

*In the
Supreme Court of the United States*

No. _____

AMANDA WOOD,
PETITIONER,

v.

BEXAR COUNTY, DEPUTY JOE GEREB,
RESPONDENTS.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

Andres Roberto Cano
Supreme Court Bar # 325608
Texas Bar 24100071
Petitioner's Counsel
1140 South Laredo
San Antonio, Texas 78204
(210) 231-0433 (office)
(210) 263-7667 (fax)
dx4829@gmail.com

QUESTIONS PRESENTED

In 42 U.S.C. 1983 litigation, Discovery responses, Discovery answers, formal policies, and documents can concede issues of fact, law, and elements of claims. Most relevant; they are party statements and are not hearsay.

(1) Whether a party's testimony in Depositions, its Admissions, Interrogatory responses, formal policies, and its law enforcement reports constitute their formal and binding position(s) on legal liability?

(2) Whether formal *Monell* policies and cited Training methods that discard 'reasonable suspicion' and 'probable cause' satisfy the quantum of proof under 42 U.S.C. 1983 to hold a County liable?

PARTIES TO THE PROCEEDINGS

Petitioner Amanda Wood was the Appellant below. Respondents Bexar County, Texas and Deputy Joe Gereb were the Appellees below.

RELATED PROCEEDINGS

United States District Court (W.D. Tex.)
Wood v. Bexar County, et al. No. 21-cv-895-OLG
December 3, 2024

United States Court of Appeals Fifth Circuit
No. 24-51006, August 6, 2025 (Published)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Amanda Wood respectfully petitions this Court for a Writ of Certiorari from a Judgment of the Fifth Circuit Court of Appeals in No. 24-51006.

OPINIONS BELOW

The Fifth Circuit affirmed the Judgment of the District Court in a published Opinion on August 6, 2025.

JURISDICTION

The Judgment of the Court of Appeals was entered on September 12, 2025. Rehearing was denied on September 5, 2025. This Court has jurisdiction under 28 U.S.C. 1254(1).

**I. CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED**

A. FOURTH AMENDMENT

The Fourth Amendment of our United States Constitution provides: “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.”

B. FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

C. 42 U.S.C. §1983

Every person, who under color of statute, ordinance, or regulation, custom, or usage, of any State or Territory of the District of Columbia, subjects, or cause to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws,

shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress...”

This is a product of the Civil Rights Act of 1871, enacted in the wake of Civil War Reconstruction. Individuals acting under the color of state law can be liable. The 42 U.S.C. 1983 statute does not provide “rights” in itself. It serves as an enforcement vehicle for violations of the U.S. Constitution or federal laws, *West v. Atkins*, 487 U.S. 42 (1988).

D. Monell LIABILITY

Under *Monell v. New York City Dept. of Soc. Services*, 436 U.S. 658 (1978), this Court held cities and counties may be liable in 42 U.S.C. 1983 suits for implementing culpable policies which directly cause Constitutional violations. These can be formal directives, or customs and practices which represent approved procedures and methods.

E. FAILURES TO TRAIN AS A POLICY CHOICE UNDER City of Canton v. Harris, 489 U.S. 378 (1989)

Under *City of Canton v. Harris*, 489 U.S. 378 (1989), this Court recognized law enforcement training may be so categorically defective as to constitute indifference to the rights of citizens. Such Training can incur liability if it results as a direct policy choice, or policy choice of inaction.

**F. UNDER THE FED. RULE OF EVIDENCE 801(d)(2),
PARTY STATEMENTS AREN'T HEARSAY**

The Fed. Rule of Evid. 801(d)(2) provides:

(2) An Opposing Party's Statement. The Statement is offered against an opposing party and:

(A) was made by the party in an individual or official capacity;

(B) is one the party manifested that it adopted or believed to be true;

(C) was made by a person authorized to make a statement on the subject;

(D) was made by a party's agent or employee on a matter within the scope of that relationship and while it existed; or

(E) was made by a coconspirator during and in furtherance of the conspiracy.

II. STATEMENT OF THE CASE

**A. AMANDA WOOD'S CONTACT, STOP, ARREST, SEARCH, AND CRIMINAL PROSECUTION WERE
ILLEGAL UNDER THE FOURTH AND FIRST
AMENDMENTS OF THE U.S. CONSTITUTION**

(1) On August 4, 2019, Petitioner Amanda Wood was stopped by Respondent Deputy Gereb in a traffic encounter. The time was after midnight. (2) Deputy Gereb was working the STEP Traffic Unit. It is a

grant-based program which mandates traffic stop quotas of 2.5 per hour. ROA.24-51006.1577. (3) Under STEP traffic policy, a Deputy must: (a) issue a warning; (b) write a ticket; or (c) arrest the motorist. ROA.24-51006.1681. (4) Bexar County received \$469,777.69 from the STEP grants in 2019. ROA.24-51006.1620. (5) Deputy Gereb allegedly stopped Wood for Speeding. Wood denied violating traffic laws. ROA.24-51006.1398. (6) Gereb never addressed any traffic violations after he noticed Wood filming him with her cell phone. ROA.24-51006.1432. (7) In fact, Gereb took exception to Wood filming his demeanor, and seized her phone as evidence. ROA.24-51006.1420. However, this phone was never used as evidence in the criminal case. ROA.24-51006.1423. (8) Incidentally, Texas motorists cannot be arrested under the Tex. Trans. Code solely for the offense of Speeding, Tex. Trans. Code §543.004. See *Tores v. State*, 518 S.W.2d 378 (Tex. Crim. App. 1975).

(9) Soon, Deputy Gereb hurled allegations of alcoholic intoxication at Wood, which she denied. ROA.24-51006.1624. (Adm. 10). (10) Deputy Gereb insisted Wood perform Field Sobriety Tests, to which she refused. As a result, Gereb claimed he arrested Wood per a Bexar County Policy of “no refusals” for Field Sobriety Tests. ROA.24-51006.1419-1420. (11) Wood refused to provide a breath or blood sample

subsequent to arrest. Deputy Gereb then applied for a blood draw warrant. Unfortunately, these **form affidavits** have many falsehoods, misstatements, and material omissions. ROA.24-51006.1451-1453. (12) Further, Bexar County Policy mandates a blood draw warrant for every citizen who refuses to provide biological samples. No individual circumstances are considered. A whole category of citizens are searched. ROA.24-51006.1488-1489. (13) To implement these blood draws, Bexar County utilizes specialized paramilitary Jailers in full riot gear. This SERT Team yanks citizens out of their holding cells and throws them down and into a medieval metal chair, as with Wood, if they don't comply fast enough. ROA.24-51006.1401.

(14) After Wood's medieval blood draw, Deputy Gereb filed a criminal complaint for Misdemeanor Driving While Intoxicated. ROA.24-51006.1693. (15) Cause No. 620451, the *State of Texas v. Amanda Wood* was dismissed by the Prosecutors on September 4, 2020. The basis was **insufficient evidence**. ROA.24-51006.1667-1668. (16) Wood had to post bail, had her car towed, had her phone seized, was tussled at arrest and during the blood draw, was denied employment while the charge was pending, and had to hire an Attorney to contest the charges. ROA.24-51006.1401-1403. (17) **There were no dash camera or body camera footage of**

Amanda Wood's traffic stop or arrest. ROA.24-51006.1450. ROA.24-51006.1624. (18) Bexar County, Texas admitted Deputy Gereb acted in accordance with official policies in his Fourth Amendment dealings with Petitioner Wood on August 4, 2019. ROA.24-51006.1622. (Adm. 11).

B. ORAL STATEMENTS, WRITTEN TEXT, AND DISCOVERY RESPONSES CAN BIND A PARTY

In 5:21-cv-895-OLG, and in the Appellate Record in No. 24-51006, Petitioner filed **several hundred pages of Discovery product.** These included deposition transcripts, Interrogatory responses, Admissions, and formal policy statements which represent binding admissions from the Respondents. ROA.24-51006.1361-1894. ROA.24-51006.1894-2428. These were identical sets opposing each Defendant. Discovery products are quite useful in the pre-trial phase, and at Summary Judgment, *Celotex v. Catrett*, 477 U.S. 317 (1986).

It's well-settled a party's own words can be used against them as admissions. This holds true in criminal law, *United States v. Matlock*, 415 U.S. 164 (1974). Certainly, formal pronouncements represent *Monell* admissions in civil litigation, *Russo v. City of Bridgeport*, 479 F.3d 196 (2nd Cir. 2007).

The Oral words of law enforcement are probative, *Brown v. City of Hialeah*, 30 F.3d 1433 (11th Cir.

1994). Written statements in mundane reports can serve as binding party admissions, *Nowell v. City of Cincinnati*, No. 1:03cv859 (S.D. Ohio 9/12/06).

Deposition transcripts are not hearsay, and can be taken at face value, *United States v. Morgan*, 555 F.2d 238 (9th Cir. 1977). These sworn statements and answers can serve as party admissions, *Collins v. Wayne Corp.*, 621 F.2d 777 (5th Cir. 1980).

Filed documents can be mutually referenced, *In re Japanese Electronic Products*, 723 F.2d 238 (3rd Cir. 1983). Documents admitted and accepted can be used by all parties, *Orr v. Bank of America*, 285 F.3d 764 (9th Cir. 2002).

A single Admission under Fed. Rule Civ. Pro. 36 can dictate the case outcome. In *Stallard v. U.S.*, 12 F.3d 489 (5th Cir. 1994), the I.R.S. admitted it sued the taxpayer for the wrong calendar year. This resulted in Summary Judgment for the taxpayer. In *Miss. Dev. Comm. v. Brice*, 919 F.2d 1306 (8th Cir. 1990), a Defendant admitted they signed the contract at issue relied upon by the government Plaintiff. This admission couldn't be overcome by subsequent testimony or affidavits.

Interrogatory answers can lead to Summary Judgment for the Plaintiff, *Precision Air Parts v. Avco Corp.*, 736 F.2d 1499 (11th Cir. 1984).

Interrogatories can be read into the trial record as

evidence, *College Inn Foods v. Loudon Packing Corp.*, 65 F.2d 883 (7th Cir. 1933).

C. RESPONDENT GEREB ISSUED STATEMENTS WHICH CONSTITUTE ADMISSIONS OF LIABILITY

At Deposition, and in his own authored reports, Respondent Deputy Gereb conceded factual truths which represent admissions of fact—and even elements of claims. Deputy Gereb was deposed on March 5, 2024.

(1) In Gereb’s own report, he stated he arrested Wood for “refusing” to perform Field Sobriety Tests. ROA.24-51006.1697. (2) The gist is he arrested her for refusing to participate—**not for intoxication**. ROA.24-51006.1419. (3) Under oath at Deposition, Deputy Gereb swore he arrested Petitioner Wood **solely** for refusing to perform Field Sobriety Tests. ROA.24-51006.1419. (4) In fact, Deputy Gereb arrested Wood without determining whether her faculties were diminished. ROA.24-51006.1572. (5) Deputy Gereb immediately handcuffed Wood when she refused the Field Sobriety Tests. ROA.24-51006.1442. (6) Deputy Gereb never pursued the purported basis of his stop—traffic violations, when he saw Wood filming him with her cell phone. ROA.24-51006.1435. (7) To that end, Deputy Gereb seized Wood’s phone. ROA.24-51006.1420.

(8) Gereb had actually described Wood's balance and walking as "normal" in his Sheriff's Report. ROA.24-51006.1444-1445. (9) Deputy Gereb couldn't associate his alleged traffic infractions with violations of the Tex. Trans. Code. ROA.24-51006.1580-1581. (10) Deputy Gereb used a form affidavit to forcibly draw blood from Wood in a search warrant. This form affidavit had provisions and clauses that were not true, and didn't apply to Petitioner Wood. ROA.24-51006.1451-1453. (11) Deputy Gereb stated he sought a forced blood draw on every occasion a citizen didn't voluntarily produce one. In other words, he didn't consider the individual circumstances. ROA.24-51006.1488-1489. (12) Deputy Gereb repeatedly claimed Wood had red and bloodshot eyes. This was refuted by her booking photo. ROA.24-51006.1708. (13) Deputy Gereb admitted Wood had no contraband in her vehicle. ROA.24-51006.1458-1459.

(14) Gereb worked the STEP Traffic Unit. It is a grant-based initiative that focuses on **generating traffic stops**. ROA.24-51006.1424. (15) This STEP Unit **required** Deputies to generate at least **2.5 traffic stops per hour**. ROA.24-51006.1577.

(16) The STEP program generated \$469,377.69 for Bexar County in 2019. ROA.24-51006.1620. (Int. 3). (17) Deputy Gereb admitted there was no video of his traffic stop or arrest of Petitioner Wood. ROA.24-

51006.1450. ROA.24-51006.1624. (18) Deputy Gereb admitted the DWI criminal cause he initiated against Wood was **dismissed for insufficient evidence**. ROA.24-51006.1469. (19) Further, Deputy Gereb never issued any traffic citations to Wood. ROA.24-51006.1432. (20) Thus, Gereb never addressed the purported basis of his traffic stop. ROA.24-51006.1435.

Depositions taken during the course of litigation are regarded as substantive evidence. Generally, one cannot deviate from such previously sworn testimony, *James v. Hale*, 959 F.3d 307 (7th Cir. 2020). This is a requisite when the deponent is a party, *Clacks v. Kwik Trip*, 108 F.4th 950 (7th Cir. 2024). In *Clacks*, a truck driver sued based upon allegations of racial discrimination. However, at deposition, Clacks gave testimony which failed to show the requisite degree of willful conduct on the part of the Defendants. At Summary Judgment, Clacks submitted an Affidavit which contradicted his Deposition testimony. The Seventh Circuit disregarded the Affidavit, calling it a “sham.”

Every Circuit to have considered this issue has ruled the same. In fact, every Circuit permits District Courts to disregard subsequent affidavits which seek to controvert previous Deposition or sworn testimony. See *Barwick v. Celotex Corp.*, 736 F.3d 946 (4th Cir. 1984), where an asbestos Plaintiff

unsuccessfully tried to deviate from testimony given at 2 previous depositions. In *Franks v. Nimmo*, 796 F.2d 1230 (10th Cir. 1986), a litigant sought to deviate from unequivocal testimony given in open court. In *Reid v. Sears, Roebuck and Co.*, 790 F.2d 453 (6th Cir. 1986), a fired employee sought to contradict previous deposition testimony at Summary Judgment. The Sixth Circuit found it improper to assert a new, diametrical, position with different facts.

D. DEPUTY GEREB CITED FORMAL BEXAR COUNTY POLICIES, INFORMAL CUSTOMS, AND HIS BEXAR COUNTY TRAINING AS COMMANDS: THESE CAUSED CONSTITUTIONAL VIOLATIONS

This Court's decisions in *Monell* and *City of Canton v. Harris* were fulfilled in No. 24-51006. Deputy Gereb repeatedly cited Bexar County policies and Training methods as the sources of his conduct. Unfortunately, Deputy Gereb acted in contravention of the Fourth Amendment. In fact, Bexar County stated Deputy Gereb followed Bexar County policies in his Fourth Amendment transactions with Petitioner Wood on August 4, 2019. ROA.24-51006.1622. (Adm. 11).

(1) In Gereb's Sheriff's Report documenting his arrest of Wood on August 4, 2019, Gereb stated he **arrested Wood solely for refusing to perform**

Field Sobriety Tests as per Bexar County

Policy. ROA.24-51006.1697. Gereb reinforced this at Deposition. ROA.24-51006.1419-1420. Such a policy commands arrests in the absence of probable cause, *Beck v. Ohio*, 379 U.S. 89 (1964). (2) Gereb stated he was trained by Bexar County that traffic stops can take up to **4 or 5 hours**—without an arrest.

ROA.24-51006.1537. Such a training defect flies in the face of *Rodriguez v. United States*, 575 U.S. 348 (2015). Traffic stops must be reasonably related to the nature of the contact, and not deviate into “fishing expeditions,” *Id.* (3) Bexar County uses **form Affidavits** with ubiquitous provisions that don’t apply to the suspect. ROA.24-51006.1451-1453. These types of provisions had standard rhetoric about “drugs” which didn’t apply to Wood. ROA.24-51006.1454. Such blatant recklessness would usurp *Franks v. Delaware*, 438 U.S. 154 (1978).

(4) Deputy Gereb admitted on the STEP Traffic Patrol Unit, their policy dictates Deputies must generate an average of 2.5 traffic stops per hour to remain on that detail, and for Bexar County to receive grant funds. ROA. 24-51006.1502-1503. (5) Actually, the STEP Traffic initiative is a formal policy adopted by the Bexar County Sheriff. ROA.24-51006.1620. (Int. 7). Such a policy based on pre-textual quotas would seem to be unlawful, Tex. Trans. Code §720.002. (6) The arrest of Amanda

Wood on August 4, 2019 was made under the Selective Traffic Enforcement Program. ROA.24-51006.1635. (Int. 25). (7) The STEP Traffic policy **requires** a Deputy to perform one of the following in a traffic stop: (a) issue a warning; (b) write a ticket; or (c) arrest the motorist. ROA.24-51006.1681.

(8) Bexar County has a traffic policy where they can pull you over and arrest you; but no real traffic violation had to occur. That traffic policy is 11.16(A)(2). ROA.24-51006.1759. Deputy Gereb enforced that policy with Wood. ROA.24-51006.1547. (9) In formal policy 11.15(E), it's not required that an actual crime occur to effect a warrantless arrest. ROA.24-51006.1759. (10) This flows with formal Bexar County Policies on Probable Cause. Probable Cause in Policy 11.04(I) can be based upon: "gossip, suspicion, rumor, and a person's appearance." ROA-24-51006.1540-1541. ROA.24-51006.1749.

(11) Bexar County has a formal policy which requires a coerced blood draw in **every instance** a suspect refuses to provide a biological sample. This is 24.07(A)(4). ROA.24-51006.1738. Its companion Policy is 24.05(D)(c)(1)(2). ROA.24-51006.1488-1489. ROA.24-51006.1737-1738. One problem with that is the individual circumstances are not taken into consideration in seeking the search warrants. An entire segment of "suspects" is searched. The facts are not 'particularized.' In fact, the policy rhetoric

calls this a **no refusal policy**. ROA.24-51006.1737-1738. (12) Bexar County doesn't train its Deputies how to draft search warrant affidavits. They use **form affidavits** with standard provisions which don't apply to every suspect, and are not tailored to the particular facts of the alleged crime. ROA.24-51006.1451.

(13) Bexar County trained Deputy Gereb that it is lawful to arrest a citizen solely for refusing to perform Field Sobriety Tests. "That is the law according to Training." ROA.24-51006.1427. (14) Unfortunately, this arrest policy for refusing Field Sobriety Tests "is not the law." In fact, it reflects on their perversion of the Tex. Trans. Code §724.015, and failure to train on that subject. The Tex. Trans. Code §724.015 merely states a motorist will have their driver's license suspended for 6 months if they refuse a breathalyzer. The statute says nothing about mandatory arrests or compulsory Field Sobriety Tests. Deputy Gereb never heard of this statute. ROA.24-51006.1491.

(15) *Terry v. Ohio*, 392 U.S. 1 (1968) is central to all police street encounters with the public. It is vital that all Peace Officers have a grasp of "reasonable suspicion" and articulable facts which justify a temporary detention. Deputy Gereb never heard of that case. ROA.24-51006.1475. (16) This lack of training on *Terry* stops makes sense when Bexar

County Sheriff's Deputies can prolong traffic stops up to 5 hours without an arrest. ROA.24-51006.1537.

(17) Gereb mistakenly associates the *Miranda v. Arizona*, 384 U.S. 436 (1966) warnings with a continued "temporary detention," rather than a full custodial arrest and interrogation. ROA.24-51006.1428.

(18) Bexar County and Deputy Gereb harp on compulsory Field Sobriety Tests under threat of arrest. However, Deputy Gereb wasn't trained there is a "pass or fail" on those exercises. ROA.24-51006.1529. According to the National Highway Transportation Safety Administration, there are "factors" to consider which indicate intoxication in the 3 Field Sobriety Tests. ROA.24-51006.1800. Thus, Gereb didn't even know the purpose of the tests. (19) At the time of Wood's arrest On August 4, 2019, Deputy Gereb did not have the training for advanced certifications to administer Field Sobriety Tests (ARIDE), or detecting drugs (DRE). ROA.24-51006.1445-1446.

(20) Deputy Gereb illustrated how a tactical riot unit (SERT), forcefully and physically placed Wood into a metal chair for a coerced blood draw in the Bexar County Jail. The SERT team does this for all blood draw warrants. ROA.24-51006.1462-1465. Ostensibly, their basis is Policy 9.02(D), where "Deputies may use reasonable force even though

there is no immediate or apparent danger calling for self-defense.” ROA.24-51006.1775. (21) Wood described this medieval force of being thrown to the ground, and into a medieval chair by the SERT team in her Summary Judgment Affidavit. ROA.24-51006.1401. (22) Deputy Gereb emphasized how Bexar County does not possess the resources or instructors for much of their law enforcement Training. That is why they have to outsource. ROA.24-51006.1477-1478. (23) Deputy Gereb emphasized ‘no refusal’ policies with Petitioner Wood on August 4, 2019. But, Bexar County never told Deputy Gereb where these ‘no refusal’ policies are codified. ROA.24-51006.1525-1526.

(24) Policy 46.04 (C)(2)(c) allows Bexar County Deputies to summarily seize cellular phones and recording devices (as Wood’s phone was), “if they believe the recordings may be destroyed.” ROA.24-51006.1803. (25) In Policy 46.01, Bexar County acknowledged the public has a right to record government activities. ROA.24-51006.1802. Wood’s phone was summarily seized by Gereb after he observed her recording him. ROA.24-51006.1422-1423. Wood never got her phone back. ROA.24-51006.1400. (26) Wood started filming Gereb because of his hostility, and claims he deleted the footage after he seized it. ROA.24-1596-1597. Gereb claimed “there was evidence” on the phone. ROA.24-

51006.1423. Policy 46.04(C)(1) associates a physical seizure of recording devices with a formal arrest. ROA.24-51006.1803.

III. REASONS FOR GRANTING THE WRIT

1. THE FIFTH CIRCUIT WAS WRONG: THERE WERE MANY CONSTITUTIONAL VIOLATIONS

There were Fourth Amendment violations, and even a contravention of the First Amendment by Deputy Gereb. Among other things, Gereb arrested Wood without Probable Cause, maliciously filed an invalid criminal complaint, inserted a multitude of falsehoods in a search warrant affidavit, and retaliated against Wood for filming him with her cell phone. Deputy Gereb often cited Bexar County policies and training as the sources of his actions.

2. THE LAW WAS CLEARLY ESTABLISHED BY 2019

Qualified Immunity is a court created affirmative defense which can shield government defendants. The salient question is (1) whether a constitutional violation was alleged and proven, *Saucier v. Katz*, 533 U.S. 194 (2001). (2) This constitutional right must be recognized at the time of the event, *Scott v. Harris*, 550 U.S. 372 (2007). Qualified Immunity doesn't protect the incompetent or those who knowingly violate the law, *Malley v. Briggs*, 475 U.S. 335 (1986).

False arrests or arrests without probable cause are well-settled, *Henry v. United States*, 361 U.S. 98 (1959). This Court has established First Amendment Retaliation, *Hartman v. Moore*, 547 U.S. 250 (2006). First Amendment Retaliation has been entrenched in the circuit courts for many years. Even the late bloomer Fifth Circuit recognizes this right, *Turner v. Driver*, 848 F.3d 678 (5th Cir. 2017). False statements in search warrant affidavits have been recognized since 1978, *Franks v. Delaware*, 438 U.S. 154 (1978). Malicious Prosecution had been broached in this Court as early as 1994. The quantum necessary to reach a favorable termination in Malicious Prosecution suits was settled in *Thompson v. Clark*, 142 S.Ct. 1332 (2022).

3. **CITIES AND COUNTIES CAN'T ASSERT QUALIFIED IMMUNITY AND ARE LIABLE WHEN POLICIES CAUSE CONSTITUTIONAL HARM**

Unlawful government policies had been established since 1978, *Monell v. New York City Dept. of Soc. Svcs.*, 436 U.S. 658 (1978). Inadequate Training had been assessed as well, *City of Canton v. Harris*, 489 U.S. 378 (1989).

In *Owen v. City of Independence*, 445 U.S. 622 (1980), this Court held municipalities cannot assert Qualified Immunity to escape legal liability.

The Circuit Courts have held that municipalities are liable if their policies cause constitutional violations. This is true even if the law was unclear, and law enforcement were entitled to Qualified Immunity. This was first observed in *Watson v. City of Kansas City*, 857 F.2d 690 (10th Cir. 1980). “A finding of municipal liability does not depend upon the liability of a police officer,” *Simmons v. City of Philadelphia*, 947 F.2d 1042 (3rd Cir. 1991). In *Thomas v. Cook County Sheriff’s Dept.*, 604 F.3d 293 (7th Cir. 2010), the County was liable based upon an unlawful policy of the Sheriff. No individuals lost.

The Fifth Circuit actually shared this view, when a City policy commanded the harassment of park vendors, *Groden v. City of Dallas*, 826 F.3d 280 (5th Cir. 2016). In *Groden*, the Officer was not found liable in a bifurcated suit. However, the Fifth Circuit observed that absolution based upon Qualified Immunity necessarily means a constitutional violation occurred. In that case, the City of Dallas could still be liable under *Monell*.

In *Hammer v. Gross*, 932 F.2d 842 (9th Cir. 1991), the City of Newport Beach had a force blood draw policy very much like Bexar County’s in No. 24-51006. Law enforcement used excessive force in implementing the coerced blood draws. However, the events occurred before *Graham v. Connor*, 490 U.S. 386 (1989) was decided. So, the law was unclear

whether the Fourth or Fourteenth Amendment decided the excessive force of suspects. The Officers received Qualified Immunity. But, the City of Newport Beach lost the case.

4. THESE BEXAR COUNTY POLICIES VIOLATE THE CONSTITUTION: IT'S THE PERFECT CASE TO SPOTLIGHT UNLAWFUL POLICIES AND CONSTITUTIONALLY DEFECTIVE TRAINING

The *Monell* theory has been established for many years. However, this court has not really addressed unlawful policies since *Tennessee v. Garner*, 471 U.S. 1 (1985). Actually, that was a municipal adoption of a (voluntary) state law. These are autonomous Bexar County policies and policy choices in Training. One can discern the unlawful implications of these fiats.

The more egregious policies are below. This Court can use Bexar County as a paradigm of malfeasance, and illustrate the Constitutional harm.

A. MANDATORY ARRESTS FOR FAILURES TO PERFORM FIELD SOBRIETY TESTS

Gereb arrested Wood for “refusing to perform SFSTs...that is the law.” ROA.24-51006.1418-20. One can’t refuse SFSTs, *id.* One will be arrested for refusing to perform SFSTs. ROA.24-51006.1418-19. That is the law according to Bexar County Training, *id.* Gereb put handcuffs on Wood when she refused to perform SFSTs, and placed her in the back of the

cruiser. ROA.24-51006.1442-43. **Her balance and walking were normal.** ROA.24-51006.1444-45. Gereb arrested Wood without determining **whether** her faculties were impaired. ROA.24-51006.1572. Gereb said Bexar County had a policy “of no refusals for Field Sobriety Tests” in his Report. ROA.24-51006.1695. ROA.24-51006.1697. But, Gereb admitted it isn’t always safe for citizens to perform these tests based upon weather, traffic, etc. ROA.24-51006.1529.

There is no compulsory field sobriety test compliance in Texas, *Villareal v. State*, 475 S.W.3d 784 (Tex. Crim. App. 2014). Refusing to perform field sobriety tests alone, doesn’t provide probable cause to arrest, *Halbert v. City of Sherman, Tx*, 33 F.3d 526 (5th Cir. 1994).

B. ARREST WITHOUT PROBABLE CAUSE POLICY

Gereb accounted for 8 D.W.I. arrests under STEP in 2019. ROA.24-51006.1621. (Int. 11) This, out of 16 for the STEP program. ROA.24-51006.1621. (Int. 8). Gereb also accounted for 14 traffic related arrests under STEP in 2019. ROA.24-51006.1621. (Int. 10). The STEP Program generated 47 traffic arrests in 2019. ROA.24-51006.1620. (Int. 5).

Bexar County Sheriff’s Deputies arrest citizens **solely** for refusing to perform Field Sobriety Tests. ROA.24-51006.1418-20. The STEP Program is

monetarily incentivized. Bexar County received \$469,377.69 in 2019. ROA.24-51006.1620. (Int. 3). The goal is pretextual Traffic stops, including **143 traffic stops effected by Deputy Gereb** in 2019. ROA.24-51006.1621. (Int. 12).

Bexar County has a traffic policy where they can pull you over and arrest you; but no real traffic violation had to occur. That traffic policy is 11.16(A)(2). ROA.24-51006.1759. Deputy Gereb enforced that policy with Wood. ROA.24-51006.1547. In formal policy 11.15(E), it's not required that an actual crime occurs to effect a warrantless arrest. ROA.24-51006.1759. This flows with formal Bexar County Policies on Probable Cause. Probable Cause in Policy 11.04(I) can be based upon: "gossip, suspicion, rumor, and a person's appearance." ROA-24-51006.1540-1541. ROA.24-51006.1749.

Wood was arrested under the STEP Policy on August 4, 2019. ROA.24-51006.1635. (Int. 25).

C. **INADEQUATE 4th AMENDMENT TRAINING**

Deputy Gereb believes ordinary traffic stops can last up to 5 hours—without an arrest. Gereb is trained that way. ROA.24-51006.1537. Gereb doesn't associate a traffic stop—which is a form of a *Terry* stop, with "reasonable suspicion." ROA.24-51006.1533. Deputy Gereb never heard of *Terry v.*

Ohio, 392 U.S. 1 (1968), which is central to contacts with citizens and suspects. ROA.24-51006.1475. Gereb doesn't know the relationship between reasonable suspicion and a *Terry* stop. ROA.24-51006.1475-76.

In Policy 11.16(A)(2), Deputies only have “to believe” a traffic offense occurred—an actual offense doesn't have to occur. ROA.24-51006.1759. Under Policy 11.15(E), it isn't required that an actual crime occurs for a warrantless arrest. ROA.24-51006.1759. Probable Cause in Policy 11.04(I) can be based upon: “gossip, suspicion, rumor, and a person's appearance.” ROA-24-51006.1540-1541. ROA.24-51006.1749. In Policy 11.17(A)(B), Deputies are told about ‘suspicious places’ as a basis to arrest. But, they are given conflicting definitions which segue into a vague invitation to arrest for anything. ROA,24-51006.1741. Deputies may use physical force against the public though not needed; Policy 9.02(D). ROA.24-51006.1755.

A failure to Train on probable cause and arrests can lead to *Monell* liability, *Pappas v. New Haven Police Dept.*, No. 3:98-CV-981-HBF (D. Conn. 2001).

See *Fisher v. City of San Jose*, 475 F.3d 1049 (9th Cir. 2007), where illegal arrests were carried out according to city policy. The District Court **ordered** San Jose to provide **proper** training.

D. POLICY OF ILLEGAL *TERRY* STOPS

Gereb was responsible for 143 traffic stops in 2019. ROA.24-51006.1621. (Int. 12). Gereb’s traffic stops routinely last longer than 20 minutes. ROA.24-51006.1534. In fact, Gereb is trained traffic stops may last up to 5 hours without an arrest. ROA.24-51006.1537.

Bexar County has an official policy, 11.16(A)(2), where Deputies only have ‘to believe’ a traffic violation occurred to arrest; **real violations aren’t required.** ROA.24-51006.1547. Gereb enforces this policy on duty. *Id.* ROA.24-51006.1759. Gereb volunteers for STEP and has to “produce,” or will be removed from STEP. ROA.24-51006.1492-94.

Gereb never asked Wood to sign a ticket, nor ever presented one to her—the supposed basis of the stop. ROA.24-51006.1518-19. Bexar County has a requirement of 2.5 traffic stops per hour on the STEP Patrol, ROA.24-51006.1493-94. Wood’s traffic stop took 35 minutes until she was arrested. ROA.24-51006.1430. **At the Academy, there’s no time limitation for *Terry* stops.** ROA.24-51006.1430.

See *United States v. Sharpe* 470 U.S. 685 (1985), where *Terry* stops “shouldn’t exceed 20 minutes.” Wood’s *Terry* stop lasted 35 minutes. ROA.24-51006.1430-31. In *Rodriguez v. United States*, 575

U.S. 348 (2015), Police can't prolong or extend a traffic stop in the hopes of finding criminality. Policies of illegal *Terry* stops lead to liability, *Ortega v. Arpaio*, No. 13-16285 (9th Cir. 2015). See *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013), where the City of New York advised its officers to conduct 4,400,000 unlawful *Terry* frisks and summary searches between 2004-2012.

5. DEPUTY GEREB HAD NO PROBABLE CAUSE TO ARREST OR CHARGE WOOD FOR ANY OFFENSE

As an initial matter, Deputy Gereb could not arrest Petitioner Wood for the traffic offense of Speeding. Under the Tex. Trans. Code §543.004, Peace Officers cannot arrest motorists for Speeding. If they do, they face censure and possible suspension, Tex. Trans. Code §543.008. See *Tores v. State*, 518 S.W.2d 378 (Tex. Crim. App. 1975). Wood denies Speeding or committing any traffic violations. ROA.24-51006.1398. Deputy Gereb could not associate his phantom traffic violations with actual offenses under the Tex. Trans. Code. ROA.24-51006.1580-1581. In any event, Deputy Gereb never attempted to write any traffic citations. ROA.24-51006.1432. Deputy Gereb forgot about any potential traffic matters when he observed Wood filming him with her phone. ROA.24-51006.1435. Gereb seized that phone as evidence. ROA.24-51006.1420-1421.

Deputy Gereb could not arrest Petitioner Wood for suspicion of D.W.I. either. Gereb said he arrested Wood **solely** for refusing to perform Field Sobriety Tests. ROA.24-51006.1419-1420. Deputy Gereb stated he arrested Wood without determining whether her faculties were impaired or not. ROA.24-51006.1572. Gereb had previously stated Wood's walking and balance were normal. ROA.24-51006.1444-1445. Wood had no problems finding her driver's license and presenting her insurance. ROA.24-51006.1434-1435. Wood denied drinking alcohol that night to Gereb. ROA.24-51006.1624. (Adm. 10).

Ultimately, Cause No. 620451 *State of Texas v. Amanda Wood*, was dismissed for **insufficient evidence**. ROA.24-51006.1667-1668. This Court recognized the legal significance of a case dismissal for insufficient evidence in *Thompson v. Clark*, 142 S.Ct. 1332 (2022).

A. FIFTH CIRCUIT IGNORED A FALSE ARREST

Wood's arrest was a combination of unconstitutional conduct interwoven with unlawful policies. Bexar County Sheriff's Deputies can pull you over and arrest you; but no real traffic violation had to occur. That traffic policy is 11.16(A)(2). ROA.24-51006.1759. Deputy Gereb enforced that policy with Wood. ROA.24-51006.1547. This violates

United States v. Cortez, 449 U.S. 412 (1981),
“Officers must have a particularized and objective
basis for suspecting the person of criminal activity.”

Wood could not be arrested for Speeding. The
Tex. Trans. Code §543.004 precludes that. See *Tores*
v. State, 518 S.W.2d 378 (Tex. Crim. App. 1975).
Wood denies Speeding or committing any traffic
violations. ROA.24-51006.1398. Gereb couldn't link
his alleged traffic violations to actual ones under the
Tex. Trans. Code. ROA.24-51006.1580-1581. Gereb
never wrote Wood any tickets. ROA.24-51006.1432.

Bexar policies don't require a suspect to commit
an actual crime to be arrested. In formal policy
11.15(E), it's not required that an actual crime
occurs to effect a warrantless arrest. ROA.24-
51006.1759. Deputies can derive Probable Cause to
arrest based upon phantoms and fantasies. Probable
Cause in Policy 11.04(I) can be based upon: “gossip,
suspicion, rumor, and a person's appearance.” ROA-
24-51006.1540-1541. ROA.24-51006.1749.

The Fifth Circuit used warp logic in No. 24-51006;
logic afoul of *Sibron v. New York*, 392 U.S. 40 (1968).
In *Sibron*, this Court held Police can't justify an
unlawful arrest with the product of an illegal search.
Only, in No. 24-51006, there were no subsequent
evidentiary discoveries. Probable cause must exist at
the moment of arrest.

Wood couldn't be arrested for Driving While Intoxicated either. Gereb stated he arrested Wood **solely** for refusing to perform Field Sobriety Tests. ROA.24-51006.1419-1420. This is according to Bexar County's "no refusal" policy. Deputy Gereb stated he arrested Wood without determining whether her faculties were impaired or not. ROA.24-51006.1572. Gereb had previously stated Wood's walking and balance were normal. ROA.24-51006.1444-1445. Wood had no problems finding her driver's license and presenting her insurance. ROA.24-51006.1434-1435. Wood denied drinking alcohol that night to Gereb. ROA.24-51006.1624. (Adm. 10). There was no contraband in Wood's car. ROA.24-51006.1458-1459. Refusing to perform Field Sobriety Tests doesn't provide probable cause to arrest for D.W.I., *Halbert v. City of Sherman*, 33 F.3d 526 (5th Cir. 1994).

Wood's arrest was a product of Bexar County's quota based STEP Traffic program which has to generate traffic stops and arrests to receive grant money. The STEP Traffic policy **requires** a Deputy to perform one of the following in a traffic stop: (a) issue a warning; (b) write a ticket; or (c) arrest the motorist. ROA.24-51006.1681.

There was no actual or imaginary evidence of alcoholic intoxication. Cause No. 620451 was dismissed for **insufficient evidence**. ROA.24-51006.1667-1668. Police lie about alcoholic

intoxication to justify arrests, *Kingsland v. City of Miami*, 369 F.3d 1210 (11th Cir. 2004).

B. FIFTH CIRCUIT IGNORED A MENDACIOUS SEARCH WARRANT AFFIDAVIT UNDER *Franks*

As stated previously, Gereb arrested Petitioner Wood on August 4, 2019 solely for refusing to perform Field Sobriety Tests. ROA.24-51006.1419-1420. Deputy Gereb compounded this arrest without probable cause. Deputy Gereb filed a sworn criminal complaint against Wood for Misdemeanor Driving While Intoxicated. ROA.24-51006.1514. ROA.24-51006.1693. In *Franks v. Delaware*, 438 U.S. 154 (1978), this Court held falsehoods, misstatements, and material omissions invalidate Police affidavits.

Franks dealt with search warrant affidavits in the criminal context. *Malley v. Briggs*, 475 U.S. 335 (1986) addressed the civil liability Police can incur for drafting mendacious affidavits.

Deputy Gereb followed Bexar County policy in applying for a coerced blood draw on every occasion a citizen refuses to provide a biological sample. ROA.24-51006.1488-1489. This is Policy 24.07(A)(4). ROA.24-51006.1738. Its companion is 24.05(D)(c)(1)(2). ROA.24-51006.1737-1738.

Deputy Gereb used **a standard form affidavit** to draft Wood's search warrant affidavit. This is standard Bexar County Sheriff practice. ROA.24-

51006.1451. These form affidavits contain generic provisions and paragraphs which don't necessarily apply to the particular suspect. Several of these allegations were false as related to Amanda Wood. ROA.24-51006.1451-1453. One standard provision referred to drug influence. These allegations were never previously broached, pursued, or valid. ROA.24-51006.1454. The Fifth Circuit has taken exception to form affidavits. In *Terwilliger v. Reyna*, 4 F.4th 270 (5th Cir. 2021), they found arrest affidavits lacking 'particularized' facts about suspects in a biker brawl and shootout at a Twin Peaks Restaurant. In *Wilson v. Stroman*, 33 F.4th 202 (5th Cir. 2022), the Fifth Circuit again found the form affidavits from *Terwilliger* to have misled the Magistrate and Grand Jury in *Wilson*. *Wilson* involved other biker Defendants from the failed criminal prosecutions in the Twin Peaks brawl.

Gereb admitted under oath Wood's walking and balance were normal. ROA.24-51006.1444-1445. Gereb also admitted Wood had no problem finding her insurance and presenting her driver's license. ROA.24-51006.1434-1435. Yet, in Gereb's Affidavit, he falsely stated "Wood was unsteady and swaying." ROA.24-51006.1460. Gereb falsely stated Wood had "glossy eyes" in his Affidavit. Wood's booking photo refutes that. ROA.24-51006.1708.

Gereb falsely stated Wood was violating traffic laws. Gereb never wrote Wood any tickets. ROA.24-51006.1432. Gereb couldn't align his phantom traffic violations to real ones under the Tex. Trans. Code. ROA.24-51006.1580-1581.

Gereb falsely stated Wood had to perform field sobriety tests under Texas law. That is untrue. ROA.24-51006.1419. See *Villareal v. State*, 474 S.W.3d 784 (Tex. Crim. App. 2014), Tex. Trans. Code §724.015.

Gereb stated he smelled alcohol. Yet, he couldn't describe its smell or assign it to any particular type of drink. ROA.24-51006.1456-1457. There was no alcohol found in Wood's car or in her possession. ROA.24-51006.1458-1459.

Gereb misstated and overstated his credentials and professional training. Gereb had no advanced training by August 4, 2019. He wasn't ARIDE or DRE certified. ROA.24-51006.1445-1446.

Gereb forgot to include in the Affidavit he had hourly traffic stop quotas of 2.5 per hour. ROA.24-51006.1577. Deputy Gereb didn't mention he has a financial incentive with these resulting arrests. He gets paid overtime, and it takes several hours to process the inmate and complete the paperwork. ROA.24-51006.1498-1499.

C. **FIFTH CIRCUIT OVERLOOKED A MALICIOUS PROSECUTION BY DEPUTY GEREB**

Malicious Prosecution is the wrongful initiation of criminal charges without probable cause. *Thompson v. Clark*, 142 S.Ct. at 1337 (2022). Deputy Gereb filed a sworn criminal complaint against Wood for Misdemeanor Driving While Intoxicated. ROA.24-51006.1514. ROA.24-51006.1693.

Deputy Gereb was displeased Amanda Wood filmed him with her cell phone. Wood's phone was summarily seized by Gereb after he observed her recording him. ROA.24-51006.1422-1423. Wood never got her phone back. ROA.24-51006.1400. Wood started filming Gereb because of his hostility, and claims he deleted the footage after he seized it. ROA.24-1596-1597. Gereb claimed "there was evidence" on the phone. ROA.24-51006.1423.

Wood couldn't be arrested for merely filming her contact with Gereb. See *Glik v. Cunliffe*, 655 F.3d 78 (1st Cir. 2011). The public has a right to record police interactions with citizens, *Fields v. City of Philadelphia*, 862 F.3d 353 (3rd Cir. 2017).

Deputy Gereb was also displeased Wood didn't perform Field Sobriety Tests. He arrested her solely for her refusal. ROA.24-51006.1419-1420. Gereb spent 35 minutes trying to persuade Wood. ROA.24-51006.1430-1431. The STEP Traffic policy **requires**

a Deputy to perform one of the following in a traffic stop: (a) issue a warning; (b) write a ticket; or (c) arrest the motorist. ROA.24-51006.1681.

Wood couldn't be arrested for Driving While Intoxicated either. Gereb stated he arrested Wood **solely** for refusing to perform Field Sobriety Tests. ROA.24-51006.1419-1420. This is according to Bexar County's "no refusal" policy. Deputy Gereb stated he arrested Wood without determining whether her faculties were impaired or not. ROA.24-51006.1572. Gereb had previously stated Wood's walking and balance were normal. ROA.24-51006.1444-1445. In fact, Wood's Cause No. 620451 **was dismissed for insufficient evidence.** ROA.24-51006.1667-1668.

Wood's situation was similar to *Gordon v. Norman*, 788 F.2d 1194 (6th Cir. 1986). Police stopped Gordon for Speeding. They quickly focused on alcoholic intoxication. The Police asked Gordon to perform field sobriety tests and give a biological sample. Gordon refused, and the Police roughed him up and arrested him. Gordon sued and won several monetary judgments.

Wood couldn't be arrested for Speeding either. Deputy Gereb could not arrest Petitioner Wood for the traffic offense of Speeding. Under the Tex. Trans. Code §543.004, Peace Officers cannot arrest Texas motorists for Speeding. If they do, they face censure

and possible suspension, Tex. Trans. Code §543.008. See *Tores v. State*, 518 S.W.2d 378 (Tex. Crim. App. 1975). Wood denies Speeding or committing any traffic violations. ROA.24-51006.1398. Deputy Gereb could not associate his phantom traffic violations with actual offenses under the Tex. Trans. Code. ROA.24-51006.1580-1581. In any event, Deputy Gereb never attempted to write any traffic citations. ROA.24-51006.1432. Deputy Gereb forgot about any potential traffic matters when he observed Wood filming him with her phone. ROA.24-51006.1435.

Deputy Gereb compounded matters by lying in an affidavit to obtain a coerced blood draw. Gereb admitted under oath Wood's walking and balance were normal. ROA.24-51006.1444-1445. Gereb also admitted Wood had no problem finding her insurance and presenting her driver's license. ROA.24-51006.1434-1435. In Gereb's Affidavit, he falsely stated "Wood was unsteady and swaying." ROA.24-51006.1460. Gereb falsely stated Wood had "glossy eyes" in his Affidavit. Wood's booking photo refutes that. ROA.24-51006.1708.

Gereb falsely stated Wood had to perform field sobriety tests under Texas law. That is untrue. ROA.24-51006.1419. See *Villareal v. State*, 475 S.W.3d 784(Tex. Crim. App. 2014). See Tex. Trans. Code §724.015. Gereb falsely stated Wood was committing traffic violations. Gereb never cited

Wood for any violation. ROA.24-51006.1432. Gereb created fictional offenses which had no substance in the Tex. Trans. Code. ROA.24-51006.1580-1581.

This Court first mused the Constitutional tort of Malicious Prosecution in *Heck v. Humphrey*, 512 U.S. 477 (1994), and *Albright v. Oliver*, 510 U.S. 266 (1994). Gradually, this Court shaped the parameters of 42 U.S.C. 1983 Malicious Prosecution. In *Thompson v. Clark*, 142 S.Ct. 1332 (2022), this Court discussed what would constitute a ‘favorable termination.’ That is a rather liberal standard—virtually anything which doesn’t result in a final conviction, *Id.* at 1333. In *Thompson*, this Court mused an ideal termination would result in a dismissal for insufficient evidence. That’s what occurred in Cause No. 620451, *State of Texas v. Amanda Wood*. ROA.24-51006.1667-1668. A dismissal for **insufficient evidence** tends to indicate a lack of probable cause and innocence, *Thompson* at 1338.

D. FIFTH CIRCUIT OVERLOOKED A VALID FIRST AMENDMENT RETALIATION CLAIM

The STEP Traffic Policy induced Gereb’s traffic stop of Wood because of its hourly quotas. ROA.24-51006.1577. Gereb “lost his cool and train of thought” when he observed Wood filming him. ROA.24-51006.1422-1423. Gereb forgot about alleged traffic offenses altogether after Wood’s filming.

ROA.24-51006.1435. Deputy Gereb never attempted to write any traffic citations. ROA.24-51006.1432.

Deputy Gereb stated Wood started filming him as soon as he walked up to her car. ROA.24-51006.1420. Gereb understood that Wood was filming his conduct. ROA.24-51006.1422. Wood's phone was summarily seized by Gereb after he observed her recording him. ROA.24-51006.1422-1423. Wood never got her phone back. ROA.24-51006.1400. Wood started filming Gereb because of his hostility, and claims he deleted the footage after he seized it. ROA.24-1596-1597. Wood also sought to document the encounter because Deputy Gereb stated he didn't possess a body camera. ROA.24-51006.1595. Gereb claimed "there was evidence" on the phone. ROA.24-51006.1423. Yet, it was never used as evidence in Wood's criminal case. *Id.* Deputy Gereb admitted he could have left Wood's phone with her passenger husband—**instead of seizing it.** ROA.24-51006.1545.

Policy 46.04 (C)(2)(c) allows Bexar County Deputies to summarily seize cellular phones and recording devices (as Wood's phone was), "if they believe the recordings may be destroyed." ROA.24-51006.1803.

Bexar County acknowledged the public has a right to record government activities. ROA.24-

51006.1802. Thus, Gereb knew he couldn't base Wood's arrest on First Amendment grounds. That's when Gereb got creative and cited alcoholic intoxication. As previously discussed, Wood couldn't be lawfully arrested for suspicion of D.W.I. Deputy Gereb filed a sworn criminal complaint against Wood for Misdemeanor Driving While Intoxicated. ROA.24-51006.1514. ROA.24-51006.1693. This was dismissed for insufficient evidence. ROA.24-51006.1667-1668.

It has been shown in Argument 5(C) above that Deputy Gereb didn't have probable cause to arrest Wood for anything. This included: (1) driving intoxication; (2) traffic offenses; (3) filming him with her cell phone; or (4) any other basis.

In *Hartman v. Moore*, 547 U.S. 250 (2006), this Court held a Plaintiff must demonstrate a lack of probable cause for their arrest. Later, in *Lozman v. City of Riviera Beach, Fla.*, 138 S.Ct. 1945 (2018), this Court held a Plaintiff could prevail on a 1st Amendment Retaliation claim regardless if probable cause was present. The basis: the Constitutional violation must be a "but for" causation of the arrest. In *Nieves v. Bartlett*, 587 U.S. 391 (2019), this Court held a Plaintiff can present objective evidence they were arrested for asserting protected speech, while others similarly situated were not. Wood's husband was rowdy, was suspected of being intoxicated, and

actually threatened the Deputies as they tried to tow the vehicle. ROA.24-51006.2429. (Min. 1:13).

The Fifth Circuit is known as being defiant of this Court’s rulings. Thus, they had to be corrected on First Amendment principles in *Gonzalez v. Trevino*, 602 U.S. 653 (2024). Remember, Deputy Gereb stated his original basis to detain Wood was for traffic offenses. ROA.24-51006.1695. In particular, Texas motorists cannot be arrested for Speeding, Tex. Trans. Code §543.004.

But, the Fifth Circuit had recognized a First Amendment Right for the public to record the Police, *Turner v. Driver*, 848 F.3d 678 (5th Cir. 2017).

5th CIRCUIT ACCEPTED UNAUTHENTICATED EVIDENCE FROM THE RESPONDENTS: BUT WOULDN’T ACCEPT IT FOR THE ‘TRUTH OF THE MATTER’ WHICH HARMED RESPONDENTS

(6)

All of the Respondents’ evidence was unauthenticated and objected to on Summary Judgment. **ROA.24-51006.1362-63. ROA.24-51006.1897-1900.** Some was belated and tardy. **ROA.24-51006.2650.** The Fifth Circuit acknowledged this. Yet, it ignored the harmful statements within the Respondents’ “evidence.” Documents on file and produced in Discovery may be referenced by the opponent, *Snyder v. Whittaker*

Corp., 839 F.2d 1085 (5th Cir. 1988). Petitioner Amanda Wood often cited Bexar’s own documents.

There were FRCP 56 Rule changes regarding “evidence” on Summary Judgment in 2010. A party must still authenticate evidence before trial if challenged, *Lee v. Offshore Logistical, Transp, LLC*, 859 F.3d 353 (5th Cir. 2017). The challenged party must **demonstrate** how the evidence is **authentic**. These are pre-trial standards. *Lee* still applies after the Rule FRCP 56 changes. The Bexar Respondents didn’t authentic nor provide reasons why.

The Fifth Circuit also referenced moot matters which **had been addressed** by the Magistrate Court. The Petitioner had opposed these. ROA.24-51006.1374-1379. ROA.24-51006.1900-1901. ROA.24-51006.1911-1914. Petitioner Wood filed robust Motions in Limine. ROA.24-51006.742-801. ROA.24-51006.686-737. There was a Magistrate’s Ruling before Summary Judgment was decided—rendering such “experts” moot, and limited their ambit and conclusions. ROA.24-51006.2756-2757.

This is the perfect case for this Court to consider whether unauthenticated evidence should be allowed, and any “bilateral” uses by party opponents.

IV. CONCLUSION

Certiorari should be granted because of Gereb’s malfeasance, flawed *Monell* fiats, and poor Training.

Respectfully Submitted,

/s/ Andres Cano

Petitioner's Counsel

Texas Bar 24100071

1140 South Laredo, P.O. Box 830742

San Antonio, Texas 78204

(210) 231-0433

(210) 263-7667 (fax)

dx4829@gmail.com

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Filed
December 3, 2024
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY: NM
DEPUTY

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

AMANDA WOOD,
Plaintiff,

SA5:21cv895-OLG

BEXAR COUNTY, TEXAS,
DEPUTY JOE GEREB,
Defendants.

ORDER

The Court has considered United States Magistrate Judge Henry J. Bemporad's Report and Recommendation (R&R), filed September 20, 2024, concerning Defendants' motions for summary judgment (Dkt. Nos. 73 & 73). (*See* R&R, Dkt. No. 102.)

A party who wishes to object to a Magistrate Judge's findings and recommendations must serve and file specific written objections within fourteen

days "after being served with a copy of the recommended disposition." FED. R. Civ. P. 72(b)(2). Plaintiff, through counsel, was electronically served with a copy of the R&R on September 25, 2024. As such, her deadline to file objections was October 9, 2024. Plaintiffs objections to the **R&R**, filed October 4, 2024, were therefore timely. (*See* Dkt. No. 104.) Defendants have responded to the objections (*see* Dkt. No. 120), and Plaintiff has replied (*see* Dkt. No. 122).

When a party objects to an R&R, the Court must make a de novo determination as to "any part of the magistrate judge's disposition that has been properly objected to." FED. R. Crv. P. 72(b)(3); *see United States. v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989). Objections must be specific; frivolous, conclusory, or general objections need not be considered by the district court. *Battle v. US. Parole Comm'n*, 834 F.2d 419,421 (5th Cir. 1987) (quoting *Nettles v. Wainwright*, 677 F.2d 404, 410 n.8 (5th Cir. 1982), *overruled on other grounds by Douglass v. US Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996)). Any portions of the Magistrate Judge's findings or recommendations that were not objected to are reviewed for clear error. *Wilson*, 864 F.2d at 1221.

The Court, having reviewed the entirety of the R&R de novo, finds that it is in all things correct

and that Plaintiff's objections should be and hereby are overruled. Accordingly, the Court **ADOPTS** the Magistrate Judge's R&R, and, for the reasons set forth therein, Defendants' motions for summary judgment (Dkt. Nos. 72 & 73) are **GRANTED** and Plaintiff's claims in this case are **DISMISSED**.

All pending motions (Dkt. Nos. 105 & 118) are **DISMISSED AS MOOT**.

This case is **CLOSED**.

It is so **ORDERED**.

SIGNED this 11 day of December 2024

Orlando Garcia

U.S. DISTRICT JUDGE

**UNITED STATES
COURT OF APPEAL FOR
THE FIFTH CIRCUIT**

No. 24-51006

United States Court of Appeals
Fifth Circuit

FILED

August 6, 2025

Lyle W. Cayce, Clerk

***Amanda Wood,
Plaintiff-Appellant,***

versus

***Bexar County, Texas, Deputy J. Gereb,
Defendants—Appellees.***

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:21-CV-895

Before ELROD, *Chief Judge*, DUNCAN and
ENGELHARDT, *Circuit Judges**

Kurt D. Engelhardt, *Circuit Judge*:

Amanda Wood was arrested for driving while intoxicated. After the charge was dismissed, Wood sued the county and the officer who arrested her, alleging constitutional and state law violations. The district court granted summary judgment for

the defendants on all claims. Wood appeals the district court's judgment as to several of her claims. We AFFIRM.

I.

The first half of the events at issue were not recorded on video and the parties tell two different stories of what occurred. We recount both versions. A.

Around 2:00 AM on August 4, 2019, a Bexar County peace officer, Deputy Joe Gereb, claims that he saw a white Honda sedan cross two traffic lanes without using a turn signal, straddle the striped line dividing two lanes, almost strike the curb separating the turnaround lane, and cross the solid white street lines.¹ Using his radar gun, he clocked the vehicle at 60 miles per hour in a 45 miles per hour zone. Accordingly, Deputy Gereb signaled for the vehicle to pull over, and the driver complied.

¹ Regular patrol deputies at the Bexar County Sheriff's Office, like Deputy Gereb, did not have body or dash cameras at the time of this incident.

