

APPENDIX A

NOT RECOMMENDED FOR PUBLICATION

File Name: 20a0015n.06

CASE NO. 19-1119

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TAMMY KORTHALS,

Plaintiff-Appellee,

v.

COUNTY of HURON, *et al.*,*Defendants-Appellants.*

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FILED
Jan 13, 2020
DEBORAH S. HUNT, ClerkON APPEAL FROM THE
UNITED STATES DISTRICT
COURT FOR THE EASTERN
DISTRICT OF MICHIGAN

Before: BATCHELDER, WHITE, and MURPHY, Circuit Judges.

ALICE M. BATCHELDER, Circuit Judge. Huron County Deputy Sheriff Bradley Strozeski arrested Tammy Korthals for driving under the influence of alcohol. Korthals's intoxication was so severe that he took her directly to the hospital and, though the hospital cleared her, she still had evident difficulty walking or maintaining her balance. Despite this difficulty, when they arrived at the jail, Deputy Strozeski left Korthals's hands cuffed behind her back as he led her from the car, down a hallway, and up two stairs. This created a risk that she could stumble and, being unable to use her hands to protect herself, suffer a serious injury. Deputy Strozeski could have reduced that risk by walking behind or alongside Korthals, watching her carefully, and holding onto her for physical assistance or support. He did none of these and was atop the stairs, about six feet in front of her, when she lost her balance, fell backward from the second step, and hit her head on the floor, suffering severe injuries.

Korthals sued, pursuant to 42 U.S.C. § 1983, claiming that Deputy Strozeski committed a constitutional violation when he allowed her to fall on the stairs and that Huron County's failure to properly train its officers or implement a policy for handling impaired inmates subjected it to

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municipal liability for that same violation. The defendants moved for summary judgment based on Deputy Strozeski's assertion of qualified immunity, but the district court denied the motion.

Korthals v. Cty. of Huron, No. 17-10319, 2019 WL 176722, at *1 (E.D. Mich. Jan. 11, 2019).¹

The district court aptly framed the constitutional right at issue as an arrestee's Fourteenth Amendment right to be free from "a substantial risk of serious harm," *id.* at *2 (citing *Farmer v. Brennan*, 511 U.S. 825, 834 (1994), *Richmond v. Huq*, 885 F.3d 928, 937 (6th Cir. 2018), and *Richko v. Wayne Cty.*, 819 F.3d 907, 915 (6th Cir. 2016)), and properly recited the test as requiring the plaintiff to show both an objective "substantial risk of serious harm . . . [and] that the prison official [subjectively] knew of and [deliberately] disregarded" that risk, *id.* (quoting *Farmer*, 511 U.S. at 837) (quotation marks omitted). The court found that Korthals's evidence could persuade a jury of a substantial risk of serious harm on the stairs due to her extreme intoxication and impaired motor function (balance) while her hands were cuffed behind her back, and that Deputy Strozeski subjectively knew of and deliberately disregarded that risk. *Id.* at *3. In rejecting Deputy Strozeski's claim of qualified immunity, the court held that the particular right under these circumstances—and Deputy Strozeski's violation of that right—were clearly established by *Carroll v. City of Quincy*, 441 F. Supp. 2d 215, 223 (D. Mass. 2006). *Id.*

In this interlocutory appeal, Deputy Strozeski claims the district court erred by denying him qualified immunity.² Qualified immunity shields government officials engaged in the performance of discretionary functions from standing trial for civil liability unless their actions violate clearly established rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The plaintiff suing such an official bears the burden of

¹ The court granted summary judgment on Korthals's state-law gross-negligence claim, finding that Deputy Strozeski was not the proximate cause of her injury. *Korthals*, 2019 WL 176722, at *5. Korthals did not appeal.

² We have jurisdiction over this interlocutory appeal from the denial of qualified immunity. *See Bunkley v. City of Detroit*, 902 F.3d 552, 560 (6th Cir. 2018). Our review is de novo, accepting Korthals's version of the facts and drawing all reasonable inferences in her favor. *Id.*

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overcoming the qualified-immunity defense. *Quigley v. Tuong Vinh Thai*, 707 F.3d 675, 681 (6th Cir. 2013). At the summary-judgment stage, the plaintiff must show that (1) the defendant violated a constitutional right and (2) that right was clearly established. *Id.* at 680.

Common sense dictates that Deputy Strozeski should have exercised caution in taking the drunken, unsteady, and handcuffed Korthals up the stairs. We certainly do not condone his failure to do so. It was unreasonable, inexcusable, and, in fact, negligent. But “deliberate indifference entails something more than mere negligence,” *Farmer*, 511 U.S. at 835; it means the official actually recognized and then disregarded the risk, *id.* at 837-38. While Korthals has clearly stated a strong negligence case, it is less clear that Deputy Strozeski’s failure to use caution was not merely careless, inattentive, or sloppy, but was, instead, a conscious disregard of a recognized risk.³ Regardless, let us assume, arguendo, that Deputy Strozeski was deliberately indifferent to the risk and that he violated Korthals’s constitutional right to be free from that risk.

The determinative question becomes whether that right was “clearly established,” so as to overcome qualified immunity. *See Harlow*, 457 U.S. at 818. There are two aspects to qualified immunity’s “clearly established” element that the district court overlooked or misunderstood. The first is that, “to determine if the law is clearly established . . . , we look principally to the law of this circuit and to the Supreme Court.” *Perez v. Oakland Cty.*, 466 F.3d 416, 427 (6th Cir. 2006); *Coley v. Lucas Cty.*, 799 F.3d 530, 540 (6th Cir. 2015). The district court relied on a single case from the District of Massachusetts. As a general principle, it is doubtful that decisions from out-

³ It is possible that even this ordinary application of deliberate indifference might not apply to the present circumstances, given *Farmer*’s admonition against the use of the deliberate-indifference theory in excessive force cases, asserting that “where the decisions of prison officials are typically made in haste, under pressure, and frequently without the luxury of a second chance, [the plaintiff] must show more than indifference, deliberate or otherwise. The [plaintiff] must show that officials [acted] maliciously and sadistically for the very purpose of causing harm or . . . that officials [acted] with a knowing willingness that harm occur.” *Farmer*, 511 U.S. at 835-36 (editorial marks, quotation marks, and citations omitted.). This case is not about an excessive-force incident, but an argument could be mad that the challenged conduct was “made in haste, under pressure, and [] without the luxury of” contemplation or a reasoned decision. Therefore, under this reasoning, the deliberate-indifference analysis might be inapt.

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of-circuit district courts carry such authority. *See Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011). But even assuming that decisions from such other courts can provide “clearly established law,” we have explained that, to do so, such “decisions must both [1] point unmistakably to the unconstitutionality of the conduct complained of and [2] be so clearly foreshadowed by applicable direct authority as to leave no doubt in the mind of a reasonable [official] that his conduct, *if challenged on constitutional grounds*, would be found wanting.” *Barber v. Miller*, 809 F.3d 840, 846-47 (6th Cir. 2015) (emphasis added). The second noteworthy aspect is that “[c]learly established law is not defined at a high level of generality but must be particularized to the facts of the case.” *Vanderhoef v. Dixon*, 938 F.3d 271, 278 (6th Cir. 2019) (quotation marks omitted).

The Supreme Court has emphasized:

[T]he legal principle [must] clearly prohibit the offic[ial]’s conduct in the particular circumstances before him. The rule’s contours must be so well defined that it is clear to a reasonable offic[ial] that his conduct was unlawful in the situation he confronted. This requires a high degree of specificity. . . . [C]ourts must not define clearly established law at a high level of generality, since doing so avoids the crucial question [of] whether the official acted reasonably in the particular circumstances that he or she faced. A rule is too general if the unlawfulness of the offic[ial]’s conduct does not follow immediately from the conclusion that the rule was firmly established.

District of Columbia v. Wesby, 583 U.S. --, 138 S. Ct. 577, 590 (2018) (quotation and editorial marks omitted). “The dispositive inquiry, undertaken in light of the specific context of the case, and not as a broad general proposition, is whether the violative nature of *particular* conduct [wa]s clearly established.” *Sumpter v. Wayne Cty.*, 868 F.3d 473, 485 (6th Cir. 2017) (quotation and editorial marks omitted) (quoting *Mullenix v. Luna*, 577 U.S. --, 136 S. Ct. 305, 308 (2015)).

As mentioned, the district court relied exclusively on *Carroll v. City of Quincy*, 441 F. Supp. 2d 215 (D. Mass. 2006). In *Carroll*, the officers knew that the arrestee was intoxicated, “unsteady on his feet[,] and had difficulty walking without assistance,” but they “placed [him] in a holding area while he waited to be booked,” with “his hands [] handcuffed behind his back.” *Id.*

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at 218. When the officers called him out of the cell to be booked, he fell backwards and hit his head on the floor, suffering injury. *Id.* The court held that “the decision to place him in a holding area with his hands cuffed behind his back put him in a situation where there was a substantial risk of harm,” *id.* at 221, and it found evidence that the officers were aware of the risk, *id.* at 222, but failed to respond reasonably, in “that they took no precautionary measures,” *id.* at 223, so the court concluded that a jury could find deliberate indifference. The court also found that, while “it was the usual practice to put an inebriated arrestee in a cell until such time as the arrestee sobered up and could be booked . . . , in the majority of such cases, the cuffs would be taken off the arrestee unless he or she was acting violently.” *Id.* The court did not opine about any other precautionary measures. In denying qualified immunity, the Massachusetts district court said that an arrestee’s right to be protected from a substantial risk of serious harm was clearly established because “[c]onduct that is deliberately indifferent to an excessive risk to [an arrestee] cannot be objectively reasonable conduct” and, therefore, “a reasonable officer could not believe that his actions comported with clearly established law.” *Id.* In essence then, the court held that deliberate indifference alone is enough to show that the right was clearly established.

It is doubtful that this circular reasoning is a correct statement or application of the law, making it likely that this opinion is simply wrong (and oft ignored for good reason⁴), but even if *Carroll* were correct, it fits only at the “high level of generality” that is clearly improper. *See Vanderhoef*, 938 F.3d at 278. While the predicate facts are certainly on point with the present case (e.g., a drunken and wobbly arrestee, hands cuffed behind his back, left unattended, and fell, suffering seriously injuring), *Carroll* did not describe the right with particularity or explain

⁴ *Carroll* had theretofore been cited a total of 13 times in 13 years and only once for the same substantive proposition asserted here. *See Podgurski v. Dep’t of Corr.*, No. 13-11751, 2014 WL 4772218, at *7 (D. Mass. Sept. 23, 2014) (quoting *Carroll*, 441 F. Supp. 2d at 223, as stating: “Conduct that is deliberately indifferent to an excessive risk to [an inmate] cannot be objectively reasonable conduct.”).

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precisely how the officers' actions violated that right. Plainly, the general right is the arrestee's right to protection, by reasonable measures, from a recognized substantial risk of serious harm. That is the general right in *every* inmate-at-risk case. Read closely, *Carroll* suggests that the officers violated that general right by leaving the arrestee handcuffed in the holding cell, drunk and unattended, making the right, as "particularized to the facts of the case," an arrestee's right to be uncuffed when placed in a holding cell, drunk and unattended. That is certainly not the right Korthals claims in the present case, nor would it appear supportable in the present circumstances, given that an arrestee's being uncuffed during transit from the car to booking is different from an arrestee's being uncuffed in a confined holding cell. *See, e.g., Schack v. City of Taylor*, 177 F. App'x 469, 472-73 (6th Cir. 2006) (placing a highly intoxicated arrestee in a holding cell was not deliberately indifferent). Regardless, Korthals's claim is that Deputy Strozeski violated the general right by walking in front of her (rather than behind or alongside her), failing to watch her carefully for a trip or stumble, and offering her no physical assistance or support—making the "particularized" constitutional right the right to be closely guided, intently watched, and physically supported when walked from the car to booking, drunk and physically wobbly. Nothing in *Carroll* suggests the existence of such a constitutional right or that Deputy Strozeski necessarily violated such a right by failing to undertake those particular precautions. That is, *Carroll* would not forewarn Deputy Strozeski that, by walking in front of the drunken, wobbly, and handcuffed Korthals, without watching or holding onto her, he was necessarily—or even likely—violating the Constitution. To finish the point, if Deputy Strozeski *had* undertaken those precautions but Korthals had fallen anyway, she could have framed the alleged right differently, so as to fit that different scenario, perhaps as a constitutional right to a wheelchair in those circumstances. This exemplifies the concern with describing the right at a "high level of generality"; it "avoids the

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crucial question [of] whether the official acted reasonably in the particular circumstances that he or she faced.” *Wesby*, 138 S. Ct. at 590.

