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January 14, 2019

Catherine O'Hagan Wolfe, Clerk of Court
United States Court of Appeals for the Second Circuit
40 Centre Street
New York, NY 10007

RE: *Ferreira v. City of Binghamton, et. al.*
Case Number: 17-3234

Dear Madam:

Pursuant to the Court's directive during the January 11, 2019 oral argument of the above appeal, the following are plaintiff's annotations to the trial testimony regarding applicable police standards, practices and procedures. Once the direct and/or circumstantial evidence permitted the jury to reasonably infer a violation of *any* of these practices, the "Special Duty Rule" became inapplicable.

Plaintiