'm a little down on my luck, so I am staying at the shelter on the edge of town most  
18 nights. Sometimes I crash with my bandmates. To be blunt, I'm homeless; but I prefer to think  
19 of myself as a nomad. It's not too bad. You get to meet a lot of interesting people, like  
20 Sammie.
- 21 7. I met Sammie about a year before this whole thing happened with that awful police officer. I  
22 remember meeting Sammie like it was yesterday! I was watching Sammie eat a cheeseburger  
23 and fries on a bench in Middle Park. What a stupid name for a park, "Middle Park" because it is  
24 in the middle of town! It had been a while since I'd had a cheeseburger and fries, so I was  
25 staring. Sammie smiled, came over to me and gave me his/her french fries. I tried to protest but  
26 he/she insisted. We got to talking and ended up spending a lot of time together after that.
- 27 8. I know Sammie had a rough childhood, and his/her family turned their backs on him/her, too.  
28 Although Sammie had a rough start, he/she was really trying to turn things around. He/she was  
29 applying for jobs every day, and even tried to get me to be more proactive in looking for a full-  
30 time job. If he/she was any good at music I would've arranged a place for him/her in the band.  
31 But Sammie had no musicality!
- 32 9. Sammie is the nicest person I've ever met. He/she always went out of his/her way to help out  
33 others. One time our friend Joe collapsed and Sammie ran to get help and call 911 because  
34 he/she knew Joe was diabetic and may need immediate medical care. I didn't even know Joe  
35 was diabetic, and I'd known him a long time. But that was just like Sammie—he/she was

36 always taking the time to talk to the other people at the shelter to see if he/she could help in any  
37 way. In fact, after this Sammie found a program to set Joe up with a constant supply of insulin.

38 10. After Joe's medical incident, Sammie shared that he/she had a seizure disorder. The worst part  
39 is he/she can't afford the medication for it. I still don't quite understand what it is exactly, but  
40 Sammie told me that he/she gets butterflies in his/her stomach and has weird smells and tastes  
41 before the seizures start. I can't believe having to go through that. I've never had any medical  
42 conditions, so those things really freak me out. I tried to keep a close eye on Sammie after  
43 he/she shared that because I didn't want anything awful to happen if one of those seizures came  
44 on.

45 11. Sammie also cleans up litter in the parks and on the street. He/she would insist anyone with  
46 him/her should do it, too. He/she says we have the time and owe it to Clearwater! Sammie does  
47 this for Clearwater and this is how the police treat him/her?!? I don't think it's right. The way  
48 the Clearwater police treat those of us that are on the streets or in the shelter is just plain  
49 disrespectful. You wouldn't believe the names I've been called or how many times I've been  
50 stopped and questioned.

51 12. The Clearwater Police are particularly awful if there are two or more of us together. I  
52 occasionally shout insults back at them and tell them to leave me alone. I wouldn't have to if  
53 they weren't always giving Sammie and me a hard time when we're in Knudson Park with  
54 friends or walking in town. Even when we are cleaning up other people's litter, we get  
55 suspicious looks and questions. And Officer O'Reilly is about the worst. He/she always talks  
56 so rudely and assumes we are up to something.

57 13. The day the incident happened was no different. It was July 20, 2014 and it was a nice day. I  
58 was walking toward the park because I was supposed to meet up with Sammie that afternoon. I  
59 was humming my favorite song and playing some mean air guitar. Then I saw Sammie getting  
60 harassed by Officer O'Reilly and then he tased him/her!

61 14. I ran up to Sammie and heard Officer O'Reilly say "This is ridiculous! I've had enough of you  
62 people!" The next thing I knew, Officer O'Reilly threw Sammie to the ground, put a knee on  
63 top of his/her back and started attacking him/her. Officer Reilly hit Sammie in the head, neck  
64 and back over and over again. Officer O'Reilly hit Sammie at least ten times.

65 15. I didn't know what to do. When I ran up I started screaming at O'Reilly. I shouted, "Hey, pig!  
66 Get out of here!" But O'Reilly just kept hitting Sammie. I stood there shouting and cursing, but  
67 the attack didn't stop. When Sammie finally laid still and O'Reilly stopped, I told O'Reilly he'd  
68 be sorry for this because I would tell everyone who would listen what I saw.

69 16. Sammie went still and stopped moving. He/she was covered in bruises and scrapes and had to  
70 go to the hospital. He/she was in a coma for three days. It was horrible to see my friend that  
71 way.

72 17. Although he/she is doing better now, Sammie has suffered brain injuries and isn't the same.  
73 He/she has a hard time remembering things. Sammie has missed a few of my band's shows

74 because he/she forgot. Sometimes we get halfway through a favorite song at a show and I  
75 would see he/she fudge the words while singing along in the crowd.

76 18. I still try to follow Sammie's example and pick up litter and encourage our friends to do the same. But it  
77 just feels so wrong to help out Clearwater that way when they've done this to Sammie.

FURTHER AFFIANT SAYETH NOT

By: /s/Bo Marks  
Bo Marks

Subscribed and sworn to before me  
this 30<sup>th</sup> day of September, 2015

/s/ Mike Mather  
Notary Public, Clearwater County, WI  
My Commission expires: permanent

## **REPORT OF AXEL FOLEY**

1. I was contacted by the attorneys representing Plaintiff Sammie Smid and asked to review the facts surrounding the incident that occurred on July 20, 2014 to determine whether the use of force employed by Defendant Robin O'Reilly under the circumstances was reasonable.

2. My opinions herein are based on the following:

- Statement of Robin O'Reilly
- Statement of Sammie Smid
- Statement of Francis Underwood
- Statement of Bo Marks
- Audio Recording captured by Witness Francis Underwood
- Clearwater Police Department Incident Recall
- Incident Reports #2014-153433, Case #2013-105655, Case #2009-116233
- Civil Complaint, Sammie Smid v. Robin O'Reilly et al.
- In-person inspection of Knudson Park located in Downtown Clearwater.
- Clearwater Police Department Standard Operating Procedure Rules 4.0-4.2
- Article 1, Section 11 of the Wisconsin Constitution and the Fourth Amendment of the United States Constitution
- Certified Medical Records of Sammie Smid: Clearwater Hospital 07/20/2014-08/11/2014, Clearwater Medical Group 01/30/2012, Clearwater Fire Department Ambulance Report 07/20/2014
- Expert Report of Carter Marcus

3. I also relied on my training and experience, which is outlined in my Curriculum Vitae.

### **FIRST OPINION: UNREASONABLE USE OF FORCE**

4. Under well-established requirements and police procedures, the police in any situation may use only that level of force that is objectively reasonable to bring an incident under control. The actions on the part of O'Reilly in this case constituted a failure to observe nationally recognized standards of police procedure as well as Clearwater Police Department's own Standard Operating Procedure, which specifically states that officers should:

“[u]se force only when objectively reasonable based upon the circumstances. Officers should only use the amount of force that is reasonably necessary to secure control or to gain compliance...” Furthermore, the policy outlines several factors to be considered in determining whether to use force, including, “[t]he existence of alternative methods of control, [t]he weapons on the individual as compared to the officer... [t]he nature of the encounter... [t]he severity of the offense,” and “[t]he individual's disabilities, mental condition, or medical conditions of which the officer is aware or should be aware.”

5. In this case, given the totality of the circumstances, O'Reilly's use of force on Smid was unreasonable. This opinion is based upon the following facts and opinions:

37 A. O'Reilly failed to follow his training and wrongfully escalated rather than defused the  
38 situation.

- 39 i. Sammie was unarmed when O'Reilly aggressively approached him/her with  
40 prejudice based on previous interactions.  
41 ii. Sammie clearly warned the officer of an imminent seizure before it began  
42 and O'Reilly unreasonably assumed, without pause, that Sammie was trying  
43 to cause him/her harm.

44 B. O'Reilly needlessly subjected Sammie to harmful and excessive levels of force based on an  
45 unreasonable fear of injury.

- 46 i. Given O'Reilly's past experiences, he/she possessed an unreasonable fear of  
47 injury based on emotion rather than reason. This heightened emotional  
48 sensitivity caused the officer to misjudge the situation at hand and overreact  
49 to an extraordinary degree, disregarding his training and experience and thus  
50 mistaking a medical emergency for a physical threat.  
51 ii. Without asking further questions or conducting any further investigation into  
52 the mental and physical state of the suspect O'Reilly deployed a stun gun on  
53 Sammie while he/she was enduring a mental and physical crisis.