The decisive questions about the *Carroll* precedent, however, would be (1) whether it “point[s] unmistakably to the unconstitutionality of” Deputy Strozeski’s conduct, and (2) whether it was “so clearly foreshadowed by applicable direct authority” that Deputy Strozeski would have “no doubt” that his conduct was unconstitutional. *See Barber*, 809 F.3d at 846-47. In short, the answer to both is no: *Carroll* does not show unmistakably that Deputy Strozeski’s conduct was unconstitutional, nor was it “foreshadowed by applicable direct authority.” Therefore, as a district court case from within another Circuit, *Carroll* is not clearly established law. *Id.*

The district court also cited two Sixth Circuit cases in reference to the *Farmer* test, which warrant mention because each of them *does* state some clearly established right as “particularized to the facts of th[ose] case[s].” In *Richko*, 819 F.3d at 915, we said: “The constitutional right at issue in this case—Horvath’s right to be free from violence at the hands of other inmates—was clearly established by the Supreme Court in *Farmer* [.]” And in *Richmond*, 885 F.3d at 948, we said: “Thus, it was clearly established at the time of Richmond’s incarceration in Wayne County Jail that neglecting to provide a prisoner with needed medication, intentionally scrubbing her wound to cause unnecessary pain, and failing implement the prescribed plan of treatment could constitute a constitutional violation.” Both statements, which define very different particularized rights, fall equally within the *general* rule of an inmate’s or arrestee’s right to be protected, by reasonable measures, from a recognized substantial risk of serious harm. As the Supreme Court has explained, this level of “specificity” is necessary to make it “clear to a reasonable officer” whether “his conduct was unlawful in the situation he confronted.” *Wesby*, 138 S. Ct. at 590.

Korthals’s contention is that Deputy Strozeski violated her constitutional right to be protected from a substantial risk of serious harm because he failed to walk behind or alongside

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her, failed to watch her carefully for a stumble or fall, and failed to hold her or provide physical support when she attempted to mount the stairs, drunk and physically wobbly. “The dispositive inquiry . . . is whether the violative nature of [that] *particular* conduct [wa]s clearly established.” *Sumpter*, 868 F.3d at 485. Korthals has pointed us to no clearly established precedent from the Supreme Court or this Circuit to support that contention, and the cited out-of-circuit district court case (*Carroll*) does not qualify as clearly established law. Even if Deputy Strozeski’s failure to exercise caution when taking the drunken and handcuffed Korthals up the stairs were not merely negligent, but deliberately indifferent, such that it rose to the level of a constitutional violation, we cannot conclude that the constitutional impropriety of that particular conduct was clearly established.

Deputy Strozeski is entitled to qualified immunity on this claim. Consequently, we REVERSE the portion of the district court’s order in which it denied Deputy Strozeski’s claim of qualified immunity and REMAND for entry of judgment consistent with this opinion.

The district court denied Huron County’s motion for summary judgment because Korthals had “raised a genuine issue of material fact regarding Huron County’s liability.” *Korthals*, 2019 WL 176722, at *4. Huron County attempts to appeal that decision, but such a routine denial of a motion for summary judgment is not an appealable final order under 28 U.S.C. § 1291. Nor can Huron County establish “pendent appellate jurisdiction,” which requires that the challenge be “inextricably intertwined” with the collateral (qualified-immunity) analysis properly before us; “in other words, only when the appellate resolution of the collateral appeal necessarily resolves the pendent claim as well.” *Hopper v. Plummer*, 887 F.3d 744, 760-61 (6th Cir. 2018) (quotation marks omitted). Our resolution of Deputy Strozeski’s qualified-immunity appeal does not necessarily resolve the municipal liability claim against Huron County. Therefore, we lack jurisdiction and must DISMISS Huron County’s interlocutory appeal.

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HELENE N. WHITE, Circuit Judge, concurring. I write separately because, although I agree that we must reverse as to Deputy Strozeski, I am not in complete agreement with the majority opinion.

The majority suggests in footnote 3 that *Farmer*'s deliberate indifference standard may not apply in this case in light of the Supreme Court's recognition of a more demanding malicious/sadistic/willing-harm test in Eighth Amendment excessive force claims against prison officials whose decisions "are typically made in haste, under pressure, and frequently without the luxury of a second chance." *Farmer v Brennan*, 511 U.S. 825, 835-36 (1994) (quotations and citations omitted). I do not agree that Deputy Strozeski's situation is comparable to that of a prison official acting in haste and under pressure. Deputy Strozeski was under no immediate pressure and had hours to consider the appropriate means of escorting Korthals into the booking area.

As to the question of qualified immunity, I agree that Deputy Strozeski's conduct, while surely negligent, likely did not rise to the level of conscious disregard of a substantial risk of serious harm. And I agree that even assuming it did, Korthals has not shown that Strozeski's actions violated her clearly established constitutional rights. I do not agree, however, with my colleagues' characterization of Korthals's asserted constitutional right as a "right to be closely guided, intently watched, and physically supported when walked from the car to booking, drunk and physically wobbly," (Maj. Op. at 6.), because precedent does not require a plaintiff to define her constitutional right so exactly. Although "[a] plaintiff can meet [her] burden . . . by presenting caselaw 'with a fact pattern similar enough to have given "fair and clear warning to officers" about what the law requires,' [t]hat case 'need not be on all fours' with the instant fact pattern to form the basis of a clearly established right.'" *Vanderhoef v. Dixon*, 938 F.3d 271, 278 (6th Cir. 2019) (quoting *Hopper v. Plummer*, 887 F.3d 744, 755 (6th Cir. 2018)). "And 'an action's unlawfulness can be "clearly established" from direct holdings, from specific examples describing certain

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conduct as prohibited *or from the general reasoning that a court employs.”* *Id.* at 279 (quoting *Baynes v. Cleland*, 799 F.3d 600, 612 (6th Cir. 2015)) (emphasis added). Thus, Korthals could have met her burden by relying on case law establishing the right of intoxicated detainees to be free from conditions similar—though not identical—to those surrounding her own fall and injury.

That said, Korthals has not identified such precedent. Only one case from this court, *Schack v. City of Taylor*, involved facts similar to those here—facts describing conditions of confinement that increased the risk that an intoxicated detainee would be injured in a fall. 177 F. App’x 469 (6th Cir. 2006). In *Schack*, the plaintiff was arrested while drunk and placed in a concrete detoxification cell. *Id.* at 472. When the plaintiff stood up, he fell to the concrete floor and sustained serious injuries. *Id.* We found no constitutional violation, concluding that although leaving an intoxicated person sitting in a cell while awaiting booking may increase the risk of harm due to falling, it does not create a substantial risk of serious harm. *Id.* at 472-73. We did not speculate regarding what, if any, additional conditions of confinement would have elevated the risk to the plaintiff to a level that would violate contemporary standards of decency. *See id.* Thus, *Schack* did not establish law that would have given Strozeski clear notice that his actions violated the Fourteenth Amendment. And, for the reasons stated in the majority opinion, *Carroll v. City of Quincy*, 441 F. Supp. 2d 215 (D. Mass. 2006), provides inadequate support for Korthals’s claim.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TAMMY KORTHALS,

Plaintiff,

Case No. 17-10319

v.

HON. GEORGE CARAM STEEH

COUNTY OF HURON and
BRADLEY STROZESKI,
in his individual and official capacity,

Defendants.

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**OPINION AND ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (DOC. 29) AND
DENYING PLAINTIFF'S MOTION TO AMEND COMPLAINT (DOC. 23)**

Before the court is Defendants' motion for summary judgment and Plaintiff's motion to amend complaint, which have been fully briefed. The court heard oral argument on January 10, 2019. For the reasons explained below, Defendants' motion is granted in part and denied in part, and Plaintiff's motion is denied.

BACKGROUND FACTS

Plaintiff Tammy Korthals filed this action against Huron County and Deputy Sheriff Bradley Strozeski after falling and injuring herself inside the county jail. On October 12, 2014, Plaintiff was arrested for driving under

the influence of alcohol. At the time she was arrested, she had stopped her vehicle in a parking lot and had switched places with her sister, the other occupant. Caseville police officers Matthew Clark and Anthony Jobes arrived at the scene in response to an erratic driving complaint, as did Deputy Strozeski. Officer Clark noted that Plaintiff was "stumbling and swaying" after getting out of the vehicle and he had her "lean against the vehicle so she would not fall over." Pl.'s Ex. Q. After a search of Plaintiff's vehicle, officers found three empty beer cans, an empty pint of vodka, and a partially consumed pint of vodka.

Deputy Strozeski, who noted that Plaintiff's pants and belt were undone, conducted a field sobriety test of Plaintiff. He reported that she smelled strongly of alcohol, her eyes were bloodshot and watery, and her speech was slurred. Pl.'s Ex. G. Plaintiff was unable to recite the alphabet from C to W or count back from 89 to 67. Plaintiff was also unable to keep her balance while attempting to walk a straight line. *Id.* At 6:40 p.m., Strozeski performed a breathalyzer test on Plaintiff, which showed a .346 blood alcohol content, an extremely high level. Thinking that there was something wrong with his device, Strozeski had Officer Clark perform another breathalyzer test on Plaintiff, which registered .357. The officers were shocked by the high scores; Deputy Strozeski concluded that Plaintiff

“must use alcohol quite frequently to still be walking and talking at that point.” Pl.’s Ex. H at 33-34.

After conducting the sobriety tests, Deputy Strozeski arrested Plaintiff for driving under the influence. He cuffed her hands behind her back and placed her in the back of his patrol vehicle. Plaintiff does not remember anything further because the “alcohol kicked in pretty good by then” and she “started to black out.” Pl.’s Ex. A at 34-36.

Deputy Strozeski transported Plaintiff to the hospital, where she was given a blood alcohol test. The doctor noted that Plaintiff “walked in of her own power”; that “there is no visible swaying or swerving in her gait”; “she is alert and oriented x3”; and “she is able to converse with us without any difficulty.” Pl.’s Ex. R. When the results were returned, the doctor informed Strozeski that Plaintiff’s blood alcohol level was .41. When Strozeski asked if Plaintiff would be released, the doctor informed him that “he has seen cases like this numerous times and she would be medically cleared . . . to be released.” Pl.’s Ex. H at 17. The doctor noted that “I see no reason to keep her in the hospital at this point, given that she is ambulatory with no apparent ataxia or difficulty. She is fully functionally independent, though intoxicated, and will be in the custody of the Huron County Jail. She is released into the custody of the officers in stable but intoxicated condition.”

Pl.'s Ex. R.

After speaking with the doctor, Deputy Strozeski believed that Plaintiff was "stable and able to go to jail" and that she could walk on her own. *Id.* Strozeski understood, however, that someone with such a high blood alcohol level "could possibly hurt themselves" and "might not be able to care for themselves." *Id.* at 18.

Deputy Strozeski walked Plaintiff out to his patrol car and handcuffed her before placing her in the vehicle. At approximately 9:20 p.m., they arrived at the jail. Still handcuffed, Plaintiff slowly exits the vehicle without assistance, although she leans abnormally forward in order to do so. See Def.'s Ex. L (jail video). Plaintiff appears steady as she makes her way through the garage to the door. As she walks down the hall, however, she appears unsteady, crossing one foot in front of the other at one point and walking with her feet moving from side to side. During this time, Strozeski is walking ahead of her. As he walks up a set of steps up to the jail, Plaintiff follows and falls backward from the second step to the cement floor, hitting her head. Strozeski went to Plaintiff's aid and called an ambulance, which transported Plaintiff to the hospital. Plaintiff's injuries included a subdural hematoma (brain injury) and orbital (eye socket) fracture.

Plaintiff's complaint alleges the following causes of action: Count I, violation of Eighth and/or Fourteenth Amendment rights, 42 U.S.C. § 1983; Count II, gross negligence; Count III, willful and wanton misconduct; and Count IV, municipal liability against Huron County under § 1983. Plaintiff agrees to the dismissal of Count III. Defendants seek summary judgment on the remaining claims.

LAW AND ANALYSIS

I. Summary Judgment Standard

Summary judgment is appropriate when there is "no genuine issue as to any material fact" and defendants are "entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A genuine issue of material fact exists when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In determining "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law," the court must view the evidence and draw all reasonable inferences in the light most favorable to the non-moving party. *Id.* at 251–52, 255.