As Deputy Gereb approached the driver's side of the vehicle, he detected a strong odor of alcohol. He advised the driver that he "pulled her over for speeding, failing to maintain a single lane of traffic, failing to use her vehicle's turn signal, and disregarding traffic control devices," and requested her driver's license and proof of insurance. The driver began filming Deputy Gereb with her cell phone but complied with the document request, allowing Deputy Gereb to identify her as Amanda Wood. He also identified the sole passenger as Wood's then-husband, Christopher.

Deputy Gereb asked Wood whether she had consumed alcohol that evening, and she responded that she does not drink. Deputy Gereb expressed that he smelled a strong odor of alcohol emitting from the vehicle, asked her to exit the vehicle, and informed her that he was going to perform a roadside interview. Wood interrupted Deputy Gereb as he attempted to question her,

and when asked whether she had gotten any sleep the night before, she responded "that's none of your concern." He informed her that his questions were associated with standardized field sobriety tests. She expressed that she did not consent to the interview and refused to comply with his

questions. Deputy Gereb observed that her eyes were glossy and watery, her breath smelled of alcohol, and her speech was slurred.

While Deputy Gereb attempted to interview Wood, Christopher hung out of the passenger window, yelled, and appeared to record the interaction. At this point, Deputy Gereb called for additional assistance, handcuffed Wood, and placed her in the back of his patrol car while he waited for Deputy Brent Bible—an officer in Bexar County’s Driving While Intoxicated specialized unit—to arrive.

B.

Now for Wood’s version of the facts. According to Wood, she and Christopher had just left her grandmother’s 84th birthday celebration and were looking for an open restaurant when the events at issue occurred. She swears that she did not drink that evening, was not speeding, and did not violate any traffic laws. In fact, she says she was “driving cautiously because [she] was on the lookout for a 24 hour restaurant” and “didn’t want to miss one, if there was one nearby.” “At some point,” Wood noticed flashing lights behind her and pulled over.

Deputy Gereb approached her car and asked for her driver’s license and insurance, and she complied. She recalls that

“[s]omehow, the topic of conversation turned to whether Deputy Gereb had a body camera recording the event.” When he said that he did not, Wood “started to record the interactions with [her] cellular phone” because “Deputy Gereb’s demeanor concerned [her],” and she “wanted documentation of what transpired.”

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Deputy Gereb then “started asking [Wood] personal questions,” including questions about her medical history and whether she drank alcohol that night. She told him that she “did not drink alcohol at all.” Eventually she viewed his questions as “too personal” and “pointless,” so she stopped answering them. He then clarified that these questions were part of the field sobriety test and asked her to perform a physical field sobriety test. When she declined to perform such a test, he ordered her to get out of the car. He instructed her that “these Field Sobriety Tests were required by Bexar County” and called it a “no refusal” policy. According to Wood, Deputy Gereb “[e]ssentially” instructed her that “the direct result of refusing to perform Field Sobriety Tests was an arrest.” Deputy Gereb “never

really addressed the basis for the traffic stop,” “didn’t address traffic related matters,” and “never attempted to write a traffic citation.” Instead, he was “fixat[ed] on Field Sobriety Tests” and “was overzealous” in his “insistence” that she perform such a test.

Deputy Gereb and Wood “stood at the back of [her] car for quite some time.” She felt that she could not ignore Deputy Gereb or leave, but declined to answer any further questions, perform any field sobriety tests, or provide any biological samples. Deputy Gereb informed her that she “was being arrested for refusing to perform Field Sobriety Tests,” and then, “without any chance or opportunity [for Wood] to comply,” “seized [her] arms in a rapid motion, and dynamically contorted them behind [her] back.” He “then twisted and forced each arm downward, and inward so he could handcuff them.” “This violent twisting of [her] arms caused piercing pain and discomfort in [her] shoulders.” He then handcuffed her, “in a manner which cut into [her] wrists,” put her in the back of his patrol car, and read her *Miranda* rights. He also seized her cell phone, which was never returned to her. She suspects that he deleted the video from her phone because it did not save to her cloud database.

C.

The events after Deputy Gereb placed Wood in the back of his patrol car are undisputed, as they are recorded by Deputy Bible's body camera. The video begins with Deputy Bible approaching Wood in the backseat of Deputy Gereb's car and shining a flashlight in the car, and Wood immediately being hostile toward him. "Put the f**king phone away or whatever the f**k you have," is the first thing she is recorded saying.

Deputy Bible explained that it was a flashlight, but that he was recording her on camera, and introduced himself. He stated that he could smell alcohol and asked how much she had consumed. She replied with a laugh, "Sir, I don't drink." When Deputy Bible mentioned that Deputy Gereb sought to perform sobriety field tests, Wood hostilely responded, "Sir, he cannot perform whatever he wants without it being consensual. I don't understand why he pulled me over. I don't understand what the f**k he wants." Deputy Bible attempted to explain why Deputy Gereb pulled her over, but she repeatedly spoke over him. Eventually Deputy Bible was able to explain that Deputy Gereb pulled her over for failing to maintain a single lane and speeding,

and that both deputies detected the strong odor of alcohol.

Deputy Bible explained that he and Deputy Gereb were “trying to check and make sure that [her] physical and mental faculties [were] there for [her] to be operating a motor vehicle safely on the roadway,” prompting Wood to nonsensically respond, “I understand and I know how far I am from my house—I understand that I need to go home sir so if you are recording me you should understand that I’m not mentally retarded.” When he reiterated that he was trying to ensure that her mental and physical faculties were sufficient to operate a motor vehicle, Wood rambled: “Sir I am 100% mentally okay, I am 100% and I work my ass off and do a lot of sh*t that I don’t need to be explaining to you just because you’re an officer or you’re wearing a

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public servant uniform.” He expressed that he was just doing his job, to which she replied, “I think you should be doing something else.” Patiently, he explained that they were trying to ensure that people get home safely. Contradicting her earlier statement that she

needed to go home, Wood responded: “The only thing I’m trying to do is go out to eat with my husband, I don’t know what you’re making up or what y’all are going through, and I understand that y’all deal with f**king idiots and sh*t like that but you know what? I’m not f**king one of them.” After Deputy Bible accused her of putting words in his mouth, she incoherently apologized: “I’m sorry, I didn’t mean to make you say things like that . . . I’m not talking to you I’m just generally speaking -- like this public world -- generally speaking.” He then asked whether she would consent to a field sobriety test, and she emphatically declined. Deputy Bible accepted her refusal and shut the door. On multiple occasions throughout this conversation, Wood slurred her words and had difficulties keeping her eyes open.

Deputy Bible then walked toward Wood’s car to talk to Christopher. As he walked over, he and Deputy Gereb discussed how they could both smell the alcohol on Wood, with Deputy Bible noting “it is strong.” Deputy Bible proceeded to introduce himself to Christopher. Christopher said that he and Wood were coming from the movie theater and denied that they had been drinking.² Deputy

² Christopher later filed an affidavit stating that they were on their way home from a bar where he “drank about three Jamison whiskies” and Wood had at least two

Bible informed him that Wood was going to be arrested for driving while intoxicated because of the strong odor of alcohol emitting from her body, and that Deputy Gereb would apply for a warrant to draw her blood because she refused a field sobriety test. Deputy Bible gave Christopher the option of performing a field sobriety test and driving the car

home or impounding the car. Christopher said that he would “rather not” perform the field sobriety test and opted to have the car impounded.

After completing paperwork, Deputies Gereb and Bible returned to Wood, seated in the back of the patrol car. As Deputy Gereb began reading Wood her rights, she stuck her head out of the patrol car, and slurring her words, yelled: “Chris, don’t consent to anything, Chris! This officer is unlawfully arresting me, or whatever he’s doing.” She then continued to talk over Deputy Gereb for the full almost four minutes that it took him to read her rights. Her one-sided dialogue

alcoholic mixed drinks. He said that they stopped drinking about ten minutes before leaving the bar.

included a smorgasbord of indecipherable mumbles, slurred words, profane insults, incoherent rants, non sequiturs to Christopher, and vehement refusals to consent to a sobriety test—despite that Deputy Gereb was explaining her rights, not seeking her consent.

“I disregard any blood test, and I heard you, I’m not stupid. I refuse - that’s my civil rights -- exactly, I do need an attorney because you’re unlawfully arresting me, you don’t even know what you’re reading, you’re retarded,” Wood rambled at one point before sticking her head back out the door to again yell at Christopher: “You don’t have to consent to anything, Christopher Shane Wood, don’t consent to anything, this guy is a f**got.” She then turned back to Deputy Gereb, who was relentlessly reading her rights, and told him, “Shut up, sir. You’re a b***h. Just hurry up, sir,” and then continued to yell about how the arrest was unlawful.

“You keep saying that you pulled me over for a traffic violation, which I truly understand, but you’re saying I’m drunk! I’m not even drunk!” Wood next exclaimed before asserting, “I don’t need to consent to anything” seven times in succession. She visibly struggled to keep her head up while mumbling, mimicking Deputy Gereb, and proclaiming that Deputy Gereb “doesn’t even know how to talk.” She then yelled to

Christopher to ask if he was going to jail too. When he expressed that he did not think so, she

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responded, “well take care of the kids -- our three kids,” before directing her attention back to Deputy Gereb and mumbling: “Sir, f**k off. F**got. Get the f**k away, you b***h. [Indiscernible] You’re a f**king f**got. Get the f**k out of my face, f**k you, f**k off, I don’t consent to sh*t.” She then stuck her head out the door and shouted: “F**k you camera, I don’t consent to sh*t. F**k off. I don’t care! F**k you. I don’t give a f**k, get the f**k out of my face,” before returning to rambling about how she was being unlawfully arrested and how Deputy Gereb is “stupid.” Eventually, Deputy Gereb finished reciting Wood’s rights. Even after the deputies shut the door, Wood could be heard screaming.

Deputy Bible remained on the scene with Christopher while Deputy Gereb transported Wood to the Bexar County Adult Detention Center for booking, where she again refused to voluntarily provide a breath or blood sample. Deputy Gereb then completed and filed an Affidavit for Search Warrant and

Magistration. In the affidavit, Deputy Gereb checked boxes indicating that Wood had a strong odor of alcohol; slurred speech; talkative, cocky, excited, profane, and insulting attitude; hesitant balance; and swaying walk.³ He also wrote: “Driver had slurred speech, glossy eyes, and had a strong odor of alcohol emitting from her breath and vehicle.” At 4:10 AM, a Bexar County Magistrate Judge signed a search warrant authorizing the involuntary removal of blood samples from Wood.

A second body camera video shows Wood at the jail preparing to get her blood drawn. The video begins with several officers in tactical gear handling a combative, handcuffed Wood and moving her into a chair. There is no audio during the first 30 seconds of the video, but Wood is visibly yelling

at the officers. Wood is then heard yelling, “Let me go b***h! What’s wrong with you retards? Y’all are so stupid.” as the officers

³ In an affidavit filed at the district court, Deputy Gereb expressed that he mistakenly checked the box indicating that Wood swayed when she walked.

placed her in the chair. It took five officers to restrain Wood to the chair. One officer restrained her head while two strapped a belt across her waist and two others restrained her legs.

Once her legs were restrained, all five officers worked together to first restrain her body and then to control her arms while they removed her handcuffs and restrained her arms to the chair. At least seven other jail officials observed. Wood is heard during this time calling the officers “f**king f**gots,” “f**king retarded,” and “f**king stupid,” and telling them that she “can’t wait until [her] attorney finds out about this sh*t.” Once they secured her, she told the officers: “Okay hurry the f**k up, I’ve been here for two f**king hours” and called one a “f**got ass.” The officer wearing the body camera then asked the medical staff whether they were ready, prompting Wood to aggressively yell: “They haven’t been f**king ready. They told me to wait outside. They are f**king [indiscernible] the f**king office, retard. You’ve asked like a hundred f**king times, you’re so stupid.” She continued to hurl profane insults at the officers while they waited for the medical professionals to prepare for the blood draw. The video concludes after the officer announces that he is putting the camera “on standby for medical evaluation.”

Wood's blood was eventually drawn at 5:03 AM, roughly three hours after Deputy Gereb initiated the traffic stop. The toxicology report recorded a blood alcohol content of 0.019. According to an expert report submitted by Deputy Gereb and Bexar County—and not rebutted or challenged by Wood—the toxicology report confirmed that Wood had been drinking that evening, and that her blood alcohol content likely would have been between 0.05 and 0.11 three hours earlier when she was driving. The Bexar County

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Criminal District Attorney's Office nonetheless dismissed the charge against Wood, citing insufficient evidence.

D.

Wood subsequently filed this lawsuit against Deputy Gereb and Bexar County. Against Deputy Gereb, she alleged a First Amendment retaliation claim; Fourth Amendment claims for unreasonable search of her person, unreasonable search of her car, excessive force, obtaining a search warrant via false information (*Franks v. Delaware*, 438 U.S. 154 (1978) violation), and malicious

prosecution; and state law claims for malicious prosecution and intentional infliction of emotional distress. Against Bexar County, she alleged *Monell* claims premised on various policies that she alleges violate the Fourth and Fourteenth Amendments. The district court concluded that Deputy Gereb is entitled qualified immunity and granted summary judgment for Deputy Gereb and Bexar County on all claims. Wood timely appealed.

II.

Before reaching Wood's substantive challenges, we address her several evidentiary objections. We review a district court's summary judgment evidentiary rulings for abuse of discretion. *Hager v. Brinker Tex., Inc.*, 102 F.4th 692, 697 (5th Cir. 2024). The harmless error doctrine also applies. *Winzer v. Kaufman County*, 916 F.3d 464, 473 (5th Cir. 2019) (per curiam). An error is harmless if it does not tip the balance of the outcome at summary judgment. *Cf. id.*

A.

First, Wood argues that the district court abused its discretion by considering Christopher's affidavit. Because the affidavit conflicted with Christopher's statements to Deputy Bible at the scene, Wood concludes that the affidavit is perjured and

inadmissible. We interpret Wood’s argument as

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invoking the “sham affidavit doctrine,” which was the basis for her objection at the district court. The sham affidavit doctrine “allows a district court to disregard statements made in an affidavit that are so markedly inconsistent with a prior statement as to constitute an obvious sham.” *Rodriguez v. City of Corpus Christi*, 129 F.4th 890, 897 (5th Cir. 2025) (internal quotation marks and citation omitted). It applies when an affidavit conflicts with the affiant’s prior *sworn testimony*, typically deposition testimony. *See, e.g., Seigler v. WalMart Stores Tex., L.L.C.*, 30 F.4th 472, 477 (5th Cir. 2022). Because Christopher’s statements to Deputy Bible were not sworn testimony, the sham affidavit doctrine does not apply. The district court did not abuse its discretion.⁴

⁴ Even if the sham affidavit doctrine applied, any error would be harmless. We affirm the district court on all

B.

She next contends that the district court abused its discretion by not striking the jail videos, which she says were untimely disclosed and produced. Wood's objection to this evidence is not that the district court's consideration of it prejudiced her. To the contrary, she says that the videos "show shocking 14th Amendment violations of civil rights and medieval torture." Instead, she argues that the district court should have excluded this evidence because it was produced after the deadline to amend her complaint to add additional claims and defendants.

To the extent that Wood challenges the district court's use of this evidence on summary judgment, we are admittedly perplexed, given that she

appealed claims without relying on Christopher's affidavit. *See infra* Sections IV, V.

seemingly views it as helpful to her. Regardless, she has not demonstrated that the district court abused its discretion.⁵ C.

Wood also asserts hearsay objections to several pieces of evidence. First, she submits that the body camera and jail videos are unauthenticated and inadmissible hearsay because they were not admitted through a witness and custodian. Second, she contends that various Bexar County law enforcement documents are inadmissible hearsay that cannot be admitted under the public or business records exceptions.

“At the summary judgment stage, materials cited to support or dispute a fact need only be *capable* of being ‘presented in a

⁵ To the court’s knowledge, based on a review of the record, Wood never requested leave from the district court to amend her complaint. To the extent Wood argues that the district court erred by not permitting her to amend her complaint in light of this evidence, she cannot raise that argument on appeal for the first time. *See Rollins v. Home Depot USA*, 8 F.4th 393, 397 (5th Cir. 2021) (“A party forfeits an argument by failing to raise it in the first instance in the district court—thus raising it for the first time on appeal—or by failing to adequately brief the argument on appeal.”).

form that would be admissible in evidence.”
LSR Consulting, LLC v. Wells Fargo Bank, N.A., 835 F.3d 530, 534 (5th Cir. 2016) (quoting Fed. R. Civ. P. 56(c)(2)). Wood does not object that this evidence “cannot be presented in a form that would be admissible in evidence.” *See* Fed. R. Civ. P. 56(c)(2) (emphasis added). Instead, she relies on caselaw addressing evidence admitted *at trial* to demonstrate that the district court impermissibly considered this evidence at summary judgment. Wood has not demonstrated that the district court abused its discretion.

D.

Next, Wood argues that, by not challenging the statement of facts she submitted in her response to *their* motion for summary judgment, Deputy Gereb and Bexar County admitted her version of the facts, entitling *her* to summary judgment. Wood’s argument that the district court erred by not granting summary judgment for *her*—when she never sought summary judgment—once again leaves the court perplexed. Regardless, the undisputed facts demonstrate that Deputy Gereb and Bexar County—not Wood— were

entitled summary judgment. *See infra* Sections IV, V. E.

Finally, Wood argues that the initial traffic stop was unlawful, rendering all subsequent events also unlawful. She seems to invoke the fruit-of-the-poisonous-tree doctrine. This evidentiary *criminal* procedure doctrine is inapplicable in a 42 U.S.C. § 1983 civil damages suit. *See De La Paz v. Coy*, 786 F.3d 367, 371 n.3 (5th Cir. 2015); *Townes v. City of New York*, 176 F.3d 138, 145–46 (2d Cir. 1999); *Black v. Wigington*, 811 F.3d 1259, 1267–68 (11th Cir. 2016); *Codrington v. Dolak*, 142 F.4th 884, 895 (6th Cir. 2025).

III.

Having determined that Wood’s evidentiary challenges fail, we turn to whether the district court erred by granting summary judgment for Deputy Gereb and Bexar County. We review a district court’s grant of summary judgment *de novo*. *McVae v. Perez*, 120 F.4th 487, 491 (5th Cir. 2024), *cert. denied*, --- S. Ct. ---, 2025 WL 1549791 (2025). A court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). We generally review summary judgment evidence in the light most favorable to the nonmovant. *Carnaby v. City of Houston*, 636

F.3d 183, 187 (5th Cir. 2011). But when the incident is recorded on video, we rely on the facts as depicted in the video. *McVae*, 120 F.4th at 491.

V

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We begin with Wood’s claims against Deputy Gereb. Deputy Gereb asserts the defense of qualified immunity. Qualified immunity protects a state official from civil suit and liability if he could have reasonably believed that his actions were legal. *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). A state official is entitled qualified immunity unless (1) the evidence demonstrates that his conduct violated a statutory or constitutional right; and (2) that right was “clearly established” at the time of the violation. *McVae*, 120 F.4th at 492. Courts may analyze either prong first. *Cope v. Cogdill*, 3 F.4th 198, 204 (5th Cir. 2021).

A good-faith assertion of qualified immunity shifts the traditional summary judgment burden. *Ratliff v. Aransas County*, 948 F.3d 281, 287 (5th Cir. 2020). To survive summary judgment, the plaintiff must present

evidence demonstrating that qualified immunity does not apply. *Id.*

While she initially alleged eight claims against Deputy Gereb, Wood only appeals the district court’s ruling on four: (1) false arrest in violation of the Fourth Amendment, (2) retaliatory arrest in violation of the First Amendment, (3) malicious prosecution in violation of the Fourth Amendment; and (4) a *Franks v. Delaware* violation. We address each in turn. B.

1. False Arrest

“A false arrest occurs, and an individual’s Fourth Amendment rights are violated, when an officer conducts an arrest without probable cause.” *Scott v. City of Mandeville*, 69 F.4th 249, 255 (5th Cir. 2023). An officer has

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probable cause if “the totality of the facts and circumstances” within his knowledge “at the moment of arrest are sufficient for a reasonable person to conclude that the suspect had committed or was committing an offense.” *Id.* The question is whether there is a “fair probability”—*i.e.*, “more than a bare

suspicion” but not necessarily 50% certainty—that a crime occurred. *Id.*

“A person commits an offense,” under Texas law, “if the person is intoxicated while operating a motor vehicle in a public place.” Tex. Penal Code Ann. § 49.04. “Intoxicated” means either (1) “not having the normal use of mental or physical faculties by reason of the introduction of alcohol . . . into the body” or (2) “having an alcohol concentration of 0.08 or more.” *Id.* § 49.01(2)(A)–(B).

Deputy Bible’s body camera footage establishes that Wood was belligerent and uncooperative, slurred her words, and refused to complete the field sobriety test. At times, she was incoherent and struggled to keep her eyes open and her head upright. Further, she has not proffered competent evidence to dispute that she smelled of alcohol. Rather she simply argues that Deputy Gereb “said he ‘smelled alcohol’ yet couldn’t describe that smell in words, nor associate the smell with any type of alcoholic drink,” and points to what she calls “a scientific study [that] proved police are not able to detect the ‘smell’ of alcohol on motorists—particularly when suspects have eaten.” Wood improperly relies on this study as if it is an expert report, without following any of the requisite expert procedures. That Wood smelled like alcohol is therefore not genuinely disputed.

Wood maintains that Deputy Gereb arrested her solely for refusing to perform field sobriety tests.⁶ The undisputed facts demonstrate that this is

false; Wood exhibited several other signs of intoxication. But we do agree with our sister circuits that “refusal to submit to a field sobriety test, combined with evidence of alcohol consumption, [can] give rise to probable cause sufficient to arrest a driver for driving under the influence of alcohol.” *Kinlin v. Kline*, 749 F.3d 573, 580 (6th Cir. 2014); *see also Wilder v. Turner*, 490 F.3d 810, 815 (10th Cir. 2007) (“A prudent officer could reasonably conclude from Plaintiff’s refusal to participate in a field sobriety test coupled with the observation of several indicators of excessive alcohol consumption that Plaintiff was under the influence of alcohol.”); *Miller v. Harget*, 458 F.3d 1251, 1260 (11th Cir. 2006) (“A prudent officer could conclude from a refusal to take a test, coupled with the smell of

⁶ Wood cites *Halbert v. City of Sherman*, 33 F.3d 526 (5th Cir. 1994) for the premise that “[r]efusing to perform field sobriety tests doesn’t provide probable cause to arrest, or anything else.” This premise is nowhere to be found in *Halbert*, which affirmed dismissal

alcohol, that the driver had in fact been drinking.”). As the Eleventh Circuit has reasoned, “[s]ubmitting to a breathalyzer test is a minor inconvenience for a driver and an easy opportunity to end a detention before it matures into an arrest.” *Miller*, 458 F.3d at 1260. When a plaintiff chooses “not to endure this minor inconvenience” it is reasonable for an officer to “view [that] choice as evidence of guilt.” *Id.* Any other conclusion would allow a driver to “escape arrest simply by refusing to cooperate.” *Id.*

The undisputed facts demonstrate that Deputy Gereb had probable cause to arrest Wood for driving while intoxicated. Because Wood has not established a constitutional violation, Deputy Gereb is entitled qualified immunity on the false arrest claim.

of a Texas law false arrest claim against a private citizen who reported to police that the plaintiff was intoxicated. *Id.* at 528–29. After the private citizen reported the plaintiff, the police conducted sobriety tests and arrested the plaintiff. *Id.*

2. Retaliatory Arrest

Wood alleges that Deputy Gereb arrested her because she exercised her First Amendment right to film public activities of law enforcement. A plaintiff cannot prevail on a First Amendment retaliation claim unless he either (1) proves the absence of probable cause for his arrest, or (2) “presents objective evidence that he was arrested when otherwise similarly situated individuals not engaged in the same sort of protected speech had not been.” *Nieves v. Bartlett*, 587 U.S. 391, 402, 407 (2019). If the plaintiff meets that burden, he must also prove “that the retaliation was a substantial or motivating factor behind the arrest.” *Id.* at 404 (alterations adopted).

Because there was probable cause for Wood’s arrest, *see supra* Section IV.B.1, and she has not presented evidence that she was arrested when similarly situated individuals not engaged in protected speech were not, Deputy Gereb is entitled qualified immunity.⁷

⁷ Wood’s argument that she was arrested when a similarly situated individual—her husband, Christopher—

3. Malicious Prosecution

From 2003 to 2021, our court “explicitly denied the possibility of a constitutional malicious prosecution claim.” *Espinal v. City of Houston*, 96 F.4th 741, 748 (5th Cir. 2024) (citing *Guerra v. Castillo*, 82 F.4th 278, 289 (5th Cir. 2023)). Wood’s arrest and prosecution occurred in 2019. Her malicious prosecution claim therefore fails the clearly-established prong of qualified immunity.

4. *Franks v. Delaware*

Even if an independent magistrate approves a warrant application, “a defendant’s Fourth Amendment rights are violated if (1) the affiant, in support of the warrant, includes a false statement knowingly and intentionally, or with reckless disregard for the truth, and (2) the allegedly false statement is necessary to the finding of probable cause.” *Arizmendi v.*

was not is frivolous. Wood was arrested for *driving* while intoxicated. Christopher was not driving.

Gabbert, 919 F.3d 891, 897 (5th Cir. 2019) (quotation marks and citation omitted); see *Franks v. Delaware*, 438 U.S. 154 (1978).

Wood submits that Deputy Gereb made three false statements in his search warrant affidavit: (1) that he “smelled alcohol”; (2) that Wood was “swaying”; and (3) that Wood’s eyes were “glossy.” First, we have already determined that whether Wood smelled of alcohol is not genuinely disputed. See *supra* Section IV.B.1. We have also determined—without considering evidence that Wood was swaying or had glossy eyes—that Deputy Gereb had probable cause to arrest Wood for driving while intoxicated. See *id.* So even if those were false statements, they were not necessary to the finding of probable cause. See *Arizmendi*, 919 F.3d at 897. The district court properly granted summary judgment for Deputy Gereb. V. A.

Now for Wood’s claims against Bexar County. Wood brings several municipality liability claims under *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978). To prevail on a *Monell* claim, a plaintiff must establish (1) an official policy or custom; (2) the policymaker of that policy or custom; and (3) a constitutional violation that the policy or custom was the “moving force” behind. *Moore v. LaSalle Mgmt. Co., L.L.C.*, 41 F.4th 493, 509 (5th Cir. 2022).

Wood spills considerable ink cataloging Bexar County's allegedly unconstitutional policies. But to prevail on a *Monell* claim, she must have suffered a constitutional violation. *See id.* We have already determined that there was probable cause for Wood's arrest. *See supra* Section IV.B.1. So to the extent Wood asserts a *Monell* claim premised on being arrested without probable cause, Bexar County is entitled summary judgment. As far as we can tell, the only other constitutional violations that Wood alleges in connection with her *Monell* claims are an unconstitutional *Terry* stop and excessive force. B.

1. Terry Stop

Wood seems to argue that the traffic stop was an illegal *Terry* stop because (1) Deputy Gereb lacked a legitimate basis to stop her in the first place; (2) the stop lasted 35 minutes; and (3) she did not receive a ticket.

Warrantless searches and seizures are generally *per se* unreasonable under the Fourth Amendment. *United States v. Hill*, 752 F.3d 1029, 1033 (5th Cir. 2014) (citing *Katz v. United States*, 389 U.S. 347, 357 (1967)). The *Terry* stop is one exception to this rule. *Id.* (citing *Terry v. Ohio*, 392 U.S. 1 (1968)).

Under this exception, an officer may briefly detain—*i.e.*, “seize”—a person if the officer has a “reasonable suspicion” that the person is committing a crime. *Alexander v. City of Round Rock*, 854 F.3d 298, 303 (5th Cir. 2017). “Reasonable suspicion” is a “less demanding” standard than probable cause, but the officer must “be able to articulate more than an inchoate and unparticularized suspicion or hunch of criminal activity.” *Id.* at 303–04 (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123–24 (2000)) (internal quotation marks omitted).

“For a traffic stop to be justified at its inception, an officer must have an objectively reasonable suspicion that some sort of illegal activity, such as

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a traffic violation, occurred, or is about to occur, before stopping the vehicle.” *United States v. Lopez-Moreno*, 420 F.3d 420, 430 (5th Cir. 2005). To remain legal, the stop generally “must be temporary and last no longer than is necessary to effectuate the purpose of the stop.” *United States v. Brigham*, 382 F.3d 500, 507 (5th Cir. 2004) (en banc). But “if additional reasonable suspicion arises in the

course of the stop and before the initial purpose of the stop has been fulfilled, then the detention may continue until the new reasonable suspicion has been dispelled or confirmed.” *Lopez-Moreno*, 420 F.3d at 431.

Deputy Gereb proffered evidence that, using his radar gun, he clocked Wood driving 60 miles per hour in a 45 miles per hour zone. While Wood disputes that she was speeding, she presents no evidence to dispute Deputy Gereb’s testimony that his radar gun indicated otherwise. *See Deville v. Marcantel*, 567 F.3d 156, 165 (5th Cir. 2009) (per curiam) (providing that the officer’s “uncontradicted testimony that his radar gun indicated that [the plaintiff] was speeding could establish probable cause” that the plaintiff was speeding, even though “she testified that she was in fact not speeding, as evidenced by the fact that she set her vehicle’s cruise control at the 40mph speed limit” because “evidence that the arrestee was innocent of the crime is not necessarily dispositive of whether the officer had probable cause to conduct the arrest”). The undisputed evidence demonstrates that Deputy Gereb had a reasonable suspicion that Wood committed a traffic violation.

Next, contrary to Wood’s claim that the stop was illegal because it lasted 35 minutes, there is no brightline rule for how long a *Terry* stop may constitutionally last. *United States v. Smith*, 952 F.3d 642, 647 (5th Cir. 2020).

Because Wood has presented no evidence to establish that the stop lasted longer than necessary to dispel or confirm any reasonable suspicion, *see Lopez-Moreno*, 420 F.3d at 430–31, this argument fails too.

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Wood’s final argument—that the stop was illegal because she did not receive a traffic citation—also fails. She seems to claim that Deputy Gereb’s justification for the stop was pretextual. But “an officer’s subjective intentions have no impact on analyzing reasonable suspicion or probable cause because they are both considered to be based on an objective test.” *Id.* at 432. “So long as a traffic law infraction that would have objectively justified the stop had taken place, the fact that the police officer may have made the stop for a reason other than the occurrence of the traffic infraction is irrelevant for purposes of the Fourth Amendment[.]” *Goodwin v. Johnson*, 132 F.3d 162, 173 (5th Cir. 1997). We have already determined that Deputy Gereb had a reasonable suspicion that Wood committed a traffic violation.

Whether he pulled her over for some other subjective reason is irrelevant.

Wood has not established a Fourth Amendment violation premised on an illegal *Terry* stop.

2. Excessive Force

Wood makes two excessive force allegations: (1) Deputy Gereb “used unnecessary force in handcuffing her” and (2) the officers at the jail “resorted to medieval torture” to extract her blood.

Force used against a pretrial detainee is “excessive” in violation of the Fourteenth Amendment if it was “objectively unreasonable.” *Austin v. City of Pasadena*, 74 F.4th 312, 322 (5th Cir. 2023) (citing *Kingsley v. Hendrickson*, 576 U.S. 389, 396–97 (2015)). To determine reasonableness, we weigh several factors: (1) the relationship between the need for the use of force and the amount of force used; (2) the extent of the plaintiff’s injury; (3) any effort made by the officer to temper or limit the amount of force; (4) the severity of the security problem at issue; (5) the threat reasonably perceived by the officer; and (6) whether the plaintiff was actively resisting. *Id.* (citing *Kingsley*, 576 U.S. at 397).

It is well established that “minor, incidental injuries that occur in connection with the use of handcuffs to effectuate an arrest do not give rise to a constitutional claim for excessive force.” *Freeman v. Gore*, 483 F.3d 404, 417 (5th Cir. 2007). To support an excessive force claim, a plaintiff must have suffered more than *de minimis* injuries from the handcuffing. *See, e.g., Buehler v. Dear*, 27 F.4th 969, 982–83 (5th Cir. 2022). Wood has produced no such evidence here.

For her blood extraction allegations, we rely on the video evidence. The county officials had a warrant to draw Wood’s blood. Because Wood refused to voluntarily comply with the warrant, the officers had to restrain her. And because she actively resisted their attempts to restrain her, they had to exercise some force. But the video shows that they did not use greater force than necessary. Further, Wood has not proffered any evidence that the officers’ use of force injured her.

Wood has failed to demonstrate that either Deputy Gereb or the officers at the jail used excessive force in violation of the Fourteenth Amendment. Because she has not established a constitutional violation, as required for a *Monell* claim, the district court

properly granted summary judgment for
Bexar County.

The judgment of the district court is
AFFIRMED.

**UNITED STATES
COURT OF APPEAL FOR
THE FIFTH CIRCUIT**

No. 24-51006

United States Court of Appeals
Fifth Circuit

FILED

September 5, 2025

Lyle W. Cayce, Clerk

***Amanda Wood,
Plaintiff-Appellant,***

versus

***Bexar County, Texas; Deputy J. Gereb,
Defendants—Appellees.***

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:21-CV-895

ON PETITION FOR REHEARING EN BANC

Before ELROD, *Chief Judge*, and DUNCAN and
ENGELHARDT, *Circuit Judges**

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5th CIR. R. 40 I.O.P.), the petition for panel rehearing is DENIED. Because no active member of the panel or judge in active service requested that the court be polled on rehearing en banc. (Fed. R. App 40 and 5th CIR. R. 40), the petition for rehearing en banc is DENIED.

**UNITED STATES
COURT OF APPEAL FOR
THE FIFTH CIRCUIT**

No. 24-51006

United States Court of Appeals
Fifth Circuit

FILED

September 12, 2025

Lyle W. Cayce, Clerk

***Amanda Wood,
Plaintiff-Appellant,***

versus

***Bexar County, Texas, Deputy J. Gereb,
Defendants—Appellees.***

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:21-CV-895

Before ELROD, *Chief Judge*, DUNCAN and
ENGELHARDT, *Circuit Judges**

JUDGMENT

This cause was considered on the record on appeal and was argued by counsel.

IT IS ORDERED and ADJUDGED that the Judgment of the District Court is AFFIRMED.

IT IS FURTHER ORDERED that the Appellant pay to Appellee the costs on appeal to be taxed by the Clerk of this Court.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. See Fed. R. App. P41(b). The court may shorten or extend the time by order. See 5th Cir. R. 41 I.O.P.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1413-1414.

Q. (BY MR. CANO) Okay. Now, what -- did you -- what caused you to want to change in career?

A. Being a jailer was always just a step in the career. I always wanted to work on the streets. It was already -- continue serving my community.

Q. Okay. So did you want to go out on patrol?

A. Yes.

Q. Okay. What do you have to do to become a Texas Peace Officer?

A. You have to obtain your peace officer's license either through a -- some form of law enforcement academy.

Q. Okay.

A. It had to be through a required TCOLE hours of training to receive that.

Q. Okay. Does the Bexar County Sheriff's Office have that type of academy?

A. Yes, they did.

Q. Okay. Did you take that course through the Bexar County Sheriff's Office?

A. **I did not.**

Q. Okay. Is there a reason why?

A. I went through the San Antonio College of Law Enforcement.

Q. Okay. Is there a reason why you didn't take it with the Bexar County Sheriff's Office?

A. At the time they did not offer it. So I took it with outside -- outside academy.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1416-1418

Q. (BY MR. CANO) Okay. Now, on August 4, 2019, you stopped Ms. Wood, correct?

A. Yes, sir.

Q. Okay. And then you later arrested her, correct?

A. Yes.

Q. Okay. And then eventually she was taken to the jail; is that right?

A. Yes.

Q. (BY MR. CANO) Okay. Did you write or create the blood warrant affidavit?

A. Yes, I did.

Q. Okay. Now, during the course of your duties, do you create arrest reports?

A. Yes, I do.

Q. Okay. Did you create one that night on August 4, 2019?

A. I did.

Q. Okay. Would you recognize it if you saw it?

A. Yes.

Q. (BY MR. CANO) Would you look on -- on the top of Page 4, Deputy Gereb. Does it say who the author is?

A. Yes.

Q. Who's that?

A. Me.

Q. Okay. Let's go back to the very last page in the cue, Page 12.

A. Page 12 of 14, yes.

Q. All right. Would you look at the first sentence on the page?

A. Yes.

Q. Okay. I then advised Amanda Wood for her refusing to take the SFST, she was going to be taken into custody for DWI. I then read the Miranda warning and DIC-24 at 2:44 a.m. while Amanda Wood began to yell at her husband, don't let them arrest you.

Okay. Did you create those sentences in that report?

A. Yes, I created both of those sentences in my report.

Q. Okay. I want you to take note of that time, Deputy Gereb, it says 2:44 a.m.

A. Yes.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1419

Q. (BY MR. CANO) Okay. In and of itself, did you arrest motorists for refusing to perform a field sobriety test?

A. In this incident, yes.

Q. Okay.

A. Amanda Wood -- Texas is a nonrefusal state.

Q. Okay. Is that -- is that what you were taught at the Bexar County Sheriff's Office?

A. Yes.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1420-22.

Q. Okay. Now, at some point did Amanda Wood start filming you?

A. She allegedly -- I'm sorry, she alleged that she was filming from the time of the traffic stop when I walked up to the -- her vehicle.

Q. Okay. Did that bother you?

A. No.

Q. Okay.

A. It's not the first time I've been filmed. It's not the last time I'm going to be filmed.

Q. Okay. But yet you seized her phone as evidence; is that right?

A. Yes.

Q. Okay. Evidence of what?

A. Well, she alleged that she had evidence to the incident. So I seized her phone as evidence -- for evidence in there.

Q. (BY MR. CANO) Okay. Did you understand it to be that she was filming your conduct?

A. Yes.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1425-1426.

Q. Okay. Let's go down a few sentences, several sentences down. I advised Amanda Wood that Bexar County and San Antonio are no refusals for SFSTs?

A. Yes.

Q. Did you write that?

A. Yes, I did.

Q. Okay. What did you mean by that?

A. She cannot refuse an SFST.

Q. Okay. But going back to what we saw on Page 12, you said you're arresting her for refusing to perform field sobriety tests, right?

A. Yes.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1428-1431.

Q. (BY MR. CANO) Okay. So are you saying early on in an encounter you read people their Miranda rights?

A. No.

Q. Okay. When you read her the Miranda rights was she already handcuffed?

A. Yes. She was already advised she was going to be taken into custody for DWI.

Q. (BY MR. CANO) Okay. Now, let's go to Page 1. On Page 1, it's got a reported time kind of up at the top. Do you see that?

A. Yes.

Q. What time is that?

A. 02:09.

Q. Would that be a.m. or p.m.?

A. That would be a.m., in hours.

Q. Okay. So back on Page 12, it says you read her the Miranda warning at 2:44 a.m.; is that right?

A. Yes.

Q. Do they teach you -- do they teach you that a Terry stop has a limited time frame?

A. There is no set limit -- limit on it.

Q. Okay. Is that your understanding of the law?

A. Yes.

Q. Okay. So if we do the math, from 2:09 a.m. to 2:44 a.m., that's 35 minutes?

A. Yes.

Q. (BY MR. CANO) Okay. Well, on the back, on Page 12, didn't you say you're arresting her for refusing to perform standard field sobriety tests?

A. Yes.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1432.

Q. (BY MR. CANO) Okay. Did you write Ms. Wood a ticket?

A. No.

Q. Did you ever try to write Ms. Wood a ticket?

A. No.

Q. Did you ever ask Ms. Wood to sign a traffic citation?

A. No.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1434-35.

Q. Okay. We are going to look over some of your -- your reasons. Well, when you first came up to Ms. Wood, did you ask for her identification?

A. Yes.

Q. Okay. What did you ask for?

A. I first identified myself, and then I asked her for her driver's license.

Q. Did she produce it?

A. Okay. So there in the middle I said, I then instructed the driver she needed to present her driver's license and proof of insurance, in which she did.

Q. Okay. Did she have any problem presenting those?

A. No.

Q. Is it your experience that some intoxicated drivers have problems doing that?

A. Yes.

Q. Okay. Okay. Now -- so she identified herself; is that right?

A. Yes.

Q. Okay. And now -- or soon after she's -- did she start filming you?

A. No. She started filming me and notified me as soon as I walked up.

Q. Okay. So is it safe to say almost immediately you forgot about the traffic tickets?

MR. PIATT: Object to form.

THE WITNESS: No.

Q. (BY MR. CANO) Okay. Well, in your report here on Page 4, does it mention that you pursued those traffic violations?

A. Can you rephrase that question as --

Q. Okay. Did you do anything to issue her a ticket?

A. No --

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1439-1441.

Q. (BY MR. CANO) Okay. So reading by your report, are these preliminary questions about the person's health part of your standard field sobriety tests?

A. Yes.

Q. Okay. And then is there an actual physical part of the standard field sobriety tests?

A. Yes.

Q. Okay. Is that what you were trying to get her to perform?

A. Yes.

Q. Okay. So when you stopped Amanda Wood, okay, did she identify herself to you?

A. Yes.

Q. And did she provide proof that she was a licensed driver?

A. Yes.

Q. And did she provide proof that her car was insured?

A. Yes.

Q. Okay. Did she answer some of your personal questions?

A. Can you rephrase what personal means?

Q. Okay. About her health.

A. Yes.

Q. Okay. Were you saying anything to her at the back of the car?

A. Okay. Back of her vehicle?

Q. Yes.

A. Everything in reference to the standard field sobriety tests.

Q. Okay. Can you tell us how many -- in time how many minutes you were at that position?

A. No.

Q. Okay. At what point -- Okay. At some point did you actually put handcuffs on Amanda Wood?

A. At the point where she refused sobriety -- the standard field sobriety tests.

Q. Okay. Did you want her to perform the physical field sobriety tests?

A. Yes.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1443-1447.

Q. Okay. Now, when you put handcuffs on Ms. Wood, what did you do with her?

A. Place her in the back seat of my patrol vehicle.

Q. Okay. Now, when you were questioning Ms. Wood, was she ever free to leave?

A. No.

Q. When you were questioning Ms. Wood, was she ever free to disregard your orders?

A. No.

Q. (BY MR. CANO) Okay. Now once you put handcuffs on Ms. Wood, was she ever free to access her vehicle?

A. No.

Q. Okay. Once you put handcuffs on Ms. Wood, would she -- would she ever be able to access her vehicle?

A. No.

Q. Okay. Let's go to Page 9 of your report. Do you see a section where there's -- it describes balance?

A. Yes.

Q. Okay. What did you put?

A. Normal.

Q. Okay. Do you see a section where it describes walking?

A. Yes.

Q. And what did you put?

A. Normal.

Q. Okay. Let's go to Page 11. You see a section where it says, Is officer ARIDE certified?

A. Yes.

Q. Okay. What did you put?

A. No.

Q. Okay. But on August 4, 2019, did you hold that certification?

A. I did not.

Q. Okay. Below it, it has a section DRE present?

A. Yes.

Q. Okay. And what was your response?

A. No.

Q. Okay. What is a DRE?

A. Drug Recognition Expert.

Q. Okay. Is that an advanced certification?

A. Yes.

Q. Okay. And did you have that certification on August 4th, 2019?

A. Did not.

Q. Okay. Is that -- is that part of a peace officer's duty, drafting reports?

A. Yes.

Q. Sometimes do you have to draft these after a shift is over?

A. Yes.

Q. Okay. Are they a mandatory requirement?

A. Yes.

Q. Okay. Are you getting paid while you're drafting these reports?

A. Yes.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1450-53.

Q. You mentioned body cameras. When you first contacted Amanda Wood, did you have a body camera?

A. I was not issued one yet.

Q. Okay. When you first contacted Amanda Wood, did your cruiser have a dash cam?

A. No, they did not have one.

Q. Okay. Is that why there's no footage of your initial encounter with Amanda Wood?

A. Correct.

Q. Okay. Would you look at Exhibit No. 3.

Okay. Have you looked it over?

A. Yes. This is the **affidavit we did for a search warrant and magistration, meaning this would be for the blood warrant.**

Q. Okay. Does it appear to be the document that you drafted?

A. Yes.

Q. Okay. Deputy Gereb, is this a standard template?

A. A template as in -- to the warrant, yes.

Q. (BY MR. CANO) Okay. What I'm saying is, let's say you need a search warrant. You don't draft it from scratch, do you?

A. No.

Q. Okay. So are the black boldfaced type, is that things that you entered?

A. Yes, that would be the things that we enter.

Q. (BY MR. CANO) Okay. I'll read it into -- On or about the 4th day of August, 2019, the suspect did then and there operate a motor vehicle in a public place in Bexar County, Texas, while intoxicated by not having the normal use or mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, or a combination thereof, or any other substance into the suspect's body. **Did you write that clause?**

A. No.

Q. Okay. Did you present this document to a magistrate?

A. Yes.

Q. Okay. And was this clause a part of that document?

A. Yes.

Q. Okay. Did you attest under oath to this document's truth?

A. Yes.

Q. Okay. So I don't recall any mention of drugs in your sheriff's report.

A. Correct.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1456-58

Q. Okay. Can you describe the smell of alcohol?

A. Smells like alcohol.

Q. In words?

A. The odor of alcohol smells like alcohol. I'm not sure how you want me to answer that question.

Q. Okay. Are you saying that Amanda Wood was drinking pure ethyl alcohol?

MR. PIATT: Object to the form of the question.

If you understand it, you can answer.

THE WITNESS: Alcohol is -- I believe the combination is, E-T-O-H. Okay. Which remains -- there is some form of ethyl alcohol in there.

Now, I -- I -- I checked off the box that there was a strong odor of alcohol emitting from the vehicle.

Q. (BY MR. CANO) Okay. But I'm asking you to describe in words, what does alcohol smell like?

A. Alcohol. There's nothing -- no other way to describe the alcohol smells like alcohol.

Q. Okay. Well, would you agree that different alcoholic beverages might smell differently?

MR. PIATT: Object to the form of the question.

Q. (BY MR. CANO) Can you make the smell to any particular type of alcoholic beverage?

A. No.

Q. Okay. In your report -- sheriff's report, did you claim that you smelled alcohol from Amanda Wood's car?

A. Yes.

Q. Okay. After Amanda Wood was arrested, did you search her car?

A. No, I did not.

Q. Okay. Did anyone go into the interior of Amanda Wood's car?

A. Yes.

Q. Okay. And who was that?

A. Deputy Bible.

Q. Okay. Deputy Bible. And was this before it was -- the vehicle was towed?

A. Yes, for an inventory search of the vehicle.

Q. Okay. Get back to -- to your Exhibit No. 1. Just briefly. On Page 7 it's got a section of **contraband discovered**. Do you see that, kind of towards the bottom of the page?

A. Yes.

Q. Okay. What did you put?

A. No.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1459-1460.

Q. (BY MR. CANO) Okay. What did you put about her attitude?

A. According to the boxes on the warrant, talkative, cocky, excited, profane and insulting.

Q. Okay. Do you remember if you described Ms. Wood's demeanor in your sheriff's report?

A. I believe I did, yes.

Q. Okay. On Page 9 of Exhibit under resistance to officer, what did you put?

A. Passive.

Q. Okay. Now, towards the middle of the page, it's got a section for body control; do you see that?

A. Yes.

Q. Okay. What did you put?

A. Balance, hesitant. Walking, swaying. And turning I didn't put anything on there.

Q. Okay. Well, back on your sheriff's report, do you recall describing her balance?

A. Yes. I put -- I put normal -- I mean, I'm sorry, I put -- let me go back here.

Q. Page 9.

A. Page 9, correct. Yes, balance and walking was normal.

Q. Okay. So now her body control -- did you say it was hesitant?

A. Yes.

Q. And now did you say her body control was swaying?

A. No. I believe I meant to check that box and I made the walking error in swaying.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1462-1465.

Q. Okay. Now, did Ms. Wood voluntarily give you all a blood sample?

A. No.

Q. Okay. Did you have to -- Well, what did you do?

A. I obtained the blood warrant because she refused on the DIC-24.

Q. Okay. While blood was being drawn from Ms. Wood, was she physically restrained?

A. Yes.

Q. Okay. Did any individuals have to physically touch Ms. Wood?

A. Yes.

Q. And who was that?

A. The SERT Unit.

Q. Okay. What is that?

A. The -- in the jail it's called the Special Emergency Response Team. They specialize in any kind of disturbances that happen in the jail. So if there was a riot, there's inmates that are fighting, you know --let's say the other day we had an individual with a firearm, things of that nature.

Q. Okay. And again, was that the SERT Unit that placed her in the restraint chair?

A. Yes. They are the only ones authorized to do so.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1475.

Q. Okay. Along those lines, did you learn what a Terry stop is?

A. I heard of Terry stops but I don't remember it being called a Terry stop. I believe there's an actual name for that -- I believe it's case law.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1477-78.

Q. Okay. Now, some of your training -- has most of your training been at the Bexar County Sheriff's Academy?

A. Up to that point, yes.

Q. Okay. But are some of these classes taught elsewhere?

A. Yes.

Q. Okay. Is there a reason for that?

A. Bexar County Sheriff's Office doesn't always have the instructors at -- excuse me, they don't always have the instructors to put on that class, such as the intoxilyzer operator. We don't -- we don't have enough instruction to do it. And I believe that there are certain requirements to put on the class that Bexar County doesn't have the ability to do.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1480-1481.

Q. (BY MR. CANO) Okay. But I mean do you actually give your sheriff's reports to the prosecutors?

A. No. We give ours to -- when we turn them in for the -- when we're done, is that what you're asking for?

Q. Uh-huh.

A. We give them to the assistant district attorney to -- to look at the report. And they decide whether they're going to reject or accept the case. And then it gets filed from there to the point -- to the court system.

Q. Okay. Would you agree that your sheriff's report is a government record?

A. Correct.

Q. Okay. When you drafted your report regarding Ms. Wood's incident, were you truthful?

A. Yes.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1483.

Q. Okay. Well, if that's the situation, are vehicles impounded that are parked on private property?

A. Are vehicle impounded on private property?

Q. Yes.

A. That has to be up to the business owners themselves.

Q. Okay. Well, didn't you say Nardis Gun Club was a private business?

A. Correct.

Q. Okay. And did you direct Ms. Wood to park there?

A. I did.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1487-1491.

Q. Okay. So if someone is noncompliant who's under suspicion of DWI, are you going to obtain a biological sample from them?

MR. PIATT: Object to the form of the question. But if you understand it, you can answer.

THE WITNESS: I'm still going to request it.

Q. (BY MR. CANO) Okay. Ultimately will you seek a blood draw warrant?

A. Ultimately I will -- depending on what their answer to the DIC-24 is -- is a refusal or they don't answer, I will -- I will obtain a blood warrant.

Q. Okay. Well, it's at the top of Page 3. If the driver refuses to give a blood sample, the officer will comply with the current refusal policies implemented by the Bexar County District Attorney's Office?

A. Okay. Yes.

Q. Okay. And did you see at the top of Page 3: However, if the subject refuses, a warrant shall be executed in accordance with Bexar County no-refusal policy?

A. Yes.

Q. Is that the policy you enforced with Ms. Wood?

MR. PIATT: Objection --

THE WITNESS: Yes.

Q. (BY MR. CANO) Okay. So -- however, if the subject refuses a warrant shall be executed in accordance with Bexar County no-refusal policy. Have you seen -- have you heard of that policy?

A. Yes. Which is what I also put in my report.

Q. (BY MR. CANO) Okay. So if I'm to understand this correctly, if someone refuses to give a blood sample, do you automatically get a search warrant?

MR. PIATT: Object to the form.

But go ahead and answer if you understand.

THE WITNESS: If they refuse to a breath under blood specimen, according to the DIC-24, then we will obtain a blood warrant.

Q. (BY MR. CANO) Okay. Is that your understanding of the DIC-24 form?

A. Correct. It states it plainly in the report.

Q. Okay. What does this Bexar County no-refusal policy mean?

A. Can't refuse the SFST.

Q. Or -- or what?

A. Or we go -- with -- within the policy.

Q. Okay. But here at the top of Page 4, are they talking about a search warrant for blood?

A. Yep. That's what they're talking about.

Q. So does the no-refusal policy cover SFSTs and blood?

A. It -- it covers the DIC-24. But DIC-24 goes over the -- the breath -- breath or blood specimen how -- how to -- whether you can accept it or refuse it.

Q. Okay. Have you ever heard of the Texas Transportation Code 724.015?

A. I don't know the number offhand. Can you explain that to me?

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1492-1495.

Q. Okay. What's your understanding of the STEP Program?

A. To go out and enforce traffic.

Q. Okay. Did they give you any particulars about the program?

A. They gave us a policy, what to put on the Bexar County side. And we sign an agreement with it.

Q. (BY MR. CANO) Okay. As part of your Bexar County Sheriff's Office training, were there any type of motorists that you were to look for on the STEP patrol?

A. When it comes to STEP, it's just traffic violations. Typically it goes in to people that are speeding. But there are -- again, there's other violations that they also commit as well.

Q. Okay. Were DWIs included in the STEP Program?

A. Yes.

Q. Okay. At -- during your tenure in the STEP Program, was there a minimum number of contacts you had to have with motorists?

THE WITNESS: It was—

MR. PIATT: Object to form --

THE WITNESS: I'm sorry.

MR. PIATT: Go ahead. If you understand the question you can answer.

THE WITNESS: **An average of 2.5 contacts per hour.**

Q. (BY MR. CANO) Okay. What is your understanding of a contact?

A. Like I'm in a contact with you.

Q. Okay. Does that mean pulling a motorist over?

A. In this situation, yes.

Q. Okay. Do these traffic stops have to be initiated within a patrol zone?

A. Primarily they want us to work inside the patrol zone. But if we do happen to catch a traffic infraction outside of zone, it is allowed to be done as well.

Q. Okay. Now, at the end of your shift, did you -- your activities on the STEP Unit have to be documented?

A. Correct.

Q. Okay. How was that done?

A. They have a form that we fill out with the citation, infraction, citation number, along with the time. And then we submit it. Now, if there's -- if an arrest was made or we had to -- we find something

else, we annotate it in a section for remarks. Of course, date, time, work zones we worked. And I believe that was it.

Q. Okay. What did you do with this paperwork?

A. We turned it in and submitted it to the traffic office.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1498.

Q. Okay. Let's talk about overtime. Were all the hours on the STEP Unit overtime pay?

A. Yes.

Q. Okay. And what do you mean by overtime pay?

A. Well, just like -- just like anything in Bexar County Sheriff's Office, you do overtime, you get paid for it.

Q. Okay. Is that a particular -- is that an increase, above your normal pay?

A. If it's overtime, yes.

Q. Okay. Is that a certain ratio to regular hourly pay?

A. I'm not aware of how STEP pays out. From my understanding it was time and a half. But, again, I don't know my hourly rate, as far as that.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1500-1503.

Q. (BY MR. CANO) Okay. Have you seen that document before, Deputy Gereb?

A. Yes.

Q. Okay. Could you tell me what is STEP Comprehensive?

A. It's the STEP -- the comprehensive is just added -- I think it's what they say -- what it is, what -- what exactly the duties are for STEP.

Q. Is STEP Comprehensive focused on regular passenger vehicles?

A. It can be any vehicle.

Q. Okay. Well, during your time on STEP, did you pull over commercial vehicles?

A. No.

Q. Okay. Now, I'm looking on the page, it's got a space for initials. Do you see those?

A. On page --

Q. On any -- various sections of the document.

A. Yes. Yes. There are.

Q. Okay. Did the supervisor go over this document with you?

A. Yes.

Q. And did you have to understand that particular paragraph?

A. Yes.

Q. Did you have to initial the document?

A. Yes.

Q. Okay. On Page 2 of the document, what's a STEP Indicator Score?

A. STEP Indicator Score. So it -- it pretty much calculates the average per hour. So say I work six hours, and I do so many traffic stops. Count the -- averages your time, your -- how many per hour per se. Like it says 2.5, so if I did six hours, I -- I come around 15 stops.

Q. Okay. Let's go to Page 3 of the document. It says, **STEP Officer's Responsibility**. Deputy Gereb, were there things that they expected of you on STEP patrol?

A. Yes.

Q. What did they expect?

A. Well, they expect us to do what we need -- **to maintain the policy** and the current -- what's required of us. Make sure the vehicles are in working condition. If there's anything that needs to be reported, we report it and -- from that point on. Any reports -- to file the proper paperwork. Making sure that all citations were in order. Make sure everything was there.

Q. Okay. Was there -- Did they monitor your performance on the STEP Unit?

A. Yes, they do.

Q. Okay. And what if -- what if it was found they were not happy with your performance, then what?

A. They would talk to us offline and we would go from there. And if it required removal from the STEP Program, then they would -- they would do that.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1508-1511.

Q. (BY MR. CANO) Why did you request a blood draw sample of Amanda Wood?

A. Because she refused a standard field sobriety test and she refused the breathalyzer and --

Q. Were you --

A. -- and blood when asked for the DIC-24.

Q. Were you trying to gather evidence against her?

A. I was trying to make my case.

Q. Okay. And would a blood draw sample help your case?

A. Depending on the outcome of it, whether -- whether it's a case -- it's a case of the case.

Q. Okay. And in situations where the suspect doesn't want to do anything, what do you do?

A. She has her refusal and we obtain a blood warrant.

Q. (BY MR. CANO) Okay. When you have a DWI suspect who refuses to participate, do you **always** draft out a search warrant affidavit for their blood?

A. If a DWI suspect refuses to submit the submission of a breath and/or blood, we will go along with the Bexar County Sheriff's policy, which is to obtain a blood warrant -- or a search warrant in that case.

Q. So is the answer always?

A. If they refuse the volunteer submission of a breath and/or blood.

Q. Okay. As Ms. Wood did?

A. Yes.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1512-1516.

Q. Okay. But are there things you look for as far as vehicular driving that would indicate someone might be intoxicated?

A. As I stated earlier **primarily moving traffic violations.**

Q. Okay. Well, just because there's a moving violation, that doesn't -- does that mean that somebody is intoxicated?

A. **No.**

Q. Okay. No. 16.

Okay. During the course of your training, had you taken classes as to how to draft law enforcement reports?

A. Yes.

Q. What are some of the things they teach you?

A. Report writing.

Q. Okay. Are facts important?

A. Yes.

Q. Okay. Are descriptive terms important?

A. Yes.

Q. Okay. Does it take time to draft some of these incident reports?

A. Yes.

Q. Okay. And is that at the end of the shift?

A. That's at the end of the incident.

Q. Okay. And on some occasions, did you have to draft reports after your shift had ended?

A. Yes.

Q. Okay. Do these have to be -- do these reports have to be produced as a matter of policy?

A. Yes.

Q. Okay. No. 17.

Okay. Do you recognize that document?

A. Yes.

Q. Who is the affiant?

A. Me.

Q. Okay. Is that the commencement of a misdemeanor DWI charge against Amanda Wood?

MR. PIATT: Object to the form of the question.

THE WITNESS: No.

Q. (BY MR. CANO) Okay. Is that a sworn complaint that you made?

A. Yes.

Q. Okay. And is that -- you swore under oath you believe she was intoxicated?

A. I had **reasonable suspicion to charge her with a DWI** -- I'm sorry, enough probable cause to charge her with a DWI.

Q. Okay. Okay. Do you recall earlier I talked about the Texas Transportation Code?

A. Okay.

Q. Okay. Do you remember I asked you about some of the provisions?

A. Yes.

Q. Okay. Would you look at that -- this particular one?

A. Okay.

Q. Okay. Texas Transportation Code, Section 545.351?

A. Yes.

Q. Do you know what it addresses?

A. Speeding.

Q. (BY MR. CANO) Do you see provision number (b) 4 (1)?

A. Yes.

Q. Okay: An operator may not drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard for actual and potential hazards then existing.

A. Yes.

Q. Okay. On this document does it have a posted number?

A. No.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1516

Q. (BY MR. CANO) Have you ever been taught this statute at the Bexar County Sheriff's Office?

A. Yes.

Q. Okay. What's your understanding of the offenses given?

A. If you go one mile per hour over, you're speeding.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1518.

Q. (BY MR. CANO) Okay. Did you claim that Ms. Wood was speeding?

A. I did.

Q. Okay. And you never asked her to sign a citation, did you?

A. No.

Q. Okay. Have you ever read this statute?

A. Yes, I had to read them when I came out to patrol, when we test.

Q. Okay. An officer shall issue a written notice to appear if the offense charged is speeding. Are you familiar with that?

A. Yes.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1524-1526.

Q. Okay. I did. I misspoke earlier. Have you ever seen the Texas Transportation Code, Chapter 724.015?

A. I don't know them by the numbers but I know -- I've seen the -- the laws.

Q. Okay. On clause, let's see (a)(2), would you look at that?

A. Yes.

Q. Is that what you're talking about with the DIC-24?

A. That's part of it, yes. That's the -- to the DIC-25 as well.

Q. Okay.

A. But that's actually stated in the DIC-24.

Q. Okay. So if you request a breath sample and they refuse, is their license going to be suspended?

A. It's a possibility that it can be suspended, yes.

Q. Okay. And on clause (7), do they have a right to contest that?

A. Yes, they do.

Q. Did the Bexar County Sheriff's Office train you or tell you where this statutory no-refusal policy comes from?

MR. PIATT: Objection to the form of the question.

Q. (BY MR. CANO) Can you tell me where this statewide no-refusal policy comes from?

A. The -- the State of Texas.

Q. Can you tell me what particular statute you're referring to?

A. I don't -- I don't know it offhand.

Q. Okay. Did the Bexar County Sheriff's Office ever tell you what that statute is?

A. Not -- not that I recall.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1527-1529.

Q. Okay. How does someone pass or fail this horizontal gaze nystagmus test?

A. This is not a pass or fail test.

Q. Okay. Would you notate what you observe?

A. Yes.

Q. Okay. Well, when you stop motorists, are sometimes is it on the edge of the road?

A. Yes.

Q. Sometimes is it in a dangerous place?

A. Yes.

Q. Okay. When you stop motorists, sometimes is it raining?

A. Yes.

Q. Okay. When you stop motorists, sometimes do they stop near a muddy surface?

A. Yes.

Q. Do these factors, can they affect the -- the field sobriety tests?

A. They can, yes.

Q. Are there some circumstances where you can't safely have them perform these tests?

A. There are some certain circumstances. What I've usually done is call for assistance. So one

officer can stand by the vehicle while I drive the driver to a safe spot or a parking lot to where I can safely conduct or perform a SFST.

In this case Ms. Wood was -- was instructed to drive to the next parking lot, which turned out to be Nardis Public Safety -- I mean, I'm sorry, Nardis Gun Club.

Q. Okay. So is this walk-and-turn test, is it a pass or a fail-type test?

A. **Nothing in the SFSTs is a -- is a pass or fail.**

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1533-1534.

Q. (BY MR. CANO) Do you associate a traffic stop with reasonable suspicion?

A. As to -- No, I don't. A traffic stop is a probable cause for me to stop that vehicle.

Q. Okay. And would that be based upon a perceived traffic violation?

A. Yes.

Q. Okay. Let's go to (E)(a), kind of in the middle of the page, on Page 2. It says: The U.S. Supreme Court has approved a detention of 20 minutes, but has rejected one of 90 minutes.

A. Okay.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1536-1537.

Q. When you affect a traffic stop, do some of them last longer than 20 minutes?

A. Yes.

Q. Okay. Well, in your experience does this checking for warrants and things, does that take longer than 20 minutes?

MR. PIATT: Object to the form.

THE WITNESS: Again, I don't treat any traffic stop the same. I might pull over a car, he might be done in five minutes, might be -- traffic stop, might be done in four or five hours. It really depends on the -- each traffic stop.

Q. (BY MR. CANO) Okay. So could a traffic stop take hours even if the suspect is not arrested?

A. Yes.

Q. Okay.

A. Yes. There are many cases that -- that --I've had traffic stops take longer than, 90 minutes.

Q. Okay. Is that something the Bexar County Sheriff's Office taught you?

A. Yes, as well as other training.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1540-1541.

Q. (BY MR. CANO) What leads you to believe that you have probable cause to arrest someone?

A. Based on the totality of my traffic investigation.

Q. Okay.

A. It can go to many different things.

Q. Okay. Do you base that upon their words?

A. Again, totality of circumstance. Everything is different. Every charge is different. Every offense is different. There are so many different things and variables that go into -- on a traffic stop.

Q. Okay. We've got some factors the Bexar County Sheriff's Office lists on Page 2 on "I," Paragraph I.

Have you been taught to establish probable cause that you could consider suspicion, rumor or gossip?

A. Yes.

Q. Okay. Have you been taught to establish probable cause you could consider a person's general reputation?

A. Yes.

Q. And you're taught to establish probable cause, you could consider a person's appearance?

A. Yes.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1542-1543.

Q. Okay. Now, when you arrest a suspect, do you search around the immediate area where they're arrested?

A. It depends on what the totality of the circumstances, what they're being arrested for.

Q. Okay. And was Amanda Wood arrested outside of her vehicle?

A. Yes.

Q. Now, let's go down to (4)(d), motor vehicle: When the person arrested was not in the vehicle, the vehicle cannot be searched incident to arrest unless the facts show the vehicle was within the area of the immediate control of the arrestee. Is that your -- is that the way you were trained?

A. Yes.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1544-1545.

Q. Okay. You can see the middle of the page you're talking about, First Amendment activities?

A. Okay.

Q. Okay. When someone is filming you or your activities, what do you do, if anything?

A. Let them film.

Q. Okay. And would you let them film throughout the whole process?

A. Yeah.

Q. Would you let them film up to including the time they're arrested?

A. If you're talking about this one, if someone is being arrested, their phone is shut off or put on airplane mode because, one, they're being taken into custody. Number two, if we're taking that phone for evidence, that means that, yes, they have the right to film, but also there is evidence on that phone that we can use.

Q. Okay. Could you have given her phone to her husband?

A. We could have --

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1545-1547.

Q. (BY MR. CANO) Okay. Under policy of 11.16 traffic -- traffic arrest, do you see Section (A)(2)?

A. Yes.

Q. Okay. It says: The officer must have probable cause to believe a traffic offense was committed; it is not required that there actually be a violation.

A. Yes.

Q. Is that the way you're trained?

A. Yes and no. Yes, we were trained under certain circumstances. And, no, because I've never --me personally, I've never arrested without a violation.

Q. (BY MR. CANO) What does -- what does policy (A)(2) state?

A. The officer must have probable cause to believe a traffic offense was committed; it is not required that there actually be a violation.

Q. Okay. And is that the policy that you enforce on duty?

A. Yes.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1548.

Q. Okay. But do you regard Class C misdemeanors as a very minor offense?

A. Yes.

Q. Well, let's look at 11.27 Special Class C Arrest Rules For The Sheriff's Office. Okay. Number A, discretion to issue citation in lieu of arrest: In case of Class C misdemeanor, an officer has the discretion not to arrest the violator and can instead issue a written citation ticket for the offense.

Okay. Is that what they -- they instruct you that you have the discretion?

A. Yes, we use -- we use discretion.

Q. Okay. And are there circumstances where you can actually arrest someone for a Class C misdemeanor?

A. Well, at that point it would be a Class B misdemeanor.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1550.

Q. Okay. If you're ultimately dismissed, does the Sheriff himself have to sign off on that?

A. Yes.

Q. Okay. Well, let's say you're punished, can you contest that punishment?

A. Yes.

Q. Okay. Can you demand a hearing?

A. Yes.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1554

Q. Okay. Are you instructed that the sheriff has final say in disciplinary matters?

A. Yes.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1557-1558.

Q. Okay. Let's look at the bottom, (D), on the bottom of Page 1. Okay: Deputies may use reasonable force to overcome resistance in the lawful performance of duties, even though there's no immediate or apparent danger calling for self-defense.

Okay. Have you seen that policy?

A. Yes, it's the same thing, Chapter 9.

Q. Okay.

A. But I believe there have been revisions to it if I'm correct. Not to that bottom one, but as a whole due to -- due to, I guess, the updates in the climate. So that, you know, there have been updates. But again, it's primarily the same thing, yes.

Q. Okay. But are there situations where there's no apparent danger where you've had to use force?

A. Yes.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1560-1561.

Q. (BY MR. CANO) Do your policies tell you what parts of a car you can and cannot search?

A. **No.** I would just say that a vehicle can be searched depending on what the totality of what you're searching for, what -- whether there's consent, probable cause or inventory. If it's inventory, you're pretty much looking at everything that's either -- that's pretty much in plain view. **Probable cause, you're going to search top to bottom. That car -- that car is yours all day.** Consent up until the person says, Hey, you can search here, here, or here, or, hey, I want you to stop searching.

Q. Okay. Is there anything stopping you from searching the entire vehicle?

A. It depends on the circumstances. Was it consent search? And there -- there can be limitations based on what the driver or the owner of the vehicle allows you to do. If it was a probable cause search and there's no limitation. If there -- if it's an inventory search, again, it's just inventorying the vehicle, what's a -- pretty much in plain view.

Q. Okay. Is that what you were taught at the sheriff's academy?

A. That, and what's been taught with me through numerous amounts of training I've been through.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1572.

Q. (BY MS. CUBRIEL) You know what, I will withdraw that question.

You said that you were asking her interview questions. Did she refuse to answer your questions after telling you about her gallbladder surgery?

A. Yes.

Q. And so at that point if she's not answering any of your questions, **are you able to gauge whether she's got her mental faculties to be operating a motor vehicle?**

A. **No.** I did so attempt to ask her some of the questions, but again it was met with not -- not willing to answer.

Q. Okay. And you said that at least under Subsection E on this affidavit she stated -- driver stated she refused to take the SFST because she does not have to. And I believe earlier we established those are standard field sobriety tests?

A. Yes.

Q. You were asked earlier if you arrested Ms. Wood because she refused to perform the standard field sobriety tests?

A. Correct.

ORAL DEPOSITION OF DEPUTY JOE GEREB:

MARCH 5, 2024

ROA.24-51006.1578-1581.

Q. Few quick questions. Was his incident report Exhibit No. 1?

A. Mine?

Q. Yeah, I'm trying to clarify. Because I want to refer back to your incident report on Page 7.

A. Yes, that's Exhibit 1.

Q. Okay. If you look at the middle of the page, Was there any other motorists on the roadway that could have been placed in jeopardy or apprehension of collision. Do you see what you put?

A. Looking right over -- Okay. No.

Q. Okay. Was she the only car on the road?

A. Going in that direction, yes.

Q. Okay. And let's go to your warrant. On Page 1 and 2, where you're describing her alleged vehicle conduct. Is there anything in your affidavit that says she drove in an unsafe manner?

A. The whole entire paragraph.

Q. No, I'm saying specifically, did you use the words "in an unsafe manner," on your affidavit?

A. Did I use the words "unsafe manner," no.

Q. Okay. And when you attest to this affidavit, did you attest all the content in the affidavit?

A. Yes.

Q. Okay. Now, much has been said or talked about discussion you had with Ms. Wood. Can you name a Texas statute where a motorist has to talk to you?

A. No.

Q. Okay. Can you name any provision of the United States Constitution where a motorist has to talk to you?

A. No.

Q. Okay. On August 4, 2019, were you a medical doctor?

A. No.

Q. On August 4, 2019, did you have any medical training?

A. I've had some from the military. But nothing as far as to be a doctor or nurse license, no -- or EMT license, no.

Q. Okay. So no advanced training that would govern you in anatomy?

A. No.

Q. One last question. On Page 1 of 2 of your affidavit, okay. On Page 2, what specific Texas Transportation Code section does almost striking a curb reflect?

A. I couldn't give you the thing. But I can tell you right now it's called failing to maintain a single lane of traffic.

Q. Okay. So are you saying you put words in your affidavit that you can't necessarily link to a specific Texas statute?

MS. CUBRIEL: Objection; form.

Q. (BY MR. CANO) Can you link every sentence in Paragraph 5 with a specific statute?

A. Yes. But I can't give you the number offhand.

Q. Okay. So you can't do it by memory, can you?

A. Not the number, no.

Q. Okay.

DEPUTY GEREB ADMISSIONS

ROA.24-51006.1624-27.

1. Admit that you didn't write Plaintiff Amanda Wood any tickets for traffic offense during your traffic stop on August 4, 2019.

ADMIT

2. Admit that you were on patrol for the Selective Traffic Enforcement Program (STEP) on August 4, 2019, in your traffic stop of Amanda Wood.

ADMIT

9. Admit there is no dash cam video footage of your initial traffic stop of Amanda Wood on August 4, 2019.

ADMIT

10. Admit that Amanda Wood denied drinking alcohol to you on August 4, 2019.

ADMIT

11. Admit you swore out an Affidavit for a Search Warrant authorizing a forced blood draw of Amanda Wood on August 4, 2019. Pursuant to the Fed. R. Civ. Pro. 36(a)(4), Deputy Gereb **admits** he

completed an affidavit on August 4, 2019 for a search warrant authorizing the search of the person of Amanda Wood for blood evidence and the seizure of the same as evidence.

13. Admit that Amanda Wood was filming your actions with a cellular phone on August 4, 2019.

Pursuant to the Fed. R. Civ. Pro. 36(a)(4), Deputy Gereb **admits** that Amanda Wood was holding up a cellular phone on August 4, 2019, but Deputy Gereb is without information as to whether Amanda Wood was actually filming, or when or how long she was filming.

14. Admit that you seized Amanda Wood's cellular phone on August 4, 2019.

ADMIT

17. Admit that you signed a criminal complaint against Amanda Wood, charging her with a Misdemeanor D.W.I. offense.

ADMIT

22. Admit you seized Amanda Wood's cellular phone used to record you on August 4, 2019, and classified the phone as "evidence" in your Sheriff's Report.

Pursuant to Fed. R. Civ. P. 36(a)(4), Deputy Gereb **admits** that he took Plaintiff's Wood cellular phone into evidence, but is without information and knowledge as to whether Ms. Wood was actually recording their encounter.

23. Admit you were not Advanced Roadside Impaired Driving Enforcement (ARIDE) certified on August 4, 2019.

ADMIT.

24. Admit in your August 4, 2019 Bexar County Sheriff's Office Report, you described Amanda Wood's "resistance" as passive,

Pursuant to Fed. R. Civ. P. 36(a)(4), Deputy Gereb **admits** that in the Driver Contact Report, he noted Plaintiff's "Resistance to Officer" as Passive.

25. Admit in your August 4, 2019 Bexar County Sheriff's Office Report, you described Amanda Wood's "balance" as normal.

ADMIT.

26. Admit in your August 4, 2019 Bexar County Sheriff's Office Report, you described Amanda Wood's "walking" as normal,

ADMIT.

28. Admit you were not certified as a “Drug Recognition Expert” (DRE) on August 4, 2019.

ADMIT.

**BEXAR COUNTY, TEXAS
INTERROGATORY RESPONSES
ROA.24-51006.1620-21.**

(3) **INTERROGATORY NUMBER THREE**: State the monetary value of grant money Bexar County, Texas received under the Selective Traffic Enforcement Program (STEP) for the calendar year 2019.

RESPONSE: \$469,377.69

5) **INTERROGATORY NUMBER FIVE**: State the total number of traffic related arrests under the Bexar County Sheriff's Office Selective Traffic Enforcement Program (STEP) for the year 2019.

RESPONSE: Bexar County objects on the basis that this interrogatory improperly presumes STEP is a program of the Bexar County Sheriff's Office. Subject to and without waving the foregoing objection 47.

(6) **INTERROGATORY NUMBER SIX**: Describe the process how Bexar County, Texas applies for participation in the Selective Traffic Enforcement Program (STEP) for yearly grant money.

RESPONSE: In any given year, the Texas Department of Transportation will issue a request

for proposals. Representatives of the Bexar County Sheriff's Office will complete the application.

(7) INTERROGATORY NUMBER SEVEN:

Identify the Bexar County, Texas officials and their rank who submitted the application(s) for the 2019 Bexar County Sheriff's Office Selective Traffic Enforcement Program (STEP) grant program.

RESPONSE: Bexar County objects on the basis that this interrogatory improperly presumes STEP is a program of the Bexar County Sheriff's Office. Subject to and without waving the foregoing objection Lt. Augustin Pruneda and Sheriff Javier Salazar.

(8) INTERROGATORY NUMBER EIGHT: State the total number of D.W.I. arrests made by the Bexar County Sheriff's Office Selective Traffic Enforcement Unit (STEP) in the year 2019.

RESPONSE: Bexar County objects on the basis that this interrogatory improperly presumes STEP is a program of the Bexar County Sheriff's Office. Subject to and without waving the foregoing objection 16.

(10) INTERROGATORY NUMBER TEN: State the total number of traffic related arrests made by Bexar County Sheriff's Office Deputy J. Gereb under

the Selective Traffic Enforcement Program (STEP) in the year calendar year 2019.

RESPONSE: Bexar County objects on the basis that this interrogatory improperly presumes STEP is a program of the Bexar County Sheriff's Office. Subject to and without waving the foregoing objection 14.

(11) INTERROGATORY NUMBER ELEVEN:
State the total number of D.W.I. related arrests made by Bexar County Sheriff's Office Deputy J. Gereb under the Selective Traffic Enforcement Program (STEP) in the year calendar year 2019.

RESPONSE: Bexar County objects on the basis that this interrogatory improperly presumes STEP is a program of the Bexar County Sheriff's Office. Subject to and without waving the foregoing objection 8.

12) INTERROGATORY NUMBER TWELVE:
State the total number of traffic stops made by Bexar County Sheriff's Office Deputy J. Gereb under the Selective Traffic Enforcement Program (STEP) in the year calendar year 2019.

RESPONSE: Bexar County objects on the basis that this interrogatory improperly presumes STEP is a program of the Bexar County Sheriff's Office. Subject to and without waving the foregoing objection 143.

BEXAR INTERROGATORY RESPONSES

ROA.24-51006.1632-1635.

INTERROGATORY NUMBER SIXTEEN: State whether these published TxDOT figures in (Att. 1; p. 12 Appendix 'A') accurately reflect the 2019 STEP Grant Awards to Bexar County, Texas of \$50,000 to Qualified CMV Grants and \$540,000 to Qualified COMP Grants.

RESPONSE: The amount was COMP \$599,138.37 and CMV \$28,877.33. This was broken down as: Comprehensive Grant - \$469,377.69 award with a qualifying match from Bexar County of \$129,760.68. Commercial Motor Vehicle - \$22,783.43 award with a qualifying match from Bexar County of \$6,093.90.

INTERROGATORY NUMBER TWENTY:

Describe the (process/methods) how the Bexar County Sheriff's Office reported the number of arrests to the Texas Department of Transportation (TxDOT) during its 2019 Selective Traffic Enforcement Program (STEP) as referenced in (Att. 1; p. 5).

RESPONSE: It was captured on the Daily Activity Report, the statistics were compiled and recorded and submitted to e-grants.

INTERROGATORY NUMBER TWENTY-TWO:

Describe Sheriff Javier Salazar's role in formulating official policies for the Bexar County Sheriff's Office.

RESPONSE: Javier Salazar is the duly elected Sheriff for Bexar County. He reviews and changes policies based on community interaction, court cases, and common sense. The Bexar County Sheriff's Office has a policy and planning division responsible for researching and advising the Sheriff on requested or statutory changes. Sheriff Salazar and his administration review and decide if what is in place is sufficient or makes changes accordingly.

INTERROGATORY NUMBER TWENTY-

THREE: Describe the main duties of Sheriff Javier Salazar in matters of law enforcement for Bexar County, Texas.

RESPONSE: Javier Salazar is the duly elected Sheriff and Chief Law Enforcement Officer for Bexar County, Texas. He holds a statutory office.

INTERROGATORY NUMBER TWENTY-FOUR:

Describe how the Bexar County Sheriff's Office complied with the TxDOT mandate of a minimum of 2.5 traffic stops per hour as referenced in (Att. 1; p. 3) during the 2019 Selective Traffic Enforcement Program (STEP).

RESPONSE:

PERFORMANCE MEASURES AND TARGETS

As stated from TxDOT's Request for Proposals (RFP) Manual, "Performance measures and targets provide guidance to determine efficiency and effectiveness of the project, serving as measures of project progress. Each performance measure should be designed as an evaluative mechanism for measuring, The project's level of success. Performance targets determine the degree of progress toward achievement of established performance measures and the effect on identified problems. Performance targets are expressed quantitatively (numbers of things) and are monitored and reported throughout the grant or contract period. The scoring criteria will award a point range based on the data entered compared to the statewide performance average, or STEP indicator, for each enforcement element selected. The STEP indicator is a target or goal rather than a quota and has been found to be an average enforcement performance measure across the State.

**TARGET NUMBERS AND STEP ELEMENT
INDICATOR SCORE**

The comprehensive grant has overall target numbers for each component as stated in the Goals and Strategies. The grant contract also stipulates that

the Department and officers will maintain a 2.9 STEP element indicator score. The STEP element indicator score is given on a point system determined by the type of grant specific arrest or citations issued. DWI arrests, speed, Occupant Restraint and ITC citations count towards the STEP element indicator score. All other arrests and other citations are given points as well, but are NOT counted toward the "Overall STEP indicator score." The monthly grade we will now receive is based on the STEP element indicator score. Should the Department and officers not meet the 2.9 STEP score, the project director must justify in the monthly performance report to TxDOT as to why the Department was unable to meet its contractual score. Officers use this as a guide to maintain the 2.9 STEP element indicator number while working the STEP Program. TxDOT expects productivity throughout the entire overtime shift. The lack of production throughout any EXTENDED period, without a business related reason, is an audit item that could cause the county to return grant funds already paid out and will jeopardize current or future funding. Officers should show activity throughout their STEP assignment.

INTERROGATORY NUMBER TWENTY-FIVE:

State whether the arrest of Amanda Wood on August 4, 2019 was conducted by the Bexar County Sheriff's

Office 2019 Selective Traffic Enforcement Program (STEP Unit).

RESPONSE: Yes, Deputy Joe Gereb was working under the 2019 Contractual Agreement for STEP, when this arrest was made.

BEXAR COUNTY ADMISSIONS

ROA.24-51006.1622-23.

11. **Admit** Deputy J. Gereb followed official Bexar County, Texas Sheriff's Office 4th Amendment D.W.I. Policies in his arrest of Amanda Wood on August 4, 2019.

RESPONSE: Pursuant to Fed. R. Civ. Pro. 36(a)(4), it is unclear what Plaintiff means by "4th Amendment D.W.I. policies." Deputy Gereb's conduct conformed with the 4th Amendment and any Bexar County policy.

18. **Admit** the stated basis for the affixed (Att. 5) September 4, 2020 District Attorney's Motion to Dismiss Cause No. 620451 State of Texas v. Amanda Wood was Insufficient Evidence.

ADMIT.

25. **Admit** that Sheriff Javier Salazar was the Final Policymaker for Bexar County, Texas in matters of law enforcement on August 4, 2019, (see Affixed Att. 6).

ADMIT.

26. Admit that Deputy J. Gereb was acting under the color of law for the Bexar County Sheriff's Office Selective Traffic Enforcement Program (STEP) on August 4, 2019, (see affixed Att. 6).

Defendant Bexar County objects because this Request for Admission improperly seeks a legal conclusion. Defendant Bexar County **admits** that Deputy Gereb was working STEP on August 4, 2019.

29. Admit the 2019 TxDOT Selective Traffic Transportation Program required Bexar County Sheriff's Office to create and designate enforcement zones of patrol for the traffic stops, (See Att. 4; pp. 7-8).

ADMIT.

BEXAR COUNTY S.T.E.P. POLICY 2018-19
ROA.24-51006.1783-85.

II. Performance Measures and Targets

STEP COMPREHENSIVE

Agencies will be considered to be in compliance with TxDOT performance expectations as long as they maintain an average of 2.5 vehicle stops or more during each hour of STEP-COMP enforcement.

III. STEP INDICATOR SCORE

The COMP Grant contract stipulates the Department and Officers will maintain a 2.5 stops per hour STEP Indicator score.

V. STEP OFFICER'S RESPONSIBILITY

1. In attempting to maintain each of the program's objectives, Officers should attempt to conduct each stop based on the specific Grant assignment.

2. Maintain the average stated under performance measures.

3. The Officer should run the offender's drivers license for warrants, run the vehicle's registration for its history, and must document taking one of the following three actions:

**Issuing a written warning, issuing a citation,
Making an arrest.**

4, All enforcement activities must be initiated within, or in route to, an Established Enforcement Zone as outlined in the Grant's Operational Plan.

BEXAR COUNTY: 'REASONABLE SUSPICION'

ROA.24-51006.1743-44.

**Temporary Detention of Suspect on
Reasonable Suspicion**

Policy 11.21(E)(2)(a):

(a) The U.S. Supreme Court has approved a detention of 20 minutes, but has rejected one of 90 minutes.

Policy 11.21(E)(2)(b):

(b) The reasonableness of the detention will depend in part on what is learned **after the initial stop.**

Policy 11.21(E)(2)(h):

(h) Factors which, in combination with other factors, may justify temporary detention include: **time of day, character of area in which suspect found,** physical features reasonably resembling those of person or vehicle sought, **parking in unusual area,** evasive or furtive gestures, **whether the person fits the area in which he is found,** information that a disturbance has occurred, evasive or false answers to questions, possession of burglar tools, flight upon seeing officers, **reputation of suspect or premises,** officers told by other persons that suspect is engaging in criminal activity or has weapon, and other facts consistent with criminal activity.

PROBABLE CAUSE CONSIDERATIONS

ROA.24-51006.1748-49.

Bexar County Policy 11.04(E)

Although subjective and undefined suspicion or speculation does not justify an arrest, deputies may rely on these to justify further investigation which may produce probable cause.

Bexar County Policy 11.04(F)

Generally suspicious conduct by a person not suggesting a specific crime does not establish probable cause, but it does provide a basis for further investigation.

Bexar County Policy 11.04(G)

An arrest may be made if the deputy has probable cause to believe the person committed some offense, even if the deputy is not sure which offense was committed.

Bexar County Policy 11.04(I)

Some of the factors which a deputy may consider, together and in the context of the whole situation, in determining probable cause include:

1. Suspicion, rumor, gossip;
2. A person's general reputation;
4. A person's appearance, statements, and conduct;
6. High crime rate of a particular place or area, recent criminal activity in a place or area;

Bexar County Policy 11.15(E)
ROA.24-51006.1759

11.15(E) The information available to the officer must provide him with probable cause to believe the person committed the offense; **but it is not required that the offense actually have been committed.**

TRAFFIC ARRESTS

ROA.24-51006.1759

Policy 11.16

A. Under the Texas Motor Vehicle Code, a full custodial arrest is authorized for any traffic offense.

1. However, if the offense is Speeding, and the offender signs the citation, no custodial arrest may be legally made, unless the vehicle is licensed outside Texas or the offender is not a Texas resident; for other traffic offenses, citation is optional.

2. The Officer must have probable cause to believe a traffic offense was committed; it is not required that there actually be a violation.

OTHER TEMPORARY DETENTIONS

ROA.24-51006.1745-46.

Bexar County Policy 11:22(A)(1)

(A) Traffic Detentions: Temporary detention involving traffic regulation is permissible in these circumstances:

(1) Where the Officer observes what he reasonably believes to be a traffic violation.

SEARCH INCIDENT TO LAWFUL ARREST

ROA.24-51006.1751-52.

Policy 16.06(B) Scope of Search:

(1) Object: The search may be made for any weapon, or for contraband, instrumentality, or evidence of any crime.

(4) Motor Vehicle: When an officer lawfully arrests the occupants of a vehicle, the vehicle may be searched.

a. The search may extend to the entire passenger compartment of the vehicle and to any containers found therein, but not to the trunk. (See Impoundment of Vehicles under inventories for Justification of entry into the trunk).

SEIZURE OF RECORDING DEVICES
AND MEDIA
ROA.24-51006.1802-04.

Policy 46.04 Procedures

2. If there is probable cause to believe that evidence of a serious crime has been recorded, a Deputy should:

(a) Advise and receive instructions from a supervisor.

(b) Ask the person in possession of the recording to voluntarily relinquish the recording device or media so that it may be viewed and/or copied as evidence; and

(c) In exigent circumstances, where it is reasonable to believe that the recording will be destroyed, lost, tampered, or otherwise rendered useless as evidence before a warrant can be obtained, **the recording or media may be seized under a temporary restraint**. A warrant must be obtained in order to examine and copy the recording, and the chain of custody must be clearly documented per Sheriff's Manual Chapter 19 Evidence Collection, Destruction and property handling.

3. In exigent situations where it is objectively reasonable to believe that immediate viewing of recordings is necessary to prevent death or serious

bodily harm of another before a warrant can be authorized, **the recording or media device may be seized and viewed.**

4. Whenever a recording device or media is seized without a warrant or obtained by voluntary consent, the seized item shall be held no longer than reasonably necessary for Deputies, acting with due diligence, to obtain a warrant. The device must be returned at the earliest possible time and its owner given instruction on how it can be retrieved. In all cases, property receipts shall be provided to the owner.

D. Supervisor Responsibilities

A supervisor shall be summoned to any incident in which an individual recording a Deputy's activity is going to be arrested or when recording equipment may be seized without a warrant or lawful consent.

USE OF FORCE POLICY 9.02(D)

ROA.24-51006.1775-76.

9.02(D) Deputies may use reasonable force to overcome resistance of in the lawful performance of duties, even though there is no immediate need or apparent danger calling for self-defense.

DISCIPLINE AND DISCHARGE

ROA.24-51006.1771.

Bexar County Policy 4.22

A. The Sheriff may employ disciplinary penalties up to and including immediate discharge for just cause. Infractions of this Manual of Policy and Procedures are considered against the best interests of the Sheriff's Office and may result in action in the form of a reprimand, suspension, demotion, or dismissal for just cause.

ADOPTED NHTSA POLICY OF DETERRENCE

ROA.24-51006.1787.

GENERAL DETERRENCE

The fear of arrest is the leading deterrent.

Law enforcement officers must arrest enough violators enough of the time to convince the general public they will get caught, sooner or later if they continue to drive while impaired.

ADOPTED NHTSA POLICY OF DETERRENCE

ROA.24-51006.1790.

DETERRENCE

: Driving public's fear of being arrested.

: Enough violators must be arrested to convince public they will get caught.

Unless there is a real risk of being arrested, there will not be much fear of arrest.

Law enforcement must arrest enough violators to convince the public they will get caught if they continue to drive while impaired.

ADOPTED NHTSA POLICY OF DETERRENCE

ROA.24-51006.1793.

SPECIFIC DETERRENCE

: Caught and arrested

**: Public must perceive appreciable risk of
being caught and convicted**

**: Enforcement creates and sustains fear of
being caught**

BEXAR COUNTY D.W.I. POLICIES

ROA.24-51006.1737-1738.

Policy 24.05(c): Should the suspect voluntarily refuse to submit to a chemical breath test, the officer completes the DIC-23 refusal form which is witnessed by a Notary Public and then proceeds to the video procedure.

Policy 24.05(c)(1): In cases where the arrested suspect is extremely intoxicated, but the breath test does not indicate a significant level of alcohol (.08 or above), the subject should be afforded the opportunity to submit to a blood test. However, if the subject refuses, a warrant shall be executed, in accordance with BEXAR COUNTY NO REFUSAL POLICY.

Deputy Gereb's Report: ROA.24-51006.1695.

Amanda Wood did exit the vehicle **with her cell phone still recording**. I then advised Amanda Wood I was going to ask her some questions for a roadside interview. Before I could ask any questions, Amanda Wood asked what a roadside interview was. I advised her it is an interview on the side of the roadway. I then asked Amanda Wood if she had any medical conditions such as seizures, epilepsy, diabetes, recent injuries but before I could finish the question, Amanda Wood states she had her gall bladder removed over 18 months ago, and she wears contacts. I advised Amanda Wood the questions I'm asking are associated with a Standard Field Sobriety Test (SFST). Amanda Wood stated she does not consent to interview questions. I then asked Amanda Wood if she had been drinking to which she stated she does not drink. As I began to further the interview process, Amanda Wood continuously interrupted all questions from being asked. I then advised Amanda Wood that I was going to perform the SFST to which she stated she was not going to take the test and doesn't have to. I advised Amanda Wood Bexar County and San Antonio are no refusals for SFST's.

I then advised Amanda Wood for her refusing to take the SFST, she was going to be taken into custody for DWI.

Deputy Gereb's Report: ROA.24-51006.1699.

Involved Property:

**Blood alcohol kit/ Evidence / BLOOD VIALS/
Quantity: 2 (2 X BLOOD VIALS)**

**Personal: Cell Phone/ Evidence/ SAMSUNG
NOTE 8/ Value 0.00 (SAMSUNG NOTE 8)**

Deputy Gereb's Report: ROA.24-51006.1702.

Balance: Normal

Walking: Normal

Resistance to Officer: Passive

Deputy Gereb's Report: ROA.24-51006.1704.

Pre-Arrest Screening

Were Field Sobriety Tests given?

No

If SFST not administered, why?

Defendant refused tests

One-leg stand

Is Officer ARIDE Certified?

No

DRE Present?

No

DRE Evaluation performed?

No

Deputy Gereb's Report: ROA.24-51006.1706.

Search conducted: Yes

Reason: Inventory Tow

Contraband discovered: No

Length of Detention: Over 30 minutes

STATE'S MOTION TO DISMISS NO. 620451
ROA.24-51006.1667-68. ROA.24-51006.2201-2202.

State of Texas

v.

Offense: D.W.I.

Amanda Wood

Bexar County, Texas

This day came on to be heard the Motion of the State's Attorney filed herein, asking permission of the Court to Dismiss the Criminal Action for the following reasons, to-wit:

INSUFFICIENT EVIDENCE

which having been heard by the Court is satisfied that the reasons stated are good and sufficient to authorize such dismissal. It is therefore **CONSIDERED, ORDERED, and ADJUDGED** that this Criminal Action be and the same dismissed, and that the Defendant be discharged.

Date: September 4, 2020

K. Peery
Assistant District Attorney

Melissa Vara
Magistrate