54 C. O'Reilly resorted to measures that far exceeded any level of resistance offered by Sammie.

- 55 i. When Sammie's seizures continued, O'Reilly threw Sammie onto the ground  
56 and consequently struck him/her at least three times in the head and back to  
57 the point where he/she had to be rushed via ambulance into emergency care.  
58 ii. O'Reilly's combined use of force in the form of a stun gun followed by a  
59 takedown, grapples and punches was in my view unjustified and dangerous.  
60 Not only do the medical records document the very specific and life changing  
61 injuries inflicted upon Sammie by O'Reilly, but O'Reilly him/herself  
62 understood the damage he/she had done and recognized the need for  
63 emergency care immediately following his actions.  
64 iii. To this day, Sammie suffers from the repercussions of the injuries that  
65 O'Reilly inflicted on him/her and his/her brain trauma will never fully heal.

- 66 6. It is my professional opinion that O'Reilly failed to properly assess Sammie's actions and knew  
67 or should have known that Sammie was not attempting to harm O'Reilly when Sammie began to  
68 seize violently and involuntarily during the stop and search. Sammie was suffering a health  
69 crisis and as such needed the help of O'Reilly. The officer acted emotionally and contrary to his  
70 training, using excessive and unnecessary force to subdue a sick individual. It was neither  
71 reasonable nor prudent to use any amount of force in an attempt to control Sammie, let alone the  
72 extreme amount that left Sammie suffering from permanent physical and mental disability.

## SECOND OPINION: VIOLATIONS OF DEPARTMENT POLICY

- 73 7. Defendant O'Reilly ignored established departmental policy in his/her response to the call  
74 reporting the theft of a civilian's purse. The Use of Non-Deadly Force protocol, included in  
75 Rules 4.0-4.2 of the Clearwater Police Department Standard Operating Procedure, requires that  
76 officers use only the amount of force that is reasonably necessary to secure control or to gain  
77 compliance of an individual. Rule 4.2 specifically notes that "[c]ontrol of a person through  
78 presence and verbal commands shall always be the preferred method of control." (emphasis

added). In this case, O'Reilly used force in a situation where his/her presence and verbal commands would certainly have been enough to control an individual going through a seizure. His/her choice to use force was unreasonable.

8. Moreover, an evaluation of the totality of the circumstances necessitates the opinion that O'Reilly's use of force was unreasonable. First, there were alternative methods of control available, including verbal commands, calling for back-up, and providing Smid with medical treatment for his/her seizure rather than force, to name a few. Second, Smid was unarmed. Third, Smid's actions were that of an individual going through a seizure, so the nature of the encounter and Smid's actions did not necessitate the use of force. Fourth, this encounter involved only O'Reilly and Smid—O'Reilly was not outnumbered, because it was a one-on-one encounter. Fifth, the severity of the offense of which Smid was suspected was minor. Sixth, O'Reilly was either aware or should have been aware of Smid's seizure condition. Finally, Smid was neither posing a threat to safety nor resisting arrest or escaping, as s/he was having a seizure at the time the force was used.
9. It is my professional opinion, based upon a reasonable degree of certainty, that O'Reilly ignored departmental policy in his/her use of force of Sammie Smid and that Sammie's traumatic and permanent injuries could have been avoided.

### **THIRD OPINION: FAILURE TO TRAIN**

10. Under well-established requirements and police procedures, police officers must be held accountable for carrying out their duties properly and know what is expected of them. Accordingly, command personnel have a responsibility to develop departmental policy that must be clearly communicated to each officer. In this case, deficiencies in departmental policies and officer training resulted in the mishandling of Smid during a stop and search and the ensuing brutal use of force.
11. It is my professional opinion that the City of Clearwater Police Department failed to train O'Reilly to effectively handle a stop and search of a suspect with a potential physical illness. As a result, the actions of O'Reilly caused traumatic and permanent injury to Smid.
12. ADDENDUM: Following my initial draft of this report, I have had the opportunity to review the Expert Report of Carter Marcus. None of my opinions have changed as a result of that report.

By: /s/Axel Foley  
Axel Foley

Subscribed and sworn to before me  
this 30<sup>th</sup> day of October, 2015

/s/ Ellen Henak  
Notary Public, Clearwater County, WI  
My Commission expires: permanent



## AFFIDAVIT OF ROBIN O'REILLY

Robin O'Reilly, being first duly sworn upon oath, states as follows:

1. I am Officer Robin O'Reilly. I am 45 years old and have been a police officer for almost 23 years. I was born and raised in Clearwater, but moved to Brooklyn, NY in 1989 to pursue an acting career. Acting didn't quite pay the bills, so I had to look for other work. The NYPD was heavily recruiting at the time, and offering signing bonuses that covered six months' rent. Being a strong, midwestern track and field athlete, I was virtually hired on the spot. It wasn't quite acting, but our training was fun – it involved a lot of different use of force scenarios that we had to act out. I was always the star of special training sessions. I quickly moved up the ranks and was training other officers to play out various police tactics 75% of my time.
2. Just before my 10 year anniversary on the force, my life turned upside down. I lost several close friends and my former fiancée/fiancé (also an NYPD officer) on September 11<sup>th</sup> at the World Trade Center. I wasn't scheduled to work that morning, but after the attacks, I was called in. I had just entered the lobby of Tower 1 when Tower 2 came down. I was directed to help people get away from the site. After that day, I tried to go back to work as though nothing had changed, but I wasn't myself. I was hospitalized and diagnosed with PTSD. After a few months in the hospital, I decided to return to Clearwater, Wisconsin.
3. I spent several months at home, living in my parent's house, and helping them with my younger brother, who suffers from a severe form of autism. Although he has never been verbal, I am his favorite person. He's always so happy to see me. He hugs me and he doesn't really hug anyone else, not even our parents. It was my brother who brought me out of my haze and convinced me to join the Clearwater Police Department, which I did in 2002. I was hailed as a hero.
4. Then, in early 2003, the Clearwater municipal buildings received a credible bomb threat. I was one of the first officers on the scene and was charged with evacuating the building. I evacuated it alright – but there was this woman who refused to leave her desk. She was talking on the phone. When I ordered her to leave she just kept talking. I wasn't about to see us both blown to shreds, so I grabbed her by her arm and her hair. She was too big for me to lift so I dragged her out. She wasn't too badly hurt, but she lost a clump of hair. After an investigation, during which I was on paid leave, I served a five-day unpaid suspension and was required to undergo therapy, sensitivity training, and fitness for duty exams every three months for two years. That was the only disciplinary incident I ever had that involved excessive force. After that incident, I dove head-first into intensive psycho-therapy, and even did movement therapy and yoga. According to my medical records, I have not suffered from PTSD since 2007.
5. In 2009, I was injured in the line of duty when I was attacked with a knife by a person I was arresting for domestic abuse to a toddler. Ever since the attack, I have had moderate to severe back pain. When I find time to practice yoga every day, the back pain subsides.
6. If I had not moved from New York to Wisconsin, I'd be able to retire in two years with a full pension. Now, I need 13 more years on the force. I've been trying to transfer to a desk job, without success. I've been trying to build my resume for higher-ranking positions by serving on various CPD initiatives, including the diversity initiative, the Officer-Involved Shooting task force, and the training committee (that recruits experts from around the country to train our

officers in use of the latest equipment and techniques). In addition, I serve the community. I work with the Clearwater County's board of supervisors as an advisor on handling community housing for people with disabilities, and I volunteer once a month at the humane society.