II. Fourteenth Amendment Claim

Under the Eighth Amendment, a prisoner has a right to be free from

cruel and unusual punishment. Although the Eighth Amendment applies only to individuals who have been convicted and sentenced, pretrial detainees like Plaintiff receive the same rights under the Fourteenth Amendment. *Richko v. Wayne Cty.*, 819 F.3d 907, 915 (6th Cir. 2016); *Richmond v. Huq*, 885 F.3d 928, 937 (6th Cir. 2018). The Sixth Circuit has “historically analyzed Fourteenth Amendment pretrial detainee claims and Eighth Amendment prisoner claims ‘under the same rubric.’” *Richmond*, 885 F.3d at 937. The Eighth Amendment prohibits the use of excessive force, requires “humane conditions of confinement,” including adequate medical care, and requires prison officials to “take reasonable measures to guarantee the safety of the inmates.” *Farmer v. Brennan*, 511 U.S. 825, 832 (1994).

For a claim alleging the failure to prevent harm, “the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm.” *Id.* at 834.¹ In addition to this objective component, a plaintiff must also satisfy the subjective component of the test: that the prison official knew of and disregarded “an excessive risk to inmate health

¹ Although Defendants frame the issue as deliberate indifference to a serious medical need, it is appropriately viewed as deliberate indifference to Plaintiff’s health and safety, also protected by the Fourteenth Amendment. See *Carroll v. City of Quincy*, 441 F. Supp.2d 215, 220-21 (D. Mass. 2006).

or safety." *Id.* at 837. "[T]he official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference."² *Id.*

Plaintiff has provided sufficient evidence that she was detained under conditions posing a substantial risk of serious harm. She was highly intoxicated, appeared to have some balance issues based upon the video, and was handcuffed with her hands behind her back while walking and climbing stairs in the jail. Under these circumstances, there was a substantial risk that Plaintiff could pass out or stumble, be unable to break her fall or make use of the handrail to prevent it, and seriously injure herself. See *Carroll v. City of Quincy*, 441 F. Supp.2d 215, 221 (D. Mass. 2006) ("Given that Carroll was intoxicated and had demonstrated difficulty standing without assistance, the decision to place him in a holding area with his hands cuffed behind his back put him in a situation where there was a substantial risk of harm.").

Plaintiff has also provided sufficient evidence that Deputy Strozeski

² It is not clear whether the subjective component of the test survives *Kingsley v. Hendrickson*, 135 S.Ct. 2466 (2015), which held that a pretrial detainee's excessive force claim under the Fourteenth Amendment need only meet the objective component. Although the circuits are split, the Sixth Circuit has yet to consider whether *Kingsley* "similarly abrogates the subjective intent requirement of a Fourteenth Amendment deliberate indifference claim." *Richmond*, 885 F.3d at 938 n.3. Because the parties have not briefed the issue and because the court finds that it is not dispositive of the issues presented, the court will not address it at this time.

knew of and disregarded the risk. Strozeski was aware of Plaintiff's high level of intoxication and her blood alcohol content, which was .41 at the hospital. Defendants argue that Strozeski was not aware of the substantial risk of harm because Plaintiff was able to walk without assistance and was medically cleared by the doctor. Def.'s Ex. F at 26. Given Plaintiff's extremely high blood alcohol content, however, the risk was "arguably, quite obvious." *Carroll*, 441 F. Supp.2d at 222 (detainee with blood alcohol content of .37). Strozeski agreed that someone with a .41 blood alcohol level "could possibly hurt themselves" and "might not be able to care for themselves." Def.'s Ex. F at 18. The jail video shows that Plaintiff was not completely steady on her feet as she made her way down the hall toward the stairs. Strozeski did not take any precautionary measures when escorting Plaintiff down the hall and mounting the stairs ahead of her, leaving her to her own devices. Plaintiff has raised a genuine issue of material fact regarding whether Strozeski had the requisite knowledge of a substantial risk and failed to reasonably respond to it. See *Farmer*, 511 U.S. at 842 ("Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence . . . and a factfinder may conclude that a prison official knew of a substantial risk from the very

fact that the risk was obvious.”) (citation omitted).

III. Qualified Immunity

Strozeski contends that he is entitled to qualified immunity, which shields officials from civil liability if their conduct “does not violate clearly established rights of which a reasonable person would have known.”

Pearson v. Callahan, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). In determining whether a defendant is entitled to qualified immunity, the court analyzes “(1) whether, considering the allegations in the light most favorable to the party injured, a constitutional right has been violated, and (2) whether that right was clearly established.” *Richmond*, 885 F.3d at 947 (citation omitted). As discussed above, Plaintiff has alleged sufficient facts to support a finding that her Fourteenth Amendment rights were violated. Therefore, the court must consider whether the right was clearly established “such that a reasonable official would have understood that his conduct violated the right.”

Comstock v. McCrary, 273 F.3d 693, 711 (6th Cir. 2001). “As the Supreme Court has instructed, we need not find a case in which ‘the very action in question has previously been held unlawful,’ but, ‘in the light of pre-existing law[,] the unlawfulness must be apparent.’” *Id.* at 711 (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)).

It is well settled that a prison official's "deliberate indifference" to a substantial risk of serious harm to an inmate violates the Eighth Amendment." *Farmer*, 511 U.S. at 828. Because there is a question of fact regarding whether Strozeski was aware of the risk to Plaintiff and disregarded it, he is not entitled to qualified immunity. See *Carroll*, 441 F. Supp.2d at 223. "That is because a reasonable officer could not believe that his actions comported with clearly established law if he also understood that there was an excessive risk to the plaintiff to which he did not adequately respond. Conduct that is deliberately indifferent to an excessive risk to [the plaintiff] cannot be objectively reasonable conduct."

Id.

IV. Municipal Liability

Plaintiff also asserts a claim against Huron County under § 1983, alleging that it failed to train officers or implement a policy regarding the handling of impaired inmates. In order to establish municipal liability under § 1983, a plaintiff must point to a municipal policy or custom that is behind the constitutional violation. See *Monell v. Dept. of Social Servs. of the City of New York*, 436 U.S. 658, 690 (1978). "The 'official policy' requirement was intended to distinguish acts of the *municipality* from acts of *employees* of the municipality, and thereby make clear that municipal liability is limited

to action for which the municipality is actually responsible.” *Meyers v. City of Cincinnati*, 14 F.3d 1115, 1117 (6th Cir. 1994) (quoting *Pembaur v. City of Cincinnati*, 475 U.S. 469, 478 (1986)).

“To succeed on a failure to train or supervise claim, the plaintiff must prove the following: (1) the training or supervision was inadequate for the tasks performed; (2) the inadequacy was the result of the municipality's deliberate indifference; and (3) the inadequacy was closely related to or actually caused the injury.” *Ellis ex rel. Pendergrass v. Cleveland Mun. Sch. Dist.*, 455 F.3d 690, 700 (6th Cir. 2006). Although Defendants argue that Plaintiff is required to show a pattern of constitutional violations in order to demonstrate deliberate indifference, Plaintiff may also show deliberate indifference by establishing a “failure to provide adequate training in light of foreseeable consequences that could result from a lack of instruction.” *Id.* at 700-701.

Given that Huron County did not provide training to its officers or implement a policy regarding the handling of impaired inmates, Plaintiff has raised a question of fact regarding whether the training was adequate for the tasks performed. Plaintiff has also shown that it is foreseeable that officers will regularly deal with intoxicated or otherwise impaired inmates and that a failure to take precautions in moving such inmates could result in

a substantial risk of harm. This failure to train and/or implement a policy is closely related to Plaintiff's injury. Therefore, Plaintiff has raised a genuine issue of material fact regarding Huron County's liability under § 1983.

V. Gross Negligence

Plaintiff also raises a claim of gross negligence against Deputy Strozeski under Michigan law. To support this claim, Plaintiff must show that Strozeski engaged in "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." M.C.L. 691.1407(7)(a). Deputy Strozeski is entitled to immunity, however, unless his "conduct amounts to gross negligence that is the one most immediate, efficient, and direct cause of the injury or damage, i.e., *the proximate cause.*" *Robinson v. City of Detroit*, 462 Mich. 439, 462 (2000) (holding that conduct that is merely "a proximate cause" of the injury is insufficient to overcome immunity). The Michigan Supreme Court has noted that this gross negligence exception to governmental immunity is "very narrow." *Beals v. Michigan*, 497 Mich. 363, 378 (2015).

Defendant contends that Deputy Strozeski was not *the proximate cause* of Plaintiff's injury, but rather her fall was caused by her extreme intoxication. In support of this argument, Defendant relies upon *Beals*, in which the court held that a lifeguard who failed to intervene to prevent a

drowning was entitled to governmental immunity because the lifeguard was not *the* proximate cause of the individual's death. As the court explained,

that Harman breached his duty does not necessarily entail that his inaction was the most direct cause of Beals's drowning. Indeed, Harman did not cause Beals's drowning; he merely failed to observe it happening and to attempt a rescue in response. That we can only speculate as to Beals's survival had Harman timely intervened further supports our conclusion that Harman's conduct was not the proximate cause of Beals's death.

Beals, 497 Mich. at 374. Similarly, although Strozeski did not intervene (to the extent possible) to prevent Plaintiff's fall, his inaction cannot be said to be *the* proximate cause of her injury.

Moreover, other than to argue that Strozeski's failure to properly escort Plaintiff was the cause of her fall, Plaintiff does not directly respond to this argument, rendering it forfeited. See *United States v. Huntington Nat. Bank*, 574 F.3d 329, 331 (6th Cir. 2009) ("[C]onclusory allegations and perfunctory statements, unaccompanied by citations or some effort at legal argument," are insufficient to preserve an issue.) For these reasons, the court will grant summary judgment in favor of Defendants on Plaintiff's gross negligence claim.³

³ Defendants also argued that Plaintiff's gross negligence claim is time barred. Because this claim fails on the merits, the court will not address Defendants' statute of limitations argument.

VI. Motion to Amend Complaint

Plaintiff seeks to amend her complaint to add a state law loss of consortium claim on behalf of her husband, Kelly Korthals. As discussed above, in order to support a state tort claim against a governmental employee, Plaintiff must establish that an exception to governmental immunity applies, such as the gross negligence exception. See M.C.L. 691.1407(2). Because the court has determined that Plaintiff cannot support a gross negligence claim against Deputy Strozeski, and Plaintiff has not articulated any other exception to immunity, the court will deny Plaintiff's motion to amend her complaint as futile. See M.C.L. 691.1407(1)(governmental agency immune from tort liability); *Newburgh/Six Mile Ltd. P'ship II v. Adlabs Films USA, Inc.*, 724 F. Supp. 2d 740, 752 (E.D. Mich. 2010), *aff'd*, 483 F. App'x 85 (6th Cir. 2012) (amendment futile if it could not survive pending summary judgment motion).

CONCLUSION

Therefore, IT IS HEREBY ORDERED that Defendants' motion for summary judgment (Doc. 29) is GRANTED IN PART as to Counts II and III and DENIED IN PART as to Counts I and IV.

IT IS FURTHER ORDERED that Plaintiff's motion to amend
complaint (Doc. 23) is DENIED.

Dated: January 10, 2019

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on
January 10, 2019, by electronic and/or ordinary mail.

s/Marcia Beauchemin
Deputy Clerk

APPENDIX C

Case No. 19-1119

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

ORDER

TAMMY KORTHALS

Plaintiff - Appellee

v.

COUNTY OF HURON; BRADLEY STROZESKI

Defendants - Appellants

BEFORE: BATCHELDER, WHITE, and MURPHY, Circuit Judges.

Upon consideration of the petition for rehearing filed by the Appellee,

It is **ORDERED** that the petition for rehearing be, and it hereby is, **DENIED**.

ENTERED BY ORDER OF THE COURT
Deborah S. Hunt, Clerk

Issued: February 04, 2020



APPENDIX D

Page 1		Page 3
1	UNITED STATES DISTRICT COURT	1 { I N D E X }
2	EASTERN DISTRICT OF MICHIGAN	2 WITNESS PAGE
3		3 ANTHONY JOBES
4	* * *	4 Examination by Mr. Trainor.....4
5		5 Examination by Mr. Rosati.....17
6	TAMMY KORTHALS, Plaintiff,	6 Re-examination by Mr. Trainor.....22
7	- vs. -	7
	Case No. 2:17-CV-10319	8 * * *
	Hon. George Caram Steeh	9
8	COUNTY OF HURON and BRADLEY	10 E X H I B I T S PAGE # MARKED
9	STROZESKI, in their	11 No exhibits offered.
10	individual and official	12
11	capacities,	13
	Defendants.	14
12	_____ /	15
13		16
14		17
15	DEPONENT: ANTHONY JOBES	18
16	DATE: Wednesday, August 9, 2017	19
17	TIME: 9:51 a.m.	20
18	LOCATION: 120 S. Heisterman Street	21
19	Bad Axe, Michigan	22
20		23
21	REPORTED BY: JENNIFER DIANE CLAUSON, CSR-6867	24
22	Court Reporting Services	25
23	courtreportingservices@ymail.com	
24		
25		
Page 2		Page 4
1	APPEARANCES:	1 Bad Axe, Michigan
2		2 Wednesday, August 9, 2017
3	CHRISTOPHER TRAINOR, ESQUIRE	3 At or about 9:51 a.m.
4	Christopher Trainor & Associates	4 * * * * *
5	9750 Highland Road	5 ANTHONY JOBES
6	White Lake, Michigan 48386	6 Having been first duly sworn by the Notary Public
7	(248) 886-8650	7 to tell the truth, the whole truth, and nothing
8	Appearing on behalf of the Plaintiff.	8 but the truth, testified upon his oath as follows:
9		9 EXAMINATION
10	MICHAEL ROSATI, ESQUIRE	10 BY MR. TRAINOR:
11	Johnson, Rosati, Schultz & Joppich	11 Q. Please state your name.
12	27555 Executive Drive, Suite 250	12 A. Anthony Jobes.
13	Farmington Hills, Michigan 48331	13 MR. TRAINOR: Let the record reflect this is the
14	(248) 489-3550	14 deposition of Anthony Jobes taken pursuant to notice and
15	Appearing on behalf of the Defendants.	15 agreement of counsel of record and subpoena to be used for
16		16 any and all purposes consistent with the Michigan Court
17		17 Rules, Michigan Rules of Evidence, Federal Court Rules,
18		18 Federal Rules of Evidence.
19		19 Q. (BY MR. TRAINOR): And, Mr. Jobes, have you ever had your
20		20 deposition taken before?
21		21 A. One time.
22		22 Q. Okay. I'm going remind you Jennifer's taking everything
23		23 you say down. So you got to answer out loud.
24		24 A. Okay.
25		25 Q. If you shrug your shoulders, shake your head, say uh-huh

Page 9	Page 11
<p>1 A. Yes.</p> <p>2 Q. I assume you received an academy degree, right?</p> <p>3 A. Yes.</p> <p>4 Q. And you have M-COLES certification, right?</p> <p>5 A. Yes.</p> <p>6 Q. Part of your M-COLES certification had to do with the 7 transport, escorting, whatnot of a person with handcuffs 8 on, right?</p> <p>9 A. I don't remember exactly being I guess taught how to 10 escort people in handcuffs, but I'm sure it was part of 11 the training.</p> <p>12 Q. Okay. Along those lines, what type of training did you 13 have? And I guess if it has I say escort in handcuffs or 14 whatnot, but it could refer to person in restraints, it 15 could be helping a person out. Did you have that type of 16 training?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Proper mode of escorting someone is behind them and 19 to the side, right?</p> <p>20 A. Yes.</p> <p>21 Q. If they're having trouble walking, you grab ahold of their 22 bicep in order to support them?</p> <p>23 A. Bicep, armpit area, yes.</p> <p>24 Q. Okay. Can you describe for me that training you received 25 with regards to that the best you can if you can remember</p>	<p>1 them and watch what they're doing as they're walking with 2 you?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Are you supposed to walk in front of them so you're 5 not paying attention what they're doing?</p> <p>6 A. Like I said, I don't know if -- there's not really a 7 policy or procedure. It's just officer -- officer safety 8 thing.</p> <p>9 Q. Okay. How about if you know someone's having trouble 10 walking and they're not doing well?</p> <p>11 A. Right, if they're having trouble walking or, you know, 12 whatever the reason maybe, then you should be behind them.</p> <p>13 Q. Okay.</p> <p>14 A. And holding onto them.</p> <p>15 Q. The best you can describe the passenger of this vehicle, 16 who turned out to be Ms. Korthals, can you describe other 17 than the fact that she to lean on the car because she 18 thought she was going to fall down, anything else you can 19 describe about her?</p> <p>20 MR. ROSATI: Foundation.</p> <p>21 Q. (BY MR. TRAINOR): Okay. Go ahead.</p> <p>22 A. Oh, okay.</p> <p>23 Q. He's building buildings.</p> <p>24 A. Oh, okay.</p> <p>25 Q. It's an actual legal objection, but I give him a hard</p>
<p>Page 10</p> <p>1 that I'm describing right now?</p> <p>2 A. You know, first of all handcuffs behind the back just for 3 safety purposes. When you're escorting somebody or 4 walking with them, hang onto them just in case they want 5 to try running from you or anything like that or falling. 6 Hang onto them and the bicep, elbow, armpit area.</p> <p>7 Q. Okay. How about if they're having trouble walking, 8 they're intoxicated, or under the influence of drugs or 9 have a handicap or something like that?</p> <p>10 A. Same type of training.</p> <p>11 Q. Okay. Are you always supposed to be behind them?</p> <p>12 A. I don't think there's a policy or procedure for it, but 13 I've always for officer safety purposes --</p> <p>14 Q. Right.</p> <p>15 A. -- behind them.</p> <p>16 Q. What'd you learn about taking care of the well-being, the 17 safety, the welfare of a person who's in handcuffs?</p> <p>18 A. I guess I'm not sure -- not sure what you're asking, I 19 guess.</p> <p>20 Q. Okay. Is it your responsibility to make sure --</p> <p>21 A. Right, yes.</p> <p>22 Q. Right.</p> <p>23 A. You're responsible for the person that you have under 24 arrest.</p> <p>25 Q. Okay. In that regards, are you supposed to stay behind</p>	<p>Page 12</p> <p>1 time. So --</p> <p>2 A. Gotcha. Honestly, I don't remember very much.</p> <p>3 Q. That's fair. Good. Did you see the breathalyzer be 4 administered?</p> <p>5 A. I saw Officer Clark's be administered a second time just</p> <p>6 --</p> <p>7 Q. Right.</p> <p>8 A. Because he was in training, I was training him.</p> <p>9 Q. Right.</p> <p>10 A. So I just wanted to make sure he was doing what he was</p> <p>11 supposed to do and stuff. So I did see Officer Clark's.</p> <p>12 I don't remember seeing officer -- or Deputy Strozeski's</p> <p>13 though.</p> <p>14 Q. Okay. Why was Clark's administered after --</p> <p>15 A. Because of the high reading is what --</p> <p>16 Q. Okay. From Deputy --</p> <p>17 A. Deputy Strozeski's.</p> <p>18 Q. -- Strozeski's? Did you hear what he said? Hole gripe or</p> <p>19 Jesus Christ or what the hell's going on?</p> <p>20 A. I don't remember.</p> <p>21 Q. You don't remember?</p> <p>22 A. No, we were all pretty shocked, but I don't remember --</p> <p>23 Q. Right.</p> <p>24 A. -- what he said or anything like that.</p> <p>25 Q. It was shocking, wasn't it, it was so high?</p>

Page 13	Page 15
<p>1 A. Right.</p> <p>2 Q. And then Clark's was -- do you remember what the reading 3 was?</p> <p>4 A. .357.</p> <p>5 Q. Yeah.</p> <p>6 A. I think or something like that.</p> <p>7 Q. Yeah, that's something you're not going to forget, is it?</p> <p>8 A. No, not very often you get one of those.</p> <p>9 Q. Right. You're not -- that's significant, isn't it?</p> <p>10 A. Right.</p> <p>11 Q. What would that indicate to you .357?</p> <p>12 A. They're highly intoxicated.</p> <p>13 Q. They're having troubles, aren't they?</p> <p>14 A. Mm-hm.</p> <p>15 Q. Yes?</p> <p>16 A. Well --</p> <p>17 MR. ROSATI: Foundation.</p> <p>18 A. Yes, sorry.</p> <p>19 Q. (BY MR. TRAINOR): Okay. Someone you're going to want to 20 take a look at and make sure that they're not going to 21 fall down and injure themselves, right?</p> <p>22 MR. ROSATI: Same objection.</p> <p>23 A. Right unless they're a seasoned alcoholic and --</p> <p>24 Q. (BY MR. TRAINOR): Right.</p> <p>25 A. I mean --</p>	<p>1 Q. And as you come down the hallway, would you walk in front 2 of them or behind them if they're a .30?</p> <p>3 A. Behind them. I always walk behind them.</p> <p>4 Q. Okay. This person who's a .30 would they have trouble 5 walking?</p> <p>6 A. I don't remember. It was years ago.</p> <p>7 Q. Okay. Do you think you had a hold of their bicep or their 8 -- under the armpit to help them walk?</p> <p>9 MR. ROSATI: Foundation.</p> <p>10 A. I can't remember.</p> <p>11 Q. (BY MR. TRAINOR): Okay. Do you remember any person 12 you've ever had to help down that hallway who's been under 13 the influence of alcohol, drugs, or had a handicap of some 14 sort?</p> <p>15 A. I have.</p> <p>16 Q. Okay. Do you remember helping them by holding onto their 17 bicep underneath their armpit?</p> <p>18 A. Yes.</p> <p>19 Q. Tell me what you did as you walked down that hallway.</p> <p>20 A. Just grab them by the arm, bicep -- bicep-armpit area, and 21 walked along side of them and just made sure they didn't 22 fall.</p> <p>23 Q. Okay. Why didn't you want them to fall?</p> <p>24 A. Because I'm responsible for them.</p> <p>25 Q. Okay. And when you get to the two steps that you have to</p>

Page 14	Page 16
<p>1 Q. It's still high for an alcoholic, isn't it?</p> <p>2 A. Right.</p> <p>3 Q. What's the highest you've ever had to bring someone in, 4 highest blood alcohol level, that you can remember?</p> <p>5 A. I just had one Sunday, .33.</p> <p>6 Q. Okay.</p> <p>7 MR. ROSATI: So the doctor was right. We'll talk 8 after.</p> <p>9 A. I didn't. I was with an officer that stopped them and I 10 was backup officer.</p> <p>11 Q. (BY MR. TRAINOR): Did you actually bring them in?</p> <p>12 A. I did not bring them in, no.</p> <p>13 Q. Did you -- you didn't escort them into the jail?</p> <p>14 A. I did not.</p> <p>15 Q. Personally, what's the highest blood alcohol level on a 16 person that you had to escort into a jail?</p> <p>17 A. I don't remember exact number, but it was over a .30.</p> <p>18 Q. Okay. And you brought them into this jail at Huron 19 County?</p> <p>20 A. Yes.</p> <p>21 Q. So you park in the sally port?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And open the door, come into the long hallway, 24 right?</p> <p>25 A. Yes.</p>	<p>1 step up and then turn left to go through the booking area 2 door, what do you do with them?</p> <p>3 A. Walk with them.</p> <p>4 Q. Do you walk them up the stairs?</p> <p>5 A. Yes.</p> <p>6 Q. And where do you have them stand?</p> <p>7 A. In front of me.</p> <p>8 Q. Okay.</p> <p>9 A. Kind of to the side in front of me.</p> <p>10 Q. Even when you're opening up that heavy door to get into 11 booking?</p> <p>12 A. I reached passed them to open it.</p> <p>13 Q. Okay. So there's room for you to reach passed them and 14 open up that door --</p> <p>15 A. Yes.</p> <p>16 Q. -- and hold it open, right?</p> <p>17 A. Yes.</p> <p>18 Q. And they can be --</p> <p>19 A. It's a heavy door, but yeah, you can do it.</p> <p>20 Q. And they can stand there right with you so they don't fall 21 down?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And you can still keep an eye on them and help them 24 so they don't fall down, right?</p> <p>25 A. Yes.</p>