7. On July 20<sup>th</sup>, 2014, at approximately 2:15, I received dispatch that a young person, about 20 years of age, in a grey shirt and red shorts, stole a flowered pink purse. It was reported to me that the victim did not see any weapons on the suspect, but that the victim had a five inch knife in the stolen purse. She reported that the suspect appeared un-kept, like a homeless person, but didn't smell as bad as she thought a homeless person would smell in mid-July in Wisconsin. The victim reported the suspect as not acting like a typical thief, instead acting weird, and "a little funk-ed-out and twitchy."
8. I suspected that the person involved in the purse snatching was Sammy Smid, based on my prior contacts with the Smid. Smid had never been in serious trouble, but it seemed that every day there was a new problem: shouting inside business establishments, petty shoplifting, trespassing. The Smid was arrested plenty of times but never charged. It was like the DA just didn't want to bother with Smid. But lately, I believe Smid's conduct had escalated. I suspected that Smid had seriously damaged park property the week before by tearing up playground equipment.
9. On the 4<sup>th</sup> of July that year, I arrested Smid for public intoxication, petty theft, and disorderly conduct, but again, the DA did not press charges. Smid called my supervisor to complain that the handcuffs I'd used were too tight. I know Smid was lying because I checked them myself and Smid never once told me to loosen them. Smid had a small mark on the wrist area, so I received a written counseling. It was totally unwarranted, particularly because Smid had resisted arrest by stiffening his arms against his sides and making quick jerking movements.
10. At around 3:00 PM on July 20<sup>th</sup>, I spotted Smid sitting on a park bench at Knudson Park, wearing a dirty white tee-shirt and red gym shorts. I said hello but there was no response. Smid was either totally zoning out or completely ignoring me. I raised my voice and announced myself. I asked Smid to stand up because I thought I'd find the flowered pink purse. Smid said something like, "I've got nothing to hide, stupid pig." Smid got up in my face and nearly spat at me when he/she said "pig." Something about the way Smid was acting got me scared, in the way I get scared when I think I'd better get someone in handcuffs quick or else they'll take me down. And, calling a cop a pig is disorderly conduct.
11. Smid lifted his/her arms and I started a pat-down, but then, just like the last time, Smid's arms got real stiff. Smid started shifting a bit and said something about a smell, and that is when I thought I saw a piece of pink fabric from under Smid. I said in a loud voice that I was going to bring him/her in for questioning. Just then Smid yelled, "I'm gonna seize your..." Smid then said something unintelligible. He/she stiffened up and as I was trying to handcuff him/her, Smid started flailing his/her arms. It was like I was being battered and clawed at.
12. I felt a shooting back pain and knew at that moment I couldn't defend myself against someone half my age attacking me. I kept yelling at Smid to stop resisting arrest, but I was met with deaf ears. I reached for my Taser and on the lowest setting gave Smid a shock. This did little to subdue Smid, but I thought I'd at least be able to get handcuffs on. After a second or two Smid kept on attacking me. I didn't want to use the Taser again because multiple uses of Tasers have

81 been lethal and could cause other serious complications such as cardiac arrest. I decided to  
82 struggle by hand to get Smid into handcuffs.

83 13. At some point, as I was still trying to subdue and handcuff Smid, Smid's friend, Bo Marks,  
84 approached and started yelling at me as I was being attacked. I was concerned that it would  
85 become a two against one situation, so I needed to act fast to handcuff and pat Smid down.  
86 Because Smid's arms and head movements were erratic, I had to secure him/her on the ground  
87 using my knee on his/her back.

88 14. At all times during the confrontation, I used only the level of force necessary to subdue Smid  
89 and protect myself and the public. At some point during the struggle, I remember saying to Bo  
90 Marks, "I've had enough of you two."

91 15. I was placed on administrative leave, with pay, pending a full internal investigation of the  
92 incident. I was not criminally charged nor disciplined for my actions. I was not found to have  
93 violated any department rules or policy. I was cleared to return to work. Two different  
94 detectives within the Clearwater police force conducted the internal investigation. One of those  
95 officers is Officer Madigan. I am now engaged to marry Officer Madigan, but we were not  
96 engaged or dating during the internal investigation.

FURTHER AFFIANT SAYETH NOT

By: /s/Robin O'Reilly  
Robin O'Reilly

Subscribed and sworn to before me  
this 30<sup>th</sup> day of September, 2015

/s/ Katie Wilcox  
Notary Public, Clearwater County, WI  
My Commission expires: permanent

## AFFIDAVIT OF FRANCIS UNDERWOOD

Francis Underwood, being first duly sworn upon oath, states as follows:

1. My name is Francis Lee Underwood. People call me Frank/Fran. I am 32 years old and I live in Clearwater, Wisconsin. My spouse and I moved to Clearwater from Chicago almost two years ago to escape “big city” life and raise our future children in what we thought was a safe, clean community. I found a job as a teacher soon after we moved to town. My spouse has a background in marketing, and he/she had a hard time finding a job for a while. He/she worked from home on freelance projects and writing a blog before he/she finally got a job at the beginning of 2014.
2. In the summer of 2014, I was working at a restaurant while school was out to try to make some extra money. My spouse and I were trying to save up for a down payment on a house. While working long, hard hours as a teacher during the school year may be rewarding, it definitely doesn’t bring in enough to pay the bills and save money at the same time. On July 20, 2014, my shift at the restaurant started at 4:30, but my spouse wasn’t expected home until 6:00. We had recently become parents to an adorable 6-month-old puppy named Jasper who we adopted from a local shelter, and I took him for our afternoon walk so he could “get his ya-ya’s out” before I had to leave for work. We walked from our apartment, through the neighborhood a bit, and then to Knudson Park.
3. At the park, I took Jasper to the splash pad to cool his paws – it was a hot summer day. The splash pad and playground were pretty busy. Jasper was getting distracted and was forgetting his leash manners, so I took him over to the other end of the park where it was quieter. We enjoyed a leisurely walk on the path, and the couple of times we encountered other humans and dogs, we practiced Jasper’s manners. I have to say I was pretty proud of how obedient and polite he was becoming when there weren’t many distractions around.
4. We came upon a park bench that was occupied by a young man/woman wearing a stained white shirt and red shorts. He/she smiled at us. He/she looked dirty and potentially homeless but didn’t appear to have any bags or personal items with him/her so I wasn’t sure. We didn’t interact beyond that, and Jasper and I broke off the path in front of the bench and walked toward a big tree. Jasper found a giant stick that was bigger than he was, and was dragging it around with a huge smile on his face and chewing on it. It was just so darn cute; I had to take a picture to post it to Instagram.
5. A couple of seconds after I snapped the photo that I was going to call “Jasper and Stick,” my attention was turned when some shouting began near that park bench about 6 feet away from us. I saw a uniformed Police Officer speaking to the man/woman in the red shorts. The Officer said something about matching a description, and walked up to the man/woman with handcuffs. The Officer said something about searching the man/woman, who allowed the Officer to begin a pat-down. Then, the man/woman seemed like he/she was on drugs or something—he/she muttered “seize me,” and some other things I didn’t understand. I am guessing he/she was trying to say something about the Officer arresting him/her. The officer was facing toward us and the man/woman remained sitting on the bench with his/her back to us.

- 39 6. As the Officer was doing the pat-down, the man/woman seemed to go stiff and then collapse  
40 into the bench. He/she started squirming back and forth on the bench, trying to wriggle free. I  
41 heard the Officer yell “STOP ATTACKING ME” or something like that, but he/she continued  
42 moving around. I got really scared for a moment when I thought the Officer grabbed his/her  
43 gun, but then I realized it was just a Taser. The Officer tased the man/woman and tried to  
44 handcuff him/her but he/she seemed to keep wiggling around and trying to prevent the Officer  
45 from handcuffing him/her.
- 46 7. At some point another dirty-looking person came up and started talking to the Officer. The  
47 Officer yelled to this new person that his/her friend was being ridiculous. The new person said  
48 something I couldn’t hear while the Officer kept trying to handcuff the suspect. When the  
49 Officer came up from behind the suspect, he/she fell face-first onto the sidewalk. At this point it  
50 became hard to tell what was going on because the bench partially blocked my view.
- 51 8. From what I could see, the Officer put his/her knee on the suspect’s back and tried to pull back  
52 the suspect’s arms, and it seemed like the suspect kept struggling. Everything was happening so  
53 quickly. The Officer pushed on the back of the suspect’s head 3 or 4 times while the suspect  
54 seemed to be trying to wriggle out of the officer’s grasp. He/she eventually stopped struggling  
55 and went still. The Officer said something about a “code” into his/her walkie-talkie.
- 56 9. While everything was happening, I just stood with my puppy in our spot under the tree and  
57 watched while Jasper ate the stick. I didn’t want to bring my pup anywhere near the guns and  
58 Tasers. The Officer walked away from the man/woman once he/she was handcuffed and still on  
59 the ground, and I realized he/she must have been knocked out. I looked down at my phone to  
60 text my manager at the restaurant to say I’d be late, and I realized my phone was unintentionally  
61 recording video. Sometimes I accidentally press things on my touch screen if I forget to lock  
62 my phone: I didn’t think anything of it and just pressed “stop.”
- 63 10. At that point, the Officer came up to me and introduced him/herself as Officer O’Reilly. He/she  
64 said “did you see that?” and I said I did. I thanked him/her for his/her hard work in the  
65 community. I said he/she is underappreciated, just like us teachers, but it is people like him/her  
66 that make our community the clean, safe area that made us want to move here in the first place.  
67 Within a couple of minutes, some other Police Officer arrived at the scene and interviewed me  
68 about what I saw. I told him/her everything.
- 69 11. By that time, I was *really* going to be late for work, and the puppy was worn out. I gave the  
70 Officers my phone number in case they needed anything. I texted my manager to let him know  
71 I’d be late, and I started home. As I was walking, I went to my phone to post that cute picture of  
72 Jasper to Instagram and realized I hadn’t taken a picture of him. I guess when I went to take a  
73 picture of him, my phone’s camera was set to “video” instead of “photo,” and I accidentally  
74 started taking a video from the moment I thought I was snapping that photo.
- 75 12. The video was almost 5 minutes long. It started with Jasper and the stick, and then all you see is  
76 grass and then my pant leg, then the grass and my feet. I was going to hit “delete,” but it  
77 dawned on me that I should turn up the sound and see if it picked up anything that might help the

78 Officers. In fact, it did pick up some parts of the altercation. I walked back toward the police  
79 officers and they used a cable to transfer the video to one of their computers. They thanked me  
80 for my help and I headed home. I later listened to the video and found it to be a pretty fair and  
81 accurate representation of what I was able to hear while I was watching the altercation take  
82 place.

FURTHER AFFIANT SAYETH NOT

By: /s/Francis Underwood  
Francis Underwood

Subscribed and sworn to before me  
this 30<sup>th</sup> day of September, 2015

/s/ Kristen Lonergan  
Notary Public, Clearwater County, WI  
My Commission expires: permanent

## REPORT OF CARTER MARCUS

### Qualifications and Assignment

1. My name is Carter A. Marcus. I am a retired police chief. I previously worked as the Chief of the Clearwater County Police Department from 2002-2011. Prior to that, I served as a police officer in a number of municipalities across Wisconsin, as listed on my curriculum vitae. Prior to becoming a police officer, I served in the United States Army from 1971-1974.
2. I was contacted by counsel for Robin O'Reilly to assess whether the force officer O'Reilly used on July 20, 2014 at approximately 3:00pm at Knudson Park was reasonable. I am being compensated for the time I spent on this matter at a rate of \$300 an hour. I have served as an expert on the reasonableness of police force in approximately ten other cases.
3. To conduct my assessment, I reviewed the following information:
  - Statement of Officer Robin O'Reilly
  - Statement of Sammie Smid
  - Statement of Francis Underwood
  - Statement of Bo Marks
  - Audio Recording captured by Witness Francis Underwood
  - Clearwater Police Department Incident Recall
  - Incident Reports #2014-153433, Case #2013-105655, Case #2012-116233
  - Civil Complaint, Sammie Smid v. Robin O'Reilly et al.
  - In-person inspection of Knudson Park located in Downtown Clearwater.
  - Clearwater Police Department Standard Operating Procedure Rules 4.0-4.2
  - Article 1, Section 11 of the Wisconsin Constitution and the Fourth Amendment of the United States Constitution
  - Certified Medical Records of Sammie Smid: Clearwater Hospital 07/20/2014-08/11/2014, Clearwater Medical Group 01/30/2012, Clearwater Fire Department Ambulance Report 07/20/2014
  - Expert Report of Axel Foley
4. I also personally interviewed Officer O'Reilly and visited Knudson Park, where the interaction occurred. I reserve the right to review further materials and to modify, expand, or otherwise amend my opinion based on any additional materials or reports.
5. I am qualified to assess whether the use of force was appropriate in this matter based on my decades of experience as a police officer, training officer, supervisor, and Chief of Police. In these duties, I both received and led training on Terry<sup>1</sup> investigatory stops and proper arrest techniques. I have also conducted numerous arrests myself, including many in which the subject was non-compliant. As Chief of Police, I helped develop our Department's training techniques for proper arrests. I also reviewed the records and critiqued the procedures utilized by officers in

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<sup>1</sup> *Terry v. Ohio*, 392 U.S. 1 (1968).

many high risk arrests. I am thus qualified to provide an assessment of Officer O'Reilly's actions in this matter.

### Conclusions

6. Smid brings this claim, asserting that Officer O'Reilly used excessive force in arresting him/her. The standard for determining whether an officer's exercise of force is excessive is whether the officer's actions are objectively reasonable. *Graham v. Connor*, 490 U.S. 386, 397 (1989).

#### A. Officer O'Reilly Used Reasonable Force Under the Circumstances

7. The record in this matter reflects that on July 20th, 2014 at approximately 2:15pm, Officer O'Reilly received a dispatch report stating that a robbery had occurred; specifically, that a woman's flowered pink purse had been stolen. The dispatch further informed Officer O'Reilly that the suspect was approximately 20 years of age and wearing a grey shirt and red shorts. The victim reported that the suspect appeared to be unkempt, and was exhibiting bizarre behavior. Importantly, the dispatch report also informed Officer O'Reilly that the suspect was believed to be armed with a knife that was contained within the stolen purse.
8. Officer O'Reilly had prior contacts with Smid and knew that Smid had a history of engaging in similar petty theft crimes. While this alone certainly did not provide a basis for Officer O'Reilly to believe that Smid was engaged in criminal activity on this particular occasion, it is relevant to Officer O'Reilly's interactions with Smid.
9. Approximately 45 minutes after receiving the dispatch report, Officer O'Reilly observed Smid sitting on a bench, wearing clothing which fairly closely matched the description of the offender provided by the victim (dirty white t-shirt and red gym shorts). Officer O'Reilly required neither reasonable suspicion nor probable cause to simply approach and speak with Smid.
10. The record then reflects that Officer O'Reilly asked whether Smid would allow him/her to search his/her person. Officer O'Reilly required neither reasonable suspicion nor probable cause to ask for such consent.
11. The record further reflects that Smid was at first cooperative, and granted consent to search his/her person. However, the information presented reflects that Smid's behavior then completely changed. According to Officer O'Reilly, Smid started yelling and then lunged at the Officer. At this point, Officer O'Reilly reasonably feared for his/her safety, and had a basis to use the force necessary to subdue Smid. The information presented reflects that even after Officer O'Reilly took Smid to the ground, Smid continued to try and struggle. Thus, Officer O'Reilly had to continue to use force to subdue Smid. While the force used may seem severe in retrospect, an officer is trained to use the force necessary to subdue an individual who is noncompliant and poses a physical threat to the officer.



67 12. To add to the reasonable threat Officer O'Reilly perceived, as this all happened, a third party,  
68 Bo Marks, arrived and started making threatening remarks to the Officer. These remarks  
69 included a comment that the Officer would be "sorry for this."

70 13. For all of these reasons, I conclude that Officer O'Reilly used a reasonable level of force under  
71 the circumstances. Additionally, once Smid lunged at the Officer and resisted, Officer O'Reilly  
72 at that point had a lawful basis to arrest Smid.

73 14. It is important to keep in mind that police are often tasked, in situations such as this, to evaluate  
74 risk and make difficult decisions in a split-second timeframe. As the United States Supreme  
75 Court has explained: "[t]he reasonableness of a particular use of force must be judged from the  
76 perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham*,  
77 490 U.S. at 396. It is my professional opinion that, given the information Officer  
78 O'Reilly had at the time and given Smid's behavior, Officer O'Reilly's actions were reasonable  
79 and the force used was appropriate to subdue the threat and was not excessive.

80 B. Officer O'Reilly Did Not Violate Department Policy

81 15. As I have concluded that Officer O'Reilly used a reasonable level of force under the  
82 circumstances, I do not believe that Officer O'Reilly violated any provisions of the CPD's Use  
83 of Non-Deadly Force Policy as articulated in the Clearwater Police Department Standard  
84 Operating Procedure, Rules 4.0-4.2. Officer O'Reilly had reason to use force as Smid was  
85 reasonably suspected of unlawful behavior, and then subsequently in the encounter she/he had  
86 even more reason to use force for the protection of himself/herself, and as s/he perceived Smid  
87 was resisting arrest.

88 16. Moreover, the level of force was reasonable due to the totality of the circumstances. First,  
89 Officer O'Reilly did not have any reasonable alternatives to control Smid, based upon Officer  
90 O'Reilly's perception of the encounter. I disagree with Axel Foley's conclusion that Officer  
91 O'Reilly could have called for back-up or used verbal commands, as the incident was  
92 progressing too quickly for back-up, and Officer O'Reilly attempted verbal commands and  
93 those commands failed. Second, Officer O'Reilly did reasonably believe that Smid possessed a  
94 knife at the time of the encounter, based upon the report that the stolen purse contained a knife.  
95 Third, I disagree with Axel Foley's conclusion that this was a one-on-one encounter—Bo Marks  
96 was also present, so Officer O'Reilly was outnumbered. Fourth, Officer O'Reilly had no reason  
97 to be aware of any seizure condition, as Smid's actions resembled that of someone resisting  
98 arrest. Fifth, Officer O'Reilly perceived Smid to be actively resisting arrest, so his/her use of  
99 force was reasonable. Finally, Officer O'Reilly reasonably feared for his/her safety, given  
100 Smid's actions and the threatening remarks of Bo Marks.

C. The Clearwater Police Department Did Not Fail to Properly Train

17. I also do not see any indication of a failure to properly train on the part of the Clearwater County Police Department. Again, while Officer O'Reilly's actions may seem dramatic with the benefit of hindsight, particularly given Smid's medical condition, a police officer is trained to make split-second decisions based on the information the officer has before him or her at the time. These decisions may have serious ramifications on the safety of the officer and others, and police are trained accordingly.

18. In this matter, I believe that Officer O'Reilly acted appropriately under the circumstances and with the information he/she had before him/her at the time. Given this conclusion, I find no indication that the Clearwater County Police Department failed to sufficiently train Officer O'Reilly to handle such circumstances.

By: /s/Carter Marcus  
Carter Marcus

Subscribed and sworn to before me  
this 30<sup>th</sup> day of November, 2015

/s/ Michael Rosenberg  
Notary Public, Clearwater County, WI  
My Commission expires: permanent

# **Axel Foley**

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## **Law Enforcement Consultant**

Summary: Retired Police officer with 12 years of law enforcement experience, 5 years of active duty service in the United States Army, and 16 years of experience teaching law enforcement officers

Areas of expertise:            Use of Force  
                                      Law Enforcement Tactics  
                                      Police Tactical Training  
                                      Special Weapons and Tactics (SWAT)  
                                      High Risk Arrests

Experience:	Foley & Associates Private consulting & Litigation support	2010 – Present
	Clearwater Firearms Academy Performed civilian, security, and police firearms instruction	1994 – 2010
	Clearwater Police Department Police Officer, SWAT Team Member, Field training officer, Street Crimes Officer	1984 – 1996
	United States Army Military Police Officer Member of elite security details, member of Undercover surveillance operation teams, performed duties in combat and peacekeeping missions.	1979-1984
Education:	University of Clearwater Master of Science, Criminal Justice	M.S., 1993
	University of Clearwater Bachelor of Science, Criminal Justice	B.S., 1979

**EXHIBIT**

**A**

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# CARTER A. MARCUS

## Law Enforcement Consultant

Summary: I am a retired police chief with over 30 years of law enforcement experience. Prior to becoming a police officer, I proudly served in the Army, including service in the Vietnam War. I have dedicated a significant portion of my life to police training and now serve as a private consultant on matters related to law enforcement training and assessments of police action.

Areas of  
Expertise: Use of Force  
Police Training Methods  
High Risk Arrests

Experience:	Private Law Enforcement Consultant	2011 - Present
	Clearwater County Police Department Chief of Police	2002-2011
	Clearwater County Police Department Police Officer, Anti-Gun Unit, Training Instructor	1995-2002
	Dairy County (WI) Police Department Police Officer	1985-1995
	Cheesehead County (WI) Police Department Police Officer	1974-1985
	United States Army Sergeant, First Class Service in Vietnam	1971-1974
Education:	University of Clearwater Master of Science, Criminal Justice	M.S., 1997
	University of Clearwater Bachelor of Science, Criminal Justice	B.S., 1979

**EXHIBIT**

**B**

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**TRANSCRIPT OF AUDIO FROM FRANCIS UNDERWOOD**  
**PHONE RECORDING**

VOICE 1: Good puppy!

VOICE 2: (Animal barking sound)

V1: You like the stick?

VOICE 3: Sammie...up to no good again?

VOICE 4: Huh? I'm just...on...bench.

V3: You...descript...shirt...red shorts. ...search you?

V4: Sure, whatever...don't...any...to hide.

V3: Where....purse? ...is the knife?

V4: What's...smell? I'm...going...seiz...

V3: What are you doing? Stop...attack... You're...disorderly...

V4: [Groaning or grunting sound.]

V3: I'm going...arrest...if don't... I...my Taser...

SOUND OF TASER DEPLOYMENT

V5: What...doing...O'Reilly?

V3: ...ridiculous... had enough...

V5: You...stop...seiz...

V3: ...hands...back

SOUND OF SOMETHING HITTING GROUND

V4: [Moaning sound]

**EXHIBIT**

**C**

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V3: ...stop...arrest...

V5: Stop...ing..him! Please stop!

...

V5: You killed him!

V3: No...

V5: Why did you...

V3: Code...at...park...ambulance immediately.

V5: Wake up!

FINAL		Patient Care Report	
<div style="text-align: center;"> <h1>CWFD</h1> <p>Clearwater Fire Department 2600 Fire Lane Clearwater, Wisconsin</p> </div>		<p>Run Number: 8262 Date of Service: 07/20/2014 Patient Name: Sammie Smid Medical Rec#: 2340987</p>	
CREW INFO	RESPONSE INFO	DISPOSITION	TIMES
<b>Veh:</b> CWFD AMB 1 <b>Crew 1:</b> PARKER, JABARI <b>Crew 2:</b> GOMEZ, HECTOR <b>Doc'd By:</b> GOMEZ, HECTOR	<b>Med/Trauma:</b> Trauma resulting from physical altercation  <b>Response Priority:</b> Code-4(7680)  <b>Call Taken by:</b> CWFD  <b>Location:</b> Knudson Park, 4201 N. Main Street, Clearwater  <b>Location Type:</b> Public Outdoors	<b>Outcome:</b> Treated/Held/Transported FAX REPORT NEEDED  <b>Dest. Reason:</b> Closest Facility  <b>Transport Priority:</b> Code 2(7878)  <b>At Scene Mileage:</b> 12.0  <b>At Dest. Mileage:</b> 16.4  <b>Condition at Dest.:</b> Unchanged  <b>Destination:</b> CLEARWATER HOSPITAL 4800 S. Hospital Lane, Clearwater, WI  <b>Transport Reason:</b> Acute illness or injury  <b>Transport Reason:</b> Other medical reason  <b>Transport Explanation:</b> PHYSICAL ALTERCATION RESULTING IN CONCUSSION, LOSS OF CONSCIOUSNESS, CUTS AND SCRAPES TO HEAD/ ASSOCIATED TRAUMA	<b>Recvd:</b> 15:06 07-20-14  <b>Dispatch:</b> 15:06 07-20-14  <b>En route:</b> 15:08 07-20-14  <b>At scene:</b> 15:14 07-20-14  <b>At patient:</b> 15:15 07-20-14  <b>Transport:</b> 15:22 07-20-14  <b>At dest.:</b> 15:35 07-20-14  <b>In service:</b> 15:46 07-20-14  <b>At base:</b> 16:01 07-20-14

### PATIENT INFORMATION

Name: Sammie Smid

Phone: (503) 111-0000

Mailing Addr: N/A

SSN: 111-22-3333

DOB: 05/04/1994 (20 yrs)