Page 17	Page 19
<p>1 Q. Okay. That's all I have. Thanks.</p> <p>2 EXAMINATION</p> <p>3 BY MR. ROSATI:</p> <p>4 Q. I'm Mike Rosati and I represent the county and the deputy</p> <p>5 and I got a few. That means Chris will have a few more</p> <p>6 too.</p> <p>7 A. Sure.</p> <p>8 Q. Probably. Ms. Korthals did not fall down in front of you</p> <p>9 at the scene, right?</p> <p>10 A. Right.</p> <p>11 Q. Your report said that you had her -- I want to get this</p> <p>12 right cause I --</p> <p>13 MR. TRAINOR: Did you play football?</p> <p>14 (Off the record at 10:04 a.m.)</p> <p>15 (Back on the record at 10:06 a.m.)</p> <p>16 Q. (BY MR. ROSATI): Let me just ask you a couple. I'm not</p> <p>17 going to bother with the report at this point. Every</p> <p>18 person you arrest for drunk driving, do you always put</p> <p>19 your hand on them and walk them up the hallway after you</p> <p>20 get into the sally?</p> <p>21 A. Not always.</p> <p>22 Q. Okay. If the person seems to be walking okay, do you let</p> <p>23 them walk by themselves even though they're drunk and</p> <p>24 you've arrested them for drunk driving?</p> <p>25 A. I do.</p>	<p>1 A. Right.</p> <p>2 Q. -- if you want to see it, the passenger was slow to get</p> <p>3 out of the vehicle?</p> <p>4 A. Right.</p> <p>5 Q. Okay. It doesn't say she stumbled getting out of the</p> <p>6 vehicle, right? Do you remember her stumbling getting out</p> <p>7 of the vehicle I guess is what I'm asking you one way or</p> <p>8 the other?</p> <p>9 A. Getting out of the vehicle --</p> <p>10 Q. Yeah.</p> <p>11 A. -- it does not say that. It says walking to the rear of</p> <p>12 the vehicle --</p> <p>13 Q. Right.</p> <p>14 A. -- she was stumbling and swaying.</p> <p>15 Q. She was stumbling and swaying. Describe to me what she</p> <p>16 was doing.</p> <p>17 A. Stumbling and swaying.</p> <p>18 Q. Yeah. Did she run into the car repeatedly as she was</p> <p>19 walking?</p> <p>20 A. I can't remember if she did or not.</p> <p>21 Q. Did she come close to falling while she was doing that?</p> <p>22 A. Not that I can remember, but I'm not sure.</p> <p>23 Q. Did you have to intervene, go and grab her, or anything</p> <p>24 like that as she was walking along side of the -- to the</p> <p>25 rear of the vehicle?</p>
<p>Page 18</p> <p>1 Q. How many people do you remember having to help up those</p> <p>2 two steps there onto the landing to get into that door</p> <p>3 where you get into booking?</p> <p>4 A. Not many, but I'm pretty careful with everybody that I</p> <p>5 arrest just in case.</p> <p>6 Q. You're real careful, right?</p> <p>7 A. Try to be.</p> <p>8 Q. And yet you don't do that with many people?</p> <p>9 A. I don't hold onto them per se. I just -- I'm right there</p> <p>10 in case they do.</p> <p>11 Q. Okay. I understand. You said you were always behind</p> <p>12 everyone you arrest for officer safety, correct?</p> <p>13 A. Right.</p> <p>14 Q. And that's your main concern for why you're behind them at</p> <p>15 all times, isn't it?</p> <p>16 A. Right.</p> <p>17 Q. But you can also keep an eye on them from vantage point?</p> <p>18 A. Absolutely.</p> <p>19 Q. Do you remember Ms. Korthals actually stumbling when she</p> <p>20 got out of the car?</p> <p>21 A. Do I remember her stumbling?</p> <p>22 Q. Yeah.</p> <p>23 A. I mean right now I don't, but I mean it was three years</p> <p>24 ago, but my report does say that she was stumbling.</p> <p>25 Q. Right. Your report says, and I got it right here --</p>	<p>Page 20</p> <p>1 A. I don't remember grabbing her.</p> <p>2 Q. All right. And your report says I had the passenger lean</p> <p>3 against the vehicle so she would not fall over?</p> <p>4 A. Right.</p> <p>5 Q. Right? You were concerned about her falling over at that</p> <p>6 point?</p> <p>7 A. It's just my thing if, you know, they're -- if they're</p> <p>8 swaying or staggering, then I just have them do it just to</p> <p>9 be safe.</p> <p>10 Q. Do you do that with every drunk driving arrest?</p> <p>11 A. Not every drunk driver, no.</p> <p>12 Q. Someone has to be swaying a little bit in order for you to</p> <p>13 do it?</p> <p>14 A. Right.</p> <p>15 Q. Okay. Do you remember talking to Deputy Strozeski</p> <p>16 yourself?</p> <p>17 A. Yes.</p> <p>18 Q. Do you remember what you talked about?</p> <p>19 A. I just gave him a rundown of what Mr. Britt said or told</p> <p>20 me because I had him leave once he gave me his rendition</p> <p>21 of what happened real quick.</p> <p>22 Q. Him being Britt?</p> <p>23 A. Yes, sorry, yes.</p> <p>24 Q. That's okay.</p> <p>25 A. And --</p>

Page 21	Page 23
<p>1 Q. So you just sort of relayed the information Britt had told 2 you to Deputy Strozeski? 3 A. Yes. 4 Q. When did Deputy Strozeski arrive during this process? 5 A. The -- probably about maybe five minutes after we had 6 arrived on scene of the traffic stop of the vehicle 7 Officer Clark and I did. 8 Q. Was Korthals already leaning against the vehicle at the 9 time Deputy Strozeski arrived? 10 A. She was already out of the car, yes. 11 Q. Okay. And was she already leaning against the vehicle? 12 A. Yes. 13 Q. Were you there when Deputy Strozeski did the sobriety 14 test -- 15 A. I was -- 16 Q. -- with Ms. Korthals? 17 A. -- but I believe I was searching the vehicle at the time. 18 So I didn't -- I think Officer Clark was there watching, 19 but I can't remember for sure. 20 Q. Why were you searching the vehicle? 21 A. Because of the open containers or I guess beer cans that I 22 have seen in the backseat floor board area. 23 Q. Do you remember how many you saw? 24 MR. TRAINOR: Let me place an objection just a 25 continuing objection as to relevance and form and</p>	<p>1 Q. As you walk up the stairs in all your years of escorting 2 the person down the hallway up to those stairs in Huron 3 County Jail, do you ever walk in front of them as you walk 4 up the stairs or do you walk behind them? 5 A. Up the stairs, I walk behind them and then -- 6 Q. Why is that? 7 A. Like I said before, just to keep an eye on them in case 8 something did happen, I was -- 9 Q. Right. 10 A. -- there to react or whatever. 11 Q. You would agree with me that there's a handrail on walls 12 where there's stairways to keep someone from falling or 13 for balance purposes, right? 14 A. There are or there is? 15 Q. There are? 16 A. On this one right now or this one -- 17 Q. Yes. 18 A. -- downstairs? 19 Q. Yeah. 20 A. A handrail? 21 Q. Is there a handrail? 22 A. That's a good question. I honestly don't know. 23 Q. Generally, people put handrails next to stairways, right? 24 A. Right, there is a wall that runs like along side kind of. 25 Q. Okay. But you would agree with me that maneuvering up</p>

Page 22	Page 24
<p>1 foundation. 2 MR. ROSATI: I'm just asking. 3 MR. TRAINOR: I know. 4 MR. ROSATI: Just asking. 5 Q. (BY MR. ROSATI): Go ahead. 6 A. Roughly three. Bud Light I believe it was. 7 Q. Okay. You didn't see any other alcohol containers in the 8 vehicle other than those three Bud Light? 9 A. At that time, no, but I did find, I believe, a pint of 10 Vodka, I believe, under the passenger seat. 11 MR. TRAINOR: Same objection as to relevance. 12 Q. (BY MR. ROSATI): Any recollection as to how much was left 13 in that pint bottle? 14 A. Not an exact -- not an exact amount, but there was some 15 contents. 16 Q. Less than half, more than half, if you remember? 17 A. I'm not sure. 18 Q. Okay. Did you give Deputy Strozeski any advice on 19 handling Ms. Korthals at the scene? 20 A. No. 21 Q. Excuse me for a second. 22 A. Yep. 23 Q. That's all I have. 24 RE-EXAMINATION 25 BY MR. TRAINOR:</p>	<p>1 stairs with your hands behind your back is difficult under 2 any circumstances, isn't it? 3 MR. ROSATI: Foundation. 4 Q. (BY MR. TRAINOR): Balance purposes? 5 A. Depends how coordinated you are, but it would make it a 6 little harder, I guess. 7 Q. Okay. So you shouldn't be behind them because you know 8 that that could be potentially be a problem? 9 A. Could be. 10 MR. ROSATI: Foundation. 11 Q. (BY MR. TRAINOR): And you told me a number of times you 12 told Mr. Rosati that you walk behind a person because of 13 officer safety, right? 14 A. Main reason, but like I said, I'm responsible for that 15 person. So -- 16 Q. Right. Also for their safety and welfare that's why you 17 walk behind a person, right? 18 A. Right. 19 Q. So you can observe what they're doing, correct? 20 A. Correct. 21 Q. And that's proper procedure, right? 22 MR. ROSATI: Foundation. 23 Q. (BY MR. TRAINOR): Yes? 24 A. Yes. 25 Q. And that's what you've been taught at the academy, that's</p>

APPENDIX E

		Page 1	Page 3
1	UNITED STATES DISTRICT COURT		
2	EASTERN DISTRICT OF MICHIGAN		
3			
4	* * *		
5			
6	TAMMY KORTHALS, Plaintiff,		
7	- vs. -	Case No. 2:17-CV-10319	
8	COUNTY OF HURON and BRADLEY STROZESKI, in their individual and official capacities,	Hon. George Caram Steeh	
9			
10	Defendants.		
11		/	
12			
13			
14			
15	DEONENT: RYAN NEUMAN		
16	DATE: Wednesday, August 9, 2017		
17	TIME: 11:16 a.m.		
18	LOCATION: 120 S. Heisterman Street		
19	Bad Axe, Michigan		
20			
21	REPORTED BY: JENNIFER DIANE CLAUSON, CSR-6867		
22	Court Reporting Services		
23	courtreportingservices@ymail.com		
24			
25			
		Page 2	Page 4
1	APPEARANCES:		
2			
3	CHRISTOPHER TRAINOR, ESQUIRE		
4	Christopher Trainor & Associates		
5	9750 Highland Road		
6	White Lake, Michigan 48386		
7	(248) 886-8650		
8	Appearing on behalf of the Plaintiff.		
9			
10	MICHAEL ROSATI, ESQUIRE		
11	Johnson, Rosati, Schultz & Joppich		
12	27555 Executive Drive, Suite 250		
13	Farmington Hills, Michigan 48331		
14	(248) 489-3550		
15	Appearing on behalf of the Defendants.		
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1 Q. Oral counseling's? 2 A. No, other than counsel just -- 3 Q. Check your box next time on the ticket? 4 A. Pretty much, yes. 5 Q. Okay. You're M-COLES certified -- I asked you that, 6 right? 7 A. You didn't ask me that, but I am -- 8 Q. You are? 9 A. -- M-COLES certified. 10 Q. Okay. And you had training with your M-COLES 11 certification? 12 A. Yes. 13 Q. Would that training include handling of arrestees? 14 A. Yes, sir. 15 Q. Okay. You also went to the police academy? 16 A. Yes, sir. 17 Q. Where did you go? 18 A. Delta College Northeastern Basic Police Academy. 19 Q. Okay. Do you have any college education? 20 A. I have an associate's degree. 21 Q. From where? 22 A. Delta College. 23 Q. Okay. So you have associate's degree in criminal justice? 24 A. Yes, sir. 25 Q. Okay. Did you receive any training at the academy or from	Page 9 1 A. Yes, sir. 2 Q. So the need to stabilize them is important, isn't it? 3 A. Yes, sir. 4 MR. ROSATI: Foundation and form of the question. 5 Q. (BY MR. TRAINOR): Would their welfare and their safety be 6 of importance because you're with them and you have them 7 handcuffed? 8 A. Yes, sir. 9 Q. Okay. Is there any policies or procedures with respect to 10 or here at the Huron County Jail on how a person's 11 supposed to be transported, walked, escorted? 12 A. There's policy on handcuffing. 13 Q. Okay. 14 A. Make sure that they're not too tight, double locked. 15 Q. Okay. 16 A. Could you repeat the question? 17 Q. Escorting, transporting, walking with them when you're 18 taking them from a squad car down from the sally through 19 the jail, is there any policy or procedure on that? And 20 once again, with respect to escorting, transporting, 21 moving them, those -- those types of things? 22 A. There's policy on arrest of suspects. I -- 23 MR. ROSATI: Are you understanding his question? 24 A. Yes, but like the policy, I don't recall specifically 25 reading a policy on --
Page 10 1 Deltal College with respect to handling, transporting, 2 escorting a prisoner or a -- 3 A. Yes. 4 Q. -- or an arrestee? 5 A. Yes, sir. 6 Q. Okay. And M-COLES you also received that type of training 7 there? 8 A. Yes, sir. 9 Q. Okay. Mode of escorting a prisoner is to the said and to 10 the back slightly? 11 A. Yes, sir. 12 Q. If they're having trouble walking, you place their -- your 13 hand on their bicep or underneath their armpit or 14 something to help support them? 15 A. Yes, sir. 16 Q. What's the purpose of that? 17 A. Ensure that if they're not injured in any way, also for 18 officer safety. 19 Q. Okay. Safety of both the arrestee and for the officer, 20 right? 21 A. Yes, sir. 22 Q. You would agree with me that if someone who is handcuffed 23 isn't capable of taking care of themselves cause they're 24 not able to catch themselves with their hands if they 25 fall, right?	Page 10 1 Q. (BY MR. TRAINOR): Okay. Anything that tells you what to 2 do with a person who is handicapped, intoxicated, under 3 the influence of drugs how you're supposed to handle them 4 while you're escorting them, moving them, transporting 5 them? 6 MR. ROSATI: Form of the question. 7 Q. (BY MR. TRAINOR): Go ahead. 8 A. Obviously -- 9 Q. I'm just asking if there's written policies. I'm going to 10 ask you what your knowledge is of this afterwards, okay? 11 A. Mm-hm. 12 Q. But are there written policies and procedures on that? 13 A. There's -- I mean I just looked at our policies and I 14 don't recall specifically for intoxicated persons. 15 Q. Or handicapped or someone's having trouble walking? 16 MR. ROSATI: We're talking written policies, 17 right? 18 MR. TRAINOR: Yeah, written policies? 19 MR. ROSATI: Okay. Do you understand that? 20 A. Yes. 21 MR. ROSATI: Okay. 22 A. I guess I can't answer that at this time. 23 Q. (BY MR. TRAINOR): There are none, are there? 24 A. Not that I recall seeing. 25 Q. Okay. That's fair. Because I didn't see any either. So

Page 17	Page 19
<p>1 Q. Okay. Would you agree with me that you would always want 2 to keep your arrestee next to you or in front of you while 3 you're in this area?</p> <p>4 A. If possible, yes.</p> <p>5 Q. What do you mean, if possible?</p> <p>6 A. Sometimes you're carrying stuff, but yes, you would, at 7 best, try to keep them to your left or to your side in 8 front.</p> <p>9 Q. Okay. How about when you're walking up the stairs, where 10 is your arrestee supposed to be?</p> <p>11 A. Front of you.</p> <p>12 Q. Okay. Why is that?</p> <p>13 A. Safety of yourself and of the arrestee.</p> <p>14 Q. Okay. Would you agree with me that it would be hard to 15 walk upstairs with handcuffs behind your back under any 16 circumstances even if --</p> <p>17 MR. ROSATI: Foundation.</p> <p>18 Q. (BY MR. TRAINOR): -- even if you're not intoxicated?</p> <p>19 MR. ROSATI: I'm sorry. Foundation, go ahead and 20 answer.</p> <p>21 A. I guess it depends on the individual.</p> <p>22 Q. (BY MR. TRAINOR): Okay. That would be a safety concern 23 though at any rate whether they're intoxicated or not?</p> <p>24 A. It could be.</p> <p>25 Q. Okay. I notice on the ramp over here to the other side of</p>	<p>1 A. I couldn't give you a rough number. Maybe six to 10.</p> <p>2 Q. What's .3 indicate to you?</p> <p>3 A. They've consumed a lot of alcohol.</p> <p>4 Q. They're going to have trouble standing?</p> <p>5 MR. ROSATI: Foundation.</p> <p>6 Q. (BY MR. TRAINOR): Would you agree with me?</p> <p>7 MR. ROSATI: Same objection and form.</p> <p>8 A. I mean I've arrested people that high that I'm surprised 9 they were as sturdy as they were.</p> <p>10 Q. (BY MR. TRAINOR): Okay. Once you find out they're .3 11 though, you start to have some concern, right?</p> <p>12 A. Yes.</p> <p>13 Q. So you keep an eye on them, correct?</p> <p>14 A. Yes.</p> <p>15 Q. They become more of a safety concern, don't they?</p> <p>16 A. That could, yes.</p> <p>17 Q. Okay. Ever arrest anybody who's been .357?</p> <p>18 A. I've had one at four.</p> <p>19 Q. Four?</p> <p>20 A. .4, yes.</p> <p>21 Q. And at .4, that creates even a greater concern for their 22 safety, doesn't it?</p> <p>23 A. Yes.</p> <p>24 Q. You would want to keep a really close eye on them, 25 correct?</p>
Page 18	Page 20
<p>1 this half wall. What's that ramp for?</p> <p>2 A. Wheelchair.</p> <p>3 Q. Okay. And is there a written policy or procedure with 4 respect to transporting a person in a wheelchair?</p> <p>5 A. Not to my knowledge.</p> <p>6 Q. Okay. How about the use of wheelchair? Is there a 7 written policy or procedure?</p> <p>8 A. Not to my knowledge.</p> <p>9 Q. Is there training on that?</p> <p>10 A. Not to my knowledge.</p> <p>11 Q. Okay. Did you learn at the academy or M-COLES or any 12 other place whether you're supposed to put a person in a 13 wheelchair to wheel them into the booking area?</p> <p>14 A. No.</p> <p>15 Q. No?</p> <p>16 A. No.</p> <p>17 Q. Okay. Do you know why Ms. Korthals wasn't placed in a 18 wheelchair?</p> <p>19 A. I don't know that.</p> <p>20 Q. Okay. Did you ask Strozeski why she wasn't put in a 21 wheelchair?</p> <p>22 A. No, I didn't.</p> <p>23 Q. Okay. You ever arrest someone who's blown above a .3?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. How many times?</p>	<p>1 A. Yes.</p> <p>2 Q. Did the person who was over a .4 that you arrested did you 3 help, escort them?</p> <p>4 A. I assisted them, yes.</p> <p>5 Q. Okay. Was it because they were so highly intoxicated?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Based upon their blood alcohol level?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So you drew the conclusion that this person, even 10 if they were able to walk a little bit, they're still a 11 safety risk, right?</p> <p>12 MR. ROSATI: Foundation, go ahead.</p> <p>13 Q. (BY MR. TRAINOR): Go ahead.</p> <p>14 A. They could be, yes.</p> <p>15 Q. Okay. Well, likely they would be, right?</p> <p>16 MR. ROSATI: Same objection.</p> <p>17 Q. (BY MR. TRAINOR): Or no?</p> <p>18 A. Like I said, it's on a case-by-case basis with the 19 individual what --</p> <p>20 Q. Well, you're at heightened concerned, aren't you, at .4?</p> <p>21 A. Yes.</p> <p>22 Q. At .3, you're already really concerned, right?</p> <p>23 A. Yes.</p> <p>24 Q. And you know that there's this potential based upon the 25 level of their intoxication that they could hurt</p>

<p>1 themselves, right? 2 A. Yes. 3 Q. Do you know anything about person's balance when they're 4 handcuffed behind their backs? 5 A. Their balance could be affected by it. 6 Q. Okay. Whether they're intoxicated or not, right? 7 A. Yes. 8 Q. Okay. Is there any reason why a deputy would walk in 9 front of a person who's .41 while walking down a hallway 10 supposedly escorting them? 11 MR. ROSATI: Foundation and form. 12 Q. (BY MR. TRAINOR): Go ahead. 13 A. I can't answer for that deputy why -- 14 Q. I'm asking can you think of any reason? 15 MR. ROSATI: Same objection. 16 A. I mean I don't -- I know when you get to that steel door, 17 you have to get in front or beside. 18 Q. (BY MR. TRAINOR): I'm talking about down the hallway 19 before you get to the stairs? 20 A. No, I don't know why. 21 Q. Okay. Is there any reason why a deputy would walk up the 22 stairs before a person who's .41 blood alcohol level? 23 MR. ROSATI: Same objections. 24 Q. (BY MR. TRAINOR): Go ahead. 25 A. I don't know.</p>	<p>Page 21</p> <p>1 A. Sure, but you'd still have to retrieve them items at some 2 point, either leave them standing or take them up, then 3 come back down and get your belongings. 4 Q. (BY MR. TRAINOR): Right. You ever had any issues with 5 respect to arrestees being released from Dr. Scatton or 6 anybody over at the hospital who you believe have been too 7 intoxicated to come to your jail? 8 A. Not to my recollection, no. 9 Q. Okay. You ever have any question on why concern people 10 have been released that have high blood alcohol levels why 11 they would be released to you? 12 A. No. 13 MR. ROSATI: Foundation. 14 Q. (BY MR. TRAINOR): What's the purpose of taking someone to 15 the hospital who you believe to be intoxicated? 16 A. Just so we can get a professional opinion from a physician 17 that they can be incarcerated. 18 Q. And what would be your concern? 19 A. If they're either on narcotics of some sort or 20 intoxication of alcohol. 21 Q. Poisoning, alcohol poisoning? 22 A. Yes. 23 Q. Okay. If you know an arrestee's drunk, .3 to .4 at least, 24 you know they're wobbly, you know they're staggering and 25 swaying a little bit, would you want to have ahold of them</p>
<p>Page 22</p> <p>1 Q. Okay. That would be a huge safety concern, wouldn't it? 2 MR. ROSATI: Same objection. 3 Q. (BY MR. TRAINOR): Pardon me. 4 A. It could be. 5 Q. Okay. When you get to the steel door, I've been told by 6 one person and one person said it wasn't a concern, but 7 I'll take your opinion on it. You could still reach 8 around the person and open up that door and hold it open 9 while you have ahold of the arrestee, can't you? 10 MR. ROSATI: Object to the form of the question 11 and foundation, go ahead. 12 Q. (BY MR. TRAINOR): Go ahead. 13 A. Like I said, it's -- it can be difficult at times. If you 14 have a clipboard, if you got that person's belongings, may 15 be if it's a female, you may have a purse, but I mean you 16 have to push it wide up and then -- 17 Q. Okay. Well, if the person's having trouble walking, you 18 can set the items in your hands down and assist them and 19 come back and get those things, can't you? 20 MR. ROSATI: Same objection, go ahead. 21 Q. (BY MR. TRAINOR): Pardon me. Yes? 22 A. I guess come -- 23 Q. Your clipboard, a purse, you could set them on the floor 24 and help the person through the door, couldn't you? 25 MR. ROSATI: Same objections, go ahead.</p>	<p>Page 22</p> <p>1 and help them to stabilize them? 2 MR. ROSATI: Object to form and foundation, go 3 ahead. 4 Q. (BY MR. TRAINOR): Go ahead. 5 A. It would be a concern of mine. 6 Q. Okay. Is that the proper procedure you're supposed to 7 utilize here at Huron County if those factors are in play, 8 .3 to .4, blood alcohol level, wobbly, swaying? 9 A. That's the -- 10 MR. ROSATI: Same objection, go ahead. 11 Q. (BY MR. TRAINOR): Go ahead. 12 A. That's the way we were trained to -- 13 Q. Take someone? 14 A. -- when someone's in care and custody of us, that's the 15 way we were trained to do it. 16 Q. Hold them? 17 A. Yes, sir. 18 Q. Okay. And walk behind them to the side, right? 19 A. Yes. 20 Q. Okay. Do you have family members? Do you have brothers, 21 sisters? 22 A. Yes. 23 Q. And mom dad? 24 A. Yes. 25 Q. Okay. Do you have kids?</p>

APPENDIX F

Page 1

Page 3

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3
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5
6 TAMMY KORTHALS,
7 Plaintiff,
8 - vs. - Case No. 2:17-CV-10319
9 COUNTY OF HURON and BRADLEY
10 STROZESKI, in their
11 individual and official
12 capacities,
13 Defendants.
14
15 DEPONENT: GEANIE KANABY
16 DATE: Wednesday, August 9, 2017
17 TIME: 10:36 a.m.
18 LOCATION: 120 S. Heisterman Street
19 Bad Axe, Michigan
20
21 REPORTED BY: JENNIFER DIANE CLAUSON, CSR-6867
22 Court Reporting Services
23 courtreportingservices@ymail.com
24
25

1 (I N D E X)
2 WITNESS
3 GEANIE KANABY
4 Examination by Mr. Trainor.....4
5
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7
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10 E X H I B I T S
11 Deposition Exhibit A.....18, 19
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Page 2

Page 4

1 APPEARANCES:
2
3 CHRISTOPHER TRAINOR, ESQUIRE
4 Christopher Trainor & Associates
5 9750 Highland Road
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8 Appear on behalf of the Plaintiff.
9
10 MICHAEL ROSATI, ESQUIRE
11 Johnson, Rosati, Schultz & Joppich
12 27555 Executive Drive, Suite 250
13 Farmington Hills, Michigan 48331
14 (248) 489-3550
15 Appear on behalf of the Defendants.