Weight: 180 lbs

Home Addr: N/A

#### Allergies

Codeine

#### Cause of Injury

Physical Altercation with Police Officer

#### Chief Complaint

Injuries to head and neck; lacerations to face; pain; unconsciousness

#### Past Medical History

Epilepsy; Seizures

### NARRATIVE

ARRIVED AT THE ABOVE ADDRESS 07-20. FOUND 20YO PT LYING FACE DOWN ON GROUND NEAR BENCH AT KNUDSON PARK IN PRESENCE OF TWO ADULT MALES/FEMALES, ONE OF WHOM IS A CLEARWATER POLICE OFFICER. THE OFFICER, IDENTIFIED AS OFFICER ROBIN O'REILLY, WAS TENDING TO PT TO MAKE SURE HE/SHE WAS STILL BREATHING. OTHER MALE/FEMALE ON SCENE WAS 21YO IDENTIFIED AS BO MARKS WHO APPEARED VISIBLY UPSET. PT HAD MULTIPLE CONTUSIONS TO HIS/HER FACE AND LACERATION TO LEFT ARM. IT APPEARED THAT PT HAD BEEN STRUCK IN THE HEAD AND FACE APPROXIMATELY FIVE OR SIX TIMES, AND OFFICER ACKNOWLEDGED STRIKING PT SEVERAL TIMES. PT APPEARED TO HAVE SUFFERED SEIZURE SHORTLY BEFORE ARRIVAL. OFFICER ALSO ACKNOWLEDGED USE OF TASER TO SUBDUE PT. OFFICER SEEMED TO BE SHAKEN UP FROM INCIDENT. PT WAS UNCONSCIOUS ENTIRE TIME WHILE TRANSPORTED TO HOSPITAL. THREE BYSTANDERS ARE BELIEVED TO HAVE WITNESSED THE INCIDENT. ONLY TWO BYSTANDERS, 32YO FRANCIS UNDERWOOD, AND 21YO BO MARKS REMAINED AT THE SCENE. SQUAD 404 USED A SCOOP STRETCHER TO MOVE PT FROM THE GROUND TO THE COT. SECURED PT TO COT X5. TX PT TO SQUAD 404. A TRAUMA ASSESSMENT WAS DONE WHICH REVEALED NO NOTICEABLE DEFORMITIES. GAVE REPORT TO ATTENDING RN. OBTAINED SIGNATURES AND TX PT CARE WOI. DEPART TO XR WITH PT.



Clearwater Hospital  
4800 S. Hospital Lane  
Clearwater, WI  
Inpatient Record



SMID, Sammie L.  
MRN: 23857982  
DOB: 05/04/1994  
Adm: 07/20/2014, D/C: 08/11/2014

### D/C Summaries – Encounter Notes

#### D/C Summaries signed by Martin Maldonado, MD at 08/11/2014 1358

Author:	Martin Maldonado, MD	Service:	Neurology
Filed:	08/11/2014 1358	Note:	08/11/2014 2342

### Physician Discharge Summary

**Patient ID:**

Sammie L. Smid  
23857982  
20 year old  
05/04/1994

**Admit date:** 07/20/2014

**Discharge date and time:** 08/11/2014 1358

**Admitting Physician:** Betancourt, Yuniesky, MD

**Discharge Physician:** Maldonado, Martin, MD

**Admission Diagnoses:** Concussion with prolonged loss of consciousness, without return to pre-existing conscious level [850.4]; Traumatic Brain Injury (unspecified) [850.0]; Contusions (multiple) [924.9]; Open wound of scalp without complication [873.0]; Open wound of face unspecified site uncomplicated (multiple) [873.40]; Multiple and unspecified open wound of upper limb without complication [884.0]

**Discharge Diagnoses:** Prolonged (more than 24 hours) loss of consciousness with return to pre-existing conscious level [850.3]; Traumatic Brain Injury (unspecified) [850.0]; Contusions (multiple) [924.9]; Multiple unspecified lacerations

**Hospital Course:** Admitted to hospital, in custody of Clearwater Police Department, following altercation with police. Friend, Bo Marks, visited patient several times during hospital stay, and provided brief history for patient, including a history of a seizure disorder. Patient had lost consciousness at the scene and had not regained consciousness by time of admission. Dr. Betancourt treated and debrided patient's several lacerations, including one on his/her scalp that required stitching. Patient was then turned over to Dr. Maldonado for the remainder of his/her stay, due to the neurology concerns.

Patient remained in critical condition in comatose state for three days, with no response to visual stimulation or sounds, and complete inability to communicate or show emotional responses. By end of third day, patient showed some progression, entering into sleep-wake cycles, and briefly orienting to visual stimulation and sounds. By the evening of the fourth day, patient had regained full consciousness.

**EXHIBIT**

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Since regaining full consciousness, patient has suffered from confusion, agitation, memory loss, an overreaction to stimulation, and frequent seizures. Patient has also been suffering from fasciculations (twitching) that appears to be confined to the left side of the body.

Upon discharge, patient is still suffering from these symptoms, but has shown significant improvement and the symptoms are occurring less frequently. Upon counseling and discussion with patient, patient feels s/he is able to live independently. Patient's friend, Bo Marks, was present with patient at discharge, and indicates that s/he will assist patient with acclimating back to daily living activities.

**Patient Instructions:** Rest frequently, activity as tolerated. No water on stitches until they dissolve in approximately 2 weeks. Clean wounds with alcohol pads and change dressing daily. Follow-up with Dr. Maldonado in 2 weeks.

>30 minutes in d/c mgt

**Signed:**

Martin Maldonado, MD  
08/11/2014  
11:42 PM

Electronically signed by Martin Maldonado, MD on 08/11/2014 at 11:42 PM

Clearwater Medical Group  
4600 S. Hospital Lane  
Clearwater, WI  
Outpatient Encounter



SMID, Sammie L.  
MRN: 23857982  
DOB: 05/04/1994  
Enc. Date: 01/30/2012

#### Patient Demographics

Address:

c/o Pat and Jo Smid  
811 Pine Street  
Clearwater, WI

#### Progress Notes signed by Remy Danton, MD at 01/30/12 1128

Author: Remy Danton, MD  
Filed: 01/30/12 1128

Service: Neurology  
Note: 01/30/12 1120

Author: Physician  
Note Type: Progress Notes

Today Sammie Smid returns to my office for continued evaluation and treatment of his/her previously diagnosed seizure disorder. Patient is well-known to me as I have been treating him/her since he/she was 3 y/o for management of a seizure disorder. Patient's epilepsy is occasionally refractory, when his/her stress levels are extremely high, but generally we have had success in making the seizures less frequent and less severe by use of oral medication. Patient also had some brief success with a ketogenic diet around 5 y/o, however the diet is difficult to follow and is strict, and patient's parents have not followed it since patient was 6 y/o. Patient's seizures were infrequent and mild until after the sudden death of his/her sibling. Stress seems to be the most significant trigger for patient's seizures, which occur more frequently when patient is under chronic stress and often acute stress triggers sudden onset of a seizure. As I have explained to patient and his/her mother in the past, when patient's stress levels are minimized, the seizures are much more manageable. Unfortunately, patient has suffered from chronic stress since approx. 6 y/o. Continued medication is also crucial for managing the seizures.

Today, frequency and severity of seizures remains unchanged from last visit on 07/14/11. Patient agrees to continue with medications, and feels the current combination of medications remains effective.

**Patient Instructions:** Patient is again advised to minimize stress, and continue medication. Patient's prescription is renewed. Patient is reminded of the importance of taking medication regularly. Schedule follow up with me in six months.

>30 minutes in d/c mgt

#### Signed:

Remy Danton, MD  
01/30/2012  
11:28 AM

Electronically signed by Remy Danton, MD on 01/30/2012 at 11:28 AM

EXHIBIT

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## **Clearwater Police Department Standard Operating Procedure**

### **4.0-4.2 – Use of Non-Deadly Force**

Effective Date: 01/01/2014

#### **4.0 – Introduction**

It is the procedure of the Clearwater Police Department (CPD) that officers, while in the performance of official duties, shall use force only when objectively reasonable based upon the circumstances. Officers should only use the amount of force that is reasonably necessary to secure control or to gain compliance. Members of the CPD shall act at all times within the standards established in these rules.

#### **4.1 – Non-Deadly Force Authorized**

Non-deadly force is only authorized when an officer reasonably believes it is necessary to control a person under any of the following circumstances:

1. Detaining a person reasonably suspected of unlawful behavior
2. Arresting an individual (with probable cause)
3. Preventing escape
4. Obtaining control of an individual resisting arrest
5. Protecting oneself or another

#### **4.2 – Totality of Circumstances**

Officers shall use the degree of force believed to be objectively reasonable to control a situation. The following factors should be considered in determining whether to use force:

1. The existence of alternative methods of control
2. The weapons on the individual as compared to the officer
3. The nature of the encounter
4. The actions of the person
5. The number of persons involved, as compared to the number of officers available
6. The severity of the offense
7. The individual's disabilities, mental condition, or medical conditions of which the officer is aware or should be aware
8. Whether the individual is posing a threat to the safety of officers or citizens
9. Whether the suspect is actively resisting arrest or fleeing

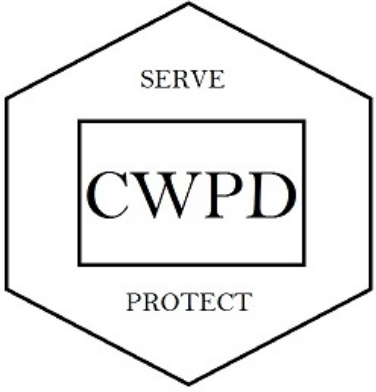
Control of a person through presence and verbal commands shall always be the preferred method of

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control. Because verbal commands are not always effective or appropriate in gaining compliance, officers may escalate the degree of force based upon the actions of the individual. Once a person is under control, officers are required to revert to the lowest degree of force necessary to maintain that control.