1 Bad Axe, Michigan
2 Wednesday, August 9, 2017
3 At or about 10:36 a.m.
4 * * * * *
5 GEANIE KANABY
6 Having been first duly sworn by the Notary Public
7 to tell the truth, the whole truth, and nothing
8 but the truth, testified upon her oath as follows:
9 EXAMINATION
10 BY MR. TRAINOR:
11 Q. Could you please state your name for the record? Could
12 you please state your name, ma'am?
13 A. Geanie Kanaby.
14 Q. Okay.
15 MR. TRAINOR: And let the record reflect this is
16 the deposition of Geanie Kanaby taken pursuant to notice
17 and agreement of counsel of record to be used for any and
18 all purposes consistent with the Michigan Court Rules,
19 Michigan Rules of Evidence, the Federal Court Rules, and
20 the Federal Rules of Evidence.
21 Q. (BY MR. TRAINOR): Is it Ms. or Mrs. Kanaby?
22 A. Mrs.
23 Q. Mrs? And Ms. Kanaby, have you ever had your deposition
24 taken before?
25 A. No.

Page 5	Page 7
<p>1 Q. So today for a short period of time here, I'm going to ask 2 you some questions and Jennifer's going to get your 3 answers down, okay? 4 A. Okay. 5 Q. Shrugging your shoulders, shaking your head, uh-huh or 6 uh-uh I'm going to remind you, not to be rude to you, but 7 I'm going to remind you that Jennifer can't get those 8 answers down, okay? 9 A. Right. 10 Q. Another thing is is that it's going to kind of go just 11 like this right here. This isn't going to be like court 12 or anything like that, okay? 13 A. Okay. 14 Q. Laid back and tell me what you know and if you don't know 15 something, say I don't know. If you don't remember 16 something, say I don't remember, okay? 17 A. Okay. 18 Q. Any answer that you give, you're going to the held to that 19 answer. Do you understand that? 20 A. Yes. 21 Q. Okay. And you're currently employed with the Huron County 22 Sheriff Department? 23 A. Yes. 24 Q. How long have you been employed that way? 25 A. Since 2009.</p>	<p>1 wheelchair available? 2 A. Yes. 3 Q. And there's a ramp that goes up into the booking area, 4 correct? 5 A. Yes. 6 Q. And the ground from the sally port into the hallway to the 7 booking area is flat, right? 8 A. Yes. 9 Q. If you're walking down the long hallway to the booking 10 area and the person's swaying or stumbling, would you want 11 to help them along by grabbing their elbow or their bicep? 12 MR. ROSATI: Foundation. 13 Q. (BY MR. TRAINOR): Go ahead. 14 MR. ROSATI: Go ahead and answer. 15 A. Yes. 16 Q. (BY MR. TRAINOR): Okay. And are you ever supposed to be 17 walking in front of someone that you're escorting down 18 that hallway? 19 MR. ROSATI: Again, foundation, go ahead. 20 A. I'm not sure on the rules as far as opening the doors. 21 Q. (BY MR. TRAINOR): Okay. Before you get to the doorway 22 walking down the hallway, are you supposed to be walking 23 in front of that person? 24 MR. ROSATI: Same objection, go ahead. 25 A. No.</p>
Page 6	Page 8
<p>1 Q. Are you M-COLES certified? 2 A. No. 3 Q. Okay. Work the jail then? 4 A. Yes. 5 Q. Do you work booking? 6 A. Yes. 7 Q. Have you ever had to escort a suspect or an arrestee from 8 the sally port down to booking area? 9 A. Yes. 10 Q. Have you ever been trained with the mode of escorting or 11 how you're supposed to escort a person? 12 A. Yes. 13 Q. And how are you supposed to escort the person? 14 A. To the -- I would be on their left side. 15 Q. Okay. They like you to be on the left side? 16 A. Yes. 17 Q. And to the back of them somewhat? 18 A. Yes. 19 Q. Okay. If they're having trouble walking, you're supposed 20 to put your hands on them? 21 A. We can hold their elbow, help them along. We have a 22 wheelchair -- 23 Q. Okay. 24 A. -- if they can't walk. 25 Q. Okay. If they're staggering or stumbling, then you have a</p>	<p>1 Q. (BY MR. TRAINOR): Okay. You've been trained differently, 2 right? 3 A. Yes. 4 Q. Why would you want to stay behind someone and to the side 5 of them? 6 A. To keep an eye on them and keep them from grabbing your 7 gun. 8 Q. Okay. 9 A. Turning on you. You have visual of them. 10 Q. Safety for you, right? 11 A. Yes. 12 Q. And safety for them, right? 13 A. Yes. 14 Q. Keep an eye on them so they don't trip, fall, hurt 15 themselves, right? 16 A. Yes. 17 Q. And you've been trained that and you know that, right? 18 A. Yes. 19 Q. You ever walk up the stairs before one of the persons 20 you're escorting down the hallway, those two stairs that 21 you get up before you go into the booking area? 22 A. I don't recall. 23 Q. Okay. That's not something you would do, would -- you 24 should do, right? 25 A. Not normally.</p>

Page 9	Page 11
<p>1 MR. ROSATI: Foundation.</p> <p>2 Q. (BY MR. TRAINOR): Not normally? Not at all, right?</p> <p>3 Right?</p> <p>4 MR. ROSATI: Same objection.</p> <p>5 A. Yes.</p> <p>6 Q. (BY MR. TRAINOR): Okay. Would you agree with me that</p> <p>7 maneuvering up stairways is difficult even with your hands</p> <p>8 free?</p> <p>9 MR. ROSATI: Same objection.</p> <p>10 A. Yes.</p> <p>11 Q. (BY MR. TRAINOR): That's why you have a handrail on lots</p> <p>12 of stairways, right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. When you walk up those two stairs before you get</p> <p>15 into the booking door, there's a flat surface outside the</p> <p>16 booking door, right?</p> <p>17 A. The door that --</p> <p>18 Q. Yeah, goes into --</p> <p>19 A. Yeah.</p> <p>20 Q. -- booking I'm calling it?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So as you're escorting someone up those stairs, you</p> <p>23 could -- you should be behind them, right?</p> <p>24 A. Yes.</p> <p>25 Q. And get them to the top of the stairs, correct?</p>	<p>1 A. Yes.</p> <p>2 Q. For what reason?</p> <p>3 A. Usually, the ones that come from the hospital that are too</p> <p>4 drunk to walk on their own.</p> <p>5 Q. Okay. Is that training you receive you're supposed to use</p> <p>6 a wheelchair?</p> <p>7 MR. ROSATI: Object to the form of the question,</p> <p>8 go ahead and answer.</p> <p>9 A. Not sure about the exact training on the wheelchair.</p> <p>10 Q. (BY MR. TRAINOR): Is that a procedure, policy that you're</p> <p>11 supposed to use a wheelchair if someone's too drunk to</p> <p>12 walk on their own?</p> <p>13 A. I believe it's at the officer's discretion.</p> <p>14 Q. Okay. Why would you use the wheelchair again?</p> <p>15 A. If they couldn't walk.</p> <p>16 Q. Or having trouble walking?</p> <p>17 A. Yeah.</p> <p>18 Q. For their welfare and safety?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. You ever have to handle someone who's .30 blood</p> <p>21 alcohol level or above?</p> <p>22 A. Yes.</p> <p>23 Q. In your opinion, what does that mean, 3 and above?</p> <p>24 MR. ROSATI: No foundation for this, go ahead and</p> <p>25 answer.</p>
<p>1 A. Yes.</p> <p>2 Q. And you should still have them in front of you even when</p> <p>3 you're opening up the door?</p> <p>4 MR. ROSATI: Same objection. Foundation, go ahead</p> <p>5 and answer.</p> <p>6 A. Usually, you can reach around them if you're on their</p> <p>7 right side and open.</p> <p>8 Q. (BY MR. TRAINOR): And open the door and hold it open,</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. So if they're having trouble standing, you can still have</p> <p>12 ahold of them and open the door, right?</p> <p>13 A. Yes.</p> <p>14 Q. There's also a ramp that goes up to that door, correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Purpose of that ramp is for what?</p> <p>17 A. If they're disabled or we're using the wheelchair.</p> <p>18 Q. Okay. Disabled, intoxicated, under the influence, right?</p> <p>19 A. We don't usually use it for if they're intoxicated.</p> <p>20 Q. You usually don't, but if someone's highly --</p> <p>21 A. If --</p> <p>22 Q. If someone's highly intoxicated, you could use the</p> <p>23 wheelchair?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. You ever had to use a wheelchair?</p>	<p>Page 10</p> <p>1 Q. (BY MR. TRAINOR): Go ahead.</p> <p>2 A. That they're highly intoxicated, we usually send them out.</p> <p>3 Q. Okay. And if they're cleared from the hospital to come</p> <p>4 back here after being checked by a doctor, what does that</p> <p>5 mean to you?</p> <p>6 A. They've been cleared for incarceration.</p> <p>7 Q. Okay. How about with respect to keeping an eye on them</p> <p>8 and making sure that they're not a harm to themselves?</p> <p>9 A. We --</p> <p>10 MR. ROSATI: Foundation, go ahead.</p> <p>11 A. We keep them in the booking room.</p> <p>12 Q. (BY MR. TRAINOR): Okay.</p> <p>13 A. And they're monitored the whole time they are there.</p> <p>14 Q. Worry about detoxing, right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. How about as you're escorting them down the hallway</p> <p>17 after you're bringing them from the hospital in this</p> <p>18 highly intoxicated condition, are you aware that there's a</p> <p>19 potential that they are going to fall or going to hurt</p> <p>20 themselves?</p> <p>21 MR. ROSATI: Foundation, go ahead.</p> <p>22 A. If the officer notifies us on what their blood level is.</p> <p>23 Q. (BY MR. TRAINOR): Okay. And if you're aware of it, you</p> <p>24 take extra precaution, correct?</p> <p>25 A. Yes.</p> <p>Page 12</p>

Page 13	Page 15
<p>1 Q. Okay. The officer tells you hey, they're .3, what would 2 that cause you to do when you're escorting the person in 3 your mind?</p> <p>4 MR. ROSATI: Again, form and foundation on that 5 one.</p> <p>6 Q. (BY MR. TRAINOR): Go ahead.</p> <p>7 MR. ROSATI: Go ahead and answer.</p> <p>8 Q. (BY MR. TRAINOR): Go ahead.</p> <p>9 A. If I was escorting them and they were .3, I would keep an 10 extra eye on them.</p> <p>11 Q. Okay. Would you put your hands on them?</p> <p>12 A. Most likely, yes.</p> <p>13 Q. Okay. Do you have training, policies, procedures on what 14 levels or when you're supposed to put your hands on 15 someone to help them walk?</p> <p>16 A. No.</p> <p>17 Q. Okay. Do you have any training, policies, or procedures 18 on transporting, moving, escorting, helping a intoxicated 19 person?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And what are those policies, procedures?</p> <p>22 A. I do not recall the exact policy offhand right now.</p> <p>23 Q. Okay. And this is a Huron County Jail policy and 24 procedure?</p> <p>25 A. Yes.</p>	<p>1 Q. Okay. Before the job title of administrative assistant, 2 what was your job title?</p> <p>3 A. Just a corrections officer.</p> <p>4 Q. Okay. As a corrections officer, you'd do cell checks, 5 hand out food, those types of things?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Did you ever have any booking responsibilities?</p> <p>8 A. Yes.</p> <p>9 Q. Do you have booking responsibilities of any kind over the 10 past year?</p> <p>11 A. This last month, yes.</p> <p>12 Q. Okay. Do you know who Tammy Korthals is?</p> <p>13 A. Yes.</p> <p>14 Q. How do you know her?</p> <p>15 A. From when she was coming into booking in 2014.</p> <p>16 Q. Right. October of 2014 would that refresh your 17 recollection?</p> <p>18 A. Sounds about right.</p> <p>19 Q. I have a log in front of me that you prepared and I'm just 20 going to show it to you. I'm not going to mark it as an 21 exhibit. It's October 12th, Sunday, 2014. Can you tell 22 me if that's your handwriting?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Did you review that log before this deposition?</p> <p>25 A. No.</p>
Page 14	Page 16
<p>1 Q. How about training? Do you remember any training on that?</p> <p>2 A. For transporting or --</p> <p>3 Q. Transporting --</p> <p>4 A. -- walking?</p> <p>5 Q. -- moving, escorting, helping?</p> <p>6 A. I can't recall the exact policy wording on that.</p> <p>7 Q. How about training on that? Do you have any training 8 other than in the academy or from M-COLES which you didn't 9 have, I'm sorry. Any academy training?</p> <p>10 A. We have the academy training. We also have videos --</p> <p>11 Q. Okay.</p> <p>12 A. -- on handling for training.</p> <p>13 Q. For what?</p> <p>14 A. For the training, we do training videos.</p> <p>15 Q. Okay. Videos on escorting, moving?</p> <p>16 A. I believe so, yes.</p> <p>17 Q. Okay. When's the last time you watched one of those 18 videos, if you know?</p> <p>19 A. I've been in the office for the last two years. So it 20 would have a year before that.</p> <p>21 Q. Okay. What's your actual job here at Huron County?</p> <p>22 A. My current job title is administrative assistant slash 23 corrections.</p> <p>24 Q. Okay. You're a corrections officer also?</p> <p>25 A. Yes.</p>	<p>1 Q. Did you review any police reports or any incident reports 2 before this deposition?</p> <p>3 A. Yes.</p> <p>4 Q. When?</p> <p>5 A. This morning.</p> <p>6 Q. Okay. Did you review any videos of this incident or 7 anything having to do with Ms. Korthals, any videos?</p> <p>8 A. For the deposition?</p> <p>9 Q. Yeah. Before the deposition?</p> <p>10 A. No.</p> <p>11 Q. Okay. Have you seen any videos of Ms. Korthals walking 12 down any hallways or falling down stairs or anything like 13 that?</p> <p>14 A. Yes, I burned the copies of the videos.</p> <p>15 Q. Okay. You watched those?</p> <p>16 A. Yes.</p> <p>17 Q. Do you remember what the videos showed?</p> <p>18 A. She was walking down the hallway. Officer Strozeski 19 brought her in.</p> <p>20 Q. Do you remember --</p> <p>21 A. She --</p> <p>22 Q. Go ahead.</p> <p>23 A. She had fallen by the stairs.</p> <p>24 Q. Okay. Do you remember anything about how she was walking 25 down the hallway?</p>

Page 17	Page 19
<p>1 A. She didn't -- she looked like she was walking fine. 2 Q. Okay. 3 A. She wasn't stumbling as bad as others that I have seen 4 that have come in. 5 Q. Okay. Did you notice if she crossed her legs, stumbled, 6 or swayed or anything like that? 7 A. I don't recall. 8 Q. Okay. Do you know if she fell down those two stairs? 9 A. Yes, she did. 10 Q. Okay. Do you remember whether Strozeski was behind her or 11 in front of her as they walked down the hallway? 12 A. I believe he was slightly to the front of her. 13 Q. Okay. Do you know if he was in front of her or behind her 14 as they went up the stairs? 15 A. I believe he was in front of her. 16 Q. Okay. And he should have been behind her, correct? 17 MR. ROSATI: Foundation. 18 A. Yes. 19 Q. (BY MR. TRAINOR): Okay. My understanding is is that you 20 write in your log that north hall door Korthals here fell 21 near north hall door unconscious, called ambulance. Do 22 you remember calling the ambulance? 23 A. Yes. 24 Q. Did you actually see her unconscious? 25 A. I believe I could see from the video cameras Officer</p>	<p>1 those answers be? 2 A. If -- I wasn't the one who booked her in. So I couldn't 3 answer. 4 Q. I understand that. And I'm not finding fault with anybody 5 here. I just want to know what they mean. That's all. 6 That's why I'm asking you. They're normally would be 7 answers -- 8 A. If they're left blank, then it could be because someone 9 was booked and released and they never asked medical 10 screening. 11 Q. Good enough. This pertains -- this Exhibit A pertains to 12 Tammy Korthals and it appears that SMB, do you know who 13 that is? 14 A. Yes. It's Corporal Bischer? 15 Q. Okay. And it looks like someone signed Tammy Korthals' 16 name. I don't know if that's her signature or not, do 17 you? 18 A. I don't know. 19 Q. Okay. So if she was booked in, the questions should have 20 been answered, if she wasn't, then those medical questions 21 wouldn't be answered, is that what you're telling me? 22 A. Normally, yes. 23 Q. Okay. And the date on these booking records would be in 24 December of 2014, two months after you called the 25 ambulance for her roughly, right?</p>
Page 18	Page 20
<p>1 Strozeski and my partner Gordon -- 2 Q. Okay. 3 A. -- was called down there. Gordon called up on the radio. 4 Q. Okay. But did you actually go and look at her? 5 A. I did not physically see her. 6 Q. Okay. Do you know if she ever regained consciousness 7 before she got in the ambulance? 8 A. I do not know. 9 Q. Okay. Any other contact that you ever had with Tammy 10 Korthals? 11 A. Not that I can recall. 12 Q. Okay. 13 A. No. 14 (Deposition Exhibit A marked for 15 identification at 10:52 a.m.) 16 Q. (BY MR. TRAINOR): Show you what's been marked as Exhibit 17 A and it's date stamped from the county and the county 18 attorney and those date stamps are pages 76 through 77, 19 78, 79, 80. Take a look at those after your attorney 20 looks at them. The first page of Exhibit A is a medical 21 screening form? 22 A. Yes. 23 Q. And I know there's questions down there, yes? 24 A. Yes. 25 Q. But I don't see any answers to the questions. Where would</p>	<p>1 A. Yes. 2 Q. Okay. So your best guess or best opinion here is that she 3 was booked in and released because there's none of the 4 medical questions that would have been answered, right? 5 A. Yes. 6 Q. Okay. Thank you. Have you ever spoken with anybody why 7 there wasn't a wheelchair used in this case? 8 A. No. 9 Q. Okay. Have you spoken with the chief of police, the 10 undersheriff, or any other commanding officer about this 11 incident? 12 A. No. 13 Q. Okay. Tell me if I'm pronouncing it right or not. 14 Strazinski (phonetic)? 15 A. Strozeski. 16 Q. Strozeski? Have you spoken with Strozeski about this 17 incident? 18 A. No. 19 Q. Okay. Other than the attorney sitting here right now, 20 have you spoken with anybody about this incident? 21 A. Not that I can recall. 22 Q. Okay. Any other contact that you know of that anybody at 23 this facility as an officer has had with Tammy Korthals 24 good or bad? 25 A. I don't recall.</p>

Page 21

1 Q. Okay. Do you know who she is, have you ever heard about
2 her, or anything like that?
3 A. I know who she is from the day that she fell.
4 Q. Okay.
5 A. Because it happened on my shift. Other than that --
6 Q. Okay. Other than that, no?
7 A. -- I don't.
8 Q. Okay.
9 A. I wouldn't know her if I seen her face-to-face probably.
10 Q. Are you a mom?
11 A. Yes.
12 Q. Okay. Do you have children?
13 A. Yes.
14 Q. Okay. Would you want your child to be injured?
15 A. No.
16 Q. Okay. If someone was taking care of your child and had
17 custody over them, would you want your child to be
18 injured?
19 A. No.
20 Q. Okay. Do you believe it's a responsibility of an officer
21 who has a person in handcuffs to make sure the person's
22 safe?
23 MR. ROSATI: Foundation.
24 Q. (BY MR. TRAINOR): Go ahead.
25 A. Yes.

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1 MR. TRAINOR: That's all I have.
2 MR. ROSATI: I have no questions.
3 (Deposition concluded at 10:57 a.m.)
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APPENDIX G

Page 0		Page 3	
1	UNITED STATES DISTRICT COURT	1	TABLE OF CONTENTS
2	EASTERN DISTRICT OF MICHIGAN	2	
3		3	WITNESS
4	TAMMY KORTHALS,	4	GORDON FOLK
5	Plaintiff,	5	
6	Case No. 2:17-cv-10319	6	Examination By Mr. Trainor: 4
7	-vs-	7	
8	COUNTY OF HURON and BRADLEY	8	
9	STROZESKI, in his individual and	9	
10	official capacity,	10	EXHIBITS
11	Defendants.	11	NUMBER IDENTIFICATION
12	/	12	None offered.
13		13	
14	DEPONENT: GORDON FOLK	14	
15	DATE: Monday, October 23, 2017	15	
16	TIME: 12:08 p.m.	16	
17	LOCATION: Huron County Sheriff Department	17	
18	120 South Heisterman Street	18	
19	Bad Axe, Michigan	19	
20	REPORTER: Ginger K. Hoffman, CSMR-9234	20	
21	Court Reporting Services	21	
22		22	
23		23	
24		24	
25		25	
Page 2		Page 4	
1	APPEARANCES:	1	Monday, October 23, 2017
2		2	Bad Axe, Michigan
3	CHRISTOPHER TRAINOR & ASSOCIATES	3	12:08 p.m.
4	By: Mr. Christopher J. Trainor (P42449)	4	* * *
5	E-mail: susan.stepanski@cjtrainor.com	5	GORDON FOLK,
6	9750 Highland Road	6	after having been first duly sworn to tell
7	White Lake, Michigan 48386	7	the truth, the whole truth, and nothing but
8	Telephone: 248.886.8650	8	the truth, was examined and testified as
9	Appearing on behalf of the Plaintiff,	9	follows:
10		10	EXAMINATION
11	JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.	11	BY MR. TRAINOR:
12	By: Holly S. Battersby (P72023)	12	Q. Could you please state your name.
13	E-mail: hbattersby@jrsjlaw.com	13	A. Gordon William Folk.
14	27555 Executive Drive, Suite 250	14	MR. TRAINOR: Let the record reflect this is
15	Farmington Hills, Michigan 48331-3550	15	the deposition of Gordon William Folk, taken pursuant
16	Telephone: 248.489.4100	16	to subpoena and agreement of counsel of record, to be
17	Appearing on behalf of the Defendants	17	used for any and all purposes consistent with the
18		18	Michigan Court Rules, Michigan Rules of Evidence,
19		19	Federal Court Rules, and the Federal Rules of Evidence.
20		20	Q. (By Mr. Trainor): And Mr. Folk, have you ever had your
21		21	deposition taken before?
22		22	A. Testified in court, but never like this.
23		23	Q. Okay. So in court they always wanted you to answer out
24		24	loud, right?
25		25	A. Yes.

Page 13	Page 15
<p>1 Q. Okay. Do you know whether she also hit her head on the 2 floor after she fell down the stairs? 3 A. I would assume so, but I don't know. 4 Q. Okay. And is it safe to say that by the time you got 5 there with the wheelchair, she was still unconscious? 6 A. Yes, sir. 7 Q. Okay. And do you know when she came to? 8 A. No, sir. 9 Q. Did you have to help her into the wheelchair? 10 A. No, sir. The ambulance picked her up from where she 11 was at. 12 Q. Okay. So the ambulance came into the jail and -- 13 A. Transported her to the hospital. I just wanted to make 14 sure she wouldn't vomit or anything like that and choke 15 on it. 16 Q. Okay. So you came with the wheelchair, but you saw 17 that she was unconscious and you said, "I can't use 18 this. I'm going to leave her and let medical people 19 take care of her," right? 20 A. Yes, sir. 21 Q. Okay. 22 A. I didn't know if she had any neck injuries or anything 23 like that, and I did not want to risk it. 24 Q. Okay. If you're standing in that gray door and you're 25 buzzing in --</p>	<p>1 Q. And that's why you'd have an arm on them in escorting 2 them? 3 A. Yes, sir. 4 Q. Okay. And there's no standard operating procedures 5 with respect to when you're supposed to escort someone 6 or not; isn't that true? 7 A. Not that I know of, sir. 8 Q. Did you ever tell anybody at this facility, you know, 9 maybe we should have something, a standard operating 10 procedure as to when we're supposed to escort someone 11 hands on? 12 A. No, sir. 13 Q. Okay. 14 MR. TRAINOR: That's all I have. Thanks a 15 lot for your time. 16 THE WITNESS: Sorry. 17 MR. TRAINOR: Oh, you don't have to 18 apologize. 19 MS. BATTERSBY: I have no questions. Thank 20 you. 21 (Deposition concluded at or about 12:23 p.m) 22 * * * 23 24 25</p>
<p>Page 14</p> <p>1 A. All right. 2 Q. -- can you see an inmate behind you that's walking up 3 those stairs? 4 A. Only if you're kind of like to the side. 5 Q. Okay. 6 A. You know what I'm saying? Facing the wall, but you 7 have an eye there and an eye on the box. That's 8 probably about the only way. 9 Q. Okay. Do you know if it's appropriate to walk in front 10 of an inmate as you're going up those stairs through 11 that door? 12 MS. BATTERSBY: Object as to form and 13 foundation. 14 You can answer. 15 THE WITNESS: I -- what? You mean a regular 16 inmate or any inmate or . . . 17 Q. (By Mr. Trainor): Any inmates. 18 A. No. I would never do it. 19 Q. Okay. You don't want them behind you for safety 20 reasons, right? 21 A. Right. 22 Q. And certainly someone who's intoxicated with their 23 hands behind their back, you wouldn't want them to try 24 to make it up those stairs by themselves, would you? 25 A. No, sir.</p>	