	<b>Clearwater Police Department</b>		<b>Incident Report</b>
	Incident: <b>Underage Drinking, Disorderly Conduct, Theft</b>		
	Incident Report No. <b>2014-153433</b>	Incident Date: <b>07/04/2014</b>	Incident Time: <b>21:32</b>
	Reporting Officer: <b>O'Reilly, Robin</b>		Report Date: <b>07/04/2014</b>
	Incident Location: <b>Knudson Park</b>		
	Suspect name: <b>Sammie Smid</b>		DOB: <b>05/04/1994</b>
	Address: <b>Homeless</b>		Phone: <b>N/A</b>
Employer: <b>N/A</b>		Work Phone: <b>N/A</b>	
Employer Address: <b>N/A</b>			
Victim name: <b>Jackie Sharp</b>		DOB: <b>12/20/1987</b>	
Address: <b>8240 S. Willow Lane</b>		Phone: <b>673-4250</b>	
<p>Narrative:</p> <p>On July 4, 2014, at 21:32 I, Officer Robin O'Reilly, was patrolling the crowds of individuals at Knudson Park on foot following Clearwater's annual Doug Stamper Fireworks Festival, when I observed SAMMIE SMID exhibiting signs of intoxication. SMID was being loud and disorderly. I could also smell an odor of intoxicants emanating from SMID's body, his/her eyes were glassy, and his/her speech was slurred. SMID was also yelling the words to "Carry On Wayward Son" by Kansas, in a loud manner. From my prior contact with SMID, I knew him/her to be under the legal drinking age of 21.</p> <p>I approached SMID, and proceeded to ask what he/she was doing. SMID replied, "Obviously, I'm singing." When I indicated to him/her that there were young children in the area, and that his/her loud and disruptive behavior was inappropriate, SMID responded in a loud voice, "What, do you hate America or something? Can't a guy/gal celebrate Independence Day?" At this point, I determined I needed to put SMID under arrest for disorderly conduct, due to his loud and disruptive behavior. I informed SMID that s/he was under arrest for disorderly conduct, and proceeded to conduct a search incident to arrest. It was at this time that I noticed a new-looking blue leather purse marked with the brand "Kate Spade," hanging down SMID's back from a shoulder strap.</p> <p>I have had prior contact with SMID, and know that s/he does not normally carry a bag with him/her, so I read SMID his/her Miranda rights and questioned him/her about the bag. SMID claimed that s/he had been picking up garbage and litter after the annual Doug Stamper Fireworks Festival, to return Knudson Park back to its usual state, and he had found the bag on a park bench that evening. SMID claimed that s/he was going to be looking through it for identification.</p> <p>I did not find it credible that SMID would have been picking up garbage in the park, or that s/he found the purse as s/he claimed. I proceeded to search the purse myself, and found a Wisconsin</p>			

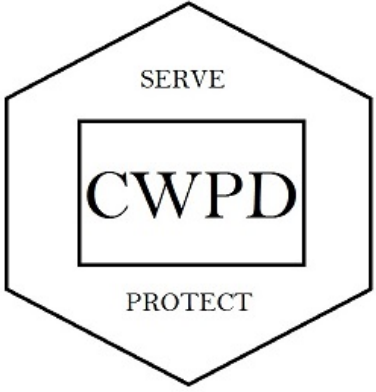
**EXHIBIT**

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Driver's License issued to a JACKIE SHARP, at 8240 S. Willow Lane. I also located \$112.43 in cash located in the purse. At this point, I attempted to place SMID in handcuffs, however SMID stiffened his/her arms against his/her sides, and made quick jerking movements. I told SMID to "Stop Resisting Arrest," and was able to overcome SMID's resistance and place the handcuffs onto SMID.

I was able to track down a phone number for SHARP, and proceeded to call her. SHARP indicated that she had been at the annual Doug Stamper Fireworks Festival at Knudson Park that evening, and had not realized that her purse was missing until she attempted to purchase frozen yogurt after the festival. SHARP was not sure when during the evening the purse went missing. I asked SHARP how much money she had left in the purse, and she indicated she believed it was around \$110, plus some change. SHARP indicated that SMID did not have her consent to be in possession of her purse.

	<b>Clearwater Police Department</b>		<b>Incident Report</b>
	Incident: <b>Loitering (Smid, Marks), Resisting Arrest (Smid)</b>		
	Incident Report No. <b>2013-105655</b>	Incident Date: <b>11/29/2013</b>	Incident Time: <b>11:01</b>
	Reporting Officer: <b>Gomez, Carlos</b>		Report Date: <b>11/30/2013</b>
	Incident Location: <b>431 S. Bradley Blvd.</b>		
	Suspect name: <b>Sammie Smid</b>		DOB: <b>05/04/1994</b>
	Address: <b>Homeless</b>		Phone: <b>N/A</b>
Second Suspect name: <b>Bo Marks</b>		DOB: <b>09/26/1993</b>	
Address: <b>Homeless</b>		Phone: <b>N/A</b>	
Employer: <b>N/A</b>		Work Phone: <b>N/A</b>	
Employer Address: <b>N/A</b>			
Victim name: <b>Freddy's BBQ Joint</b>		DOB: <b>N/A</b>	
Address: <b>431 S. Bradley Blvd.</b>		Phone: <b>221-1314</b>	
Narrative: <p>On November 29, 2013, I, Officer Carlos Gomez, was dispatched to 431 S. Bradley Blvd. for a complaint of loitering at 11:01. Upon arrival, I spoke with the owner of Freddy's BBQ Joint, FREDDY HAYES, who indicated that two individuals had been in his establishment during business hours for two days in a row without purchasing anything.</p> <p>HAYES stated that when they entered his establishment the day before, on November 28, 2013, he had permitted them to stay in the establishment because a cold front was going through Clearwater and it was extremely cold out, and because Freddy's BBQ Joint was only open a half day, due to Thanksgiving. The two individuals returned, however, on Friday, November 29, 2013. HAYES had permitted them to stay in the establishment during the morning, again due to the extremely low temperatures outside, however HAYES stated that he was losing business as the individuals were obviously homeless and one of the individuals was particularly odorous. HAYES stated that he had wanted to let them stay, however Black Friday is his busiest time of the year and he could not afford to lose any more business. HAYES indicated that he had asked the two individuals to leave, however they seemed to ignore him, at which time he had contacted the police.</p> <p>I approached the two individuals and recognized them as SAMMIE SMID and BO MARKS, two of Clearwater's homeless population, who can ordinarily be found loitering in Knudson Park. I asked them to leave, but SMID replied that they did not have anywhere to go and temperatures outside were freezing. I informed them that I was going to have to put them under arrest for loitering. As I approached SMID in order to handcuff him/her, s/he jerked away and stated, "Why are you hassling us? We aren't doing anything wrong, it's a free country!"</p>			

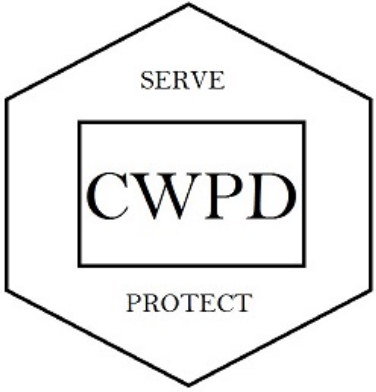
**EXHIBIT**

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I told SMID that based upon his/her behavior, I was going to be adding a citation for Resisting Arrest, and that if s/he continued with that behavior I would change that citation to a referral to the District Attorney's Office for criminal charges of Resisting Arrest. SMID indicated that he did not mean to cause trouble, and he/she was cooperative and compliant for the remainder of my encounter with him/her. MARKS was compliant and cooperative throughout.

	<b>Clearwater Police Department</b>		<b>Incident Report</b>
	Incident: <b>Littering</b>		
	Incident Report No. <b>2012-116233</b>	Incident Date: <b>05/28/2012</b>	Incident Time: <b>14:22</b>
	Reporting Officer: <b>O'Reilly, Robin</b>		Report Date: <b>05/29/2012</b>
	Incident Location: <b>Knudson Park</b>		
	Suspect name: <b>Sammie Smid</b>		DOB: <b>05/04/1994</b>
	Address: <b>Homeless</b>		Phone: <b>N/A</b>
Employer: <b>N/A</b>		Work Phone: <b>N/A</b>	
Employer Address: <b>N/A</b>			
Victim name: <b>N/A</b>		DOB: <b>N/A</b>	
Address: <b>N/A</b>		Phone: <b>N/A</b>	
<p>Narrative:</p> <p>On May 28, 2012, at 14:22, I, Officer Robin O'Reilly, was on foot patrol in Knudson Park when I observed an individual later identified as SAMMIE SMID throw a plastic bag onto the ground, not in the appropriate garbage receptacle. SMID had a disheveled appearance, and an unpleasant odor, and I suspected SMID might be homeless. I approached SMID and asked her/him what s/he thought s/he was doing, in tossing the garbage onto the ground instead of into the garbage receptacle. SMID stated that s/he was exhausted from not having slept for three nights, as his/her parents had kicked him/her out of the house earlier that month, and that s/he just didn't have the energy to put it into the garbage receptacle.</p> <p>I explained to SMID that littering is harmful for the environment, makes Knudson Park look unpleasant, and hurts the wildlife that exists in Knudson Park. I explained that Knudson Park would be a much prettier place if those individuals, like SMID, who used it most would just start acting like responsible citizens. SMID stated, "Why are you shouting, it was just a plastic bag," and I explained that, first, I was not shouting, just using a commanding voice, and second, that plastic bag could wind up killing one of the animals who SMID and other homeless people share the park with.</p> <p>SMID stated that s/he was unaware until that moment of just how harmful littering was, and asked if I could let it go just this once and s/he would never do it again. SMID swore that s/he would help make the park a better place for everyone, from then on. I explained that I couldn't let it go, and that it was my job to enforce the laws, not just issue warnings. I issued SMID a citation for littering.</p>			



CLEARWATER POLICE DEPARTMENT

DATE: 07/20/2014 TIME: 14:15

PAGE: 00001

REQUESTED BY: O'REILLY, R

## INCIDENT RECALL

Incident	Time	Type	Address Location	Bldg/Apt	Callers Name Callers Address Callers Phone	P-unit	Close Date/ Time	Operator
-----BSAT TEAM/Dist AREA-----								
2014-005302	14:15	THEFT, RESISTING OFF-INV TASER DEP	4201 N MAIN ST KNUDSON PARK			CW-7719	07/20/2014 16:01	CW7358
		OGC1	1		CW			

DATE	TIME				OPERATOR
07/20/14	14:15	Primary Event: MAIN Opened: 07/20/14 14:15			D2
07/20/14	14:15	Incident Initiated By: CD/BRAUN, RYAN			
07/20/14	14:15	Initial Field Initiate by CW/7715 at 14:15:12 on 07/20/14			D2
07/20/14	14:15	Stat CW/7715 A -Arrival	Loc: 4201 N Main Street		BRAUN, RYAN
07/20/14	14:15	Primary Unit	CHANGED CW/7715	D2	BRAUN, RYAN
07/20/14	14:15	Stat CW/7719 D -Dispatched	Loc: 4201 N Main Street	D1	GOMEZ, CARLOS
07/20/14	14:16	Stat CW/7719 A -Arrival	Loc: 4201 N Main Street		GOMEZ, CARLOS
07/20/14	14:16	Stat CW/7715 C -Clear			BRAUN, RYAN
07/20/14	14:16	ELVIRA PETERSON, VICTIM, REPORTED THAT YOUNG MALE/FEMALE, ABOUT			D1
07/20/14	14:16	20 YEARS OLD, WEARING GREY SHIRT AND RED SHORTS, STOLE FLOWERED			GOMEZ, CARLOS
07/20/14	14:16	PINK PURSE. VICTIM DID NOT OBSERVE WEAPONS, BUT SHE DID HAVE A			GOMEZ, CARLOS
07/20/14	14:16	5-INCH KNIFE LOCATED IN PURSE. VICTIM DESCRIBES INDIVIDUAL AS			GOMEZ, CARLOS
07/20/14	14:16	UNKEMPT, DRESSED AS THOUGH HOMELESS BUT "NOT SMELLY." ALSO, VICTIM			GOMEZ, CARLOS
07/20/14	14:16	DESCRIBES SUSPECT AS ACTING "A LITTLE FUNKED-OUT AND TWITCHY."			GOMEZ, CARLOS
07/20/14	14:17	All CWPd units notified			D1
07/20/14	14:19	WITNESS - JONATHAN LUCROY - NEEDED TO LEAVE THE SCENE - AVAILABLE			GOMEZ, CARLOS
07/20/14	14:19	BY PHONE IF NEEDED. 312-645-7890			GOMEZ, CARLOS
07/20/14	14:22	Stat CW/7720 A -Arrival	Loc: 4500 N Main Street	D4	LIND, ADAM
07/20/14	14:22	Stat CW/7725 A -Arrival	Loc: 4100 N Main Street	D8	SEGURA, JEAN
07/20/14	14:30	Stat CW/7741 A -Arrival	Loc: 4200 N Clearwater Street	D6	GENNETT, SCOOTER
07/20/14	14:36	Stat CW/7725 C -Clear	Loc: 4100 N Main Street	D8	SEGURA, JEAN
07/20/14	14:40	Stat CW/7730 A -Arrival	Loc: 2000 N Main Street	D10	O'REILLY, ROBIN
07/20/14	14:50	Stat CW/7730 C -Clear	Loc: 2000 N Main Street	D10	O'REILLY, ROBIN
07/20/14	14:51	Stat CW/7741 C -Clear	Loc: 4200 N Clearwater Street	D6	GENNETT, SCOOTER
07/20/14	14:53	Stat CW/7730 A -Arrival	Loc: Knudson Park	D10	O'REILLY, ROBIN
07/20/14	14:55	Stat CW/7720 C -Clear	Loc: 4500 N Main Street	D4	LIND, ADAM
07/20/14	14:56	WITNESS - ARAMIS RAMIREZ - SAW THEFT. ALSO NEEDED TO LEAVE SCENE.			D1
07/20/14	14:56	LEFT CONTACT INFO WITH CW/7719, GOMEZ, C			GOMEZ, CARLOS
07/20/14	14:57	All CWPd units notified, suspect still at large and unidentified			D1
07/20/14	15:06	CW/7730 - CALL FOR BACK-UP AND AMBULANCE LOC: KNUDSON PARK			D10
07/20/14	15:06	Stat CW/7719 D -Dispatched	Loc: Knudson Park	D1	GOMEZ, CARLOS
07/20/14	15:07	Stat CW/7741 D -Dispatched	Loc: Knudson Park	D6	GENNETT, SCOOTER
07/20/14	15:10	Stat CW/7719 A -Arrival	Loc: Knudson Park	D1	GOMEZ, CARLOS
07/20/14	15:13	Stat CW/7741 A -Arrival	Loc: Knudson Park	D6	GENNETT, SCOOTER
07/20/14	15:14	Stat CWFD - AMB 1 A -Arrival	Loc: Knudson Park	F2	GOMEZ, HECTOR
07/20/14	15:15	Stat CW/7720 A -Arrival	Loc: Knudson Park	D4	LIND, ADAM
07/20/14	15:22	Stat CWFD - AMB 1 C -Clear	Loc: Knudson Park	F2	GOMEZ, HECTOR
07/20/14	15:25	Stat CW/7719 C -Clear	Loc: Knudson Park	D1	GOMEZ, CARLOS
07/20/14	15:35	Stat CWFD - AMB 1 A -Arrival	Loc: Clearwater Hospital	F2	GOMEZ, HECTOR
07/20/14	15:41	Stat CW/7719 A -Arrival	Loc: Clearwater Hospital	D1	GOMEZ, CARLOS
07/20/14	15:46	Stat CW/7720 C -Clear	Loc: Knudson Park	D4	LIND, ADAM
07/20/14	15:51	Stat CW/7741 C -Clear	Loc: Knudson Park	D6	GENNETT, SCOOTER
07/20/14	16:01	Stat CW/7730 C -Clear	Loc: Knudson Park	D10	O'REILLY, ROBIN

\*\*\*\*\* VEHICLE/SUBJECT INFORMATION\*\*\*\*\*

NO VEHICLE OR SUBJECT RECORDS FOR EVENT 2014-005302

EXHIBIT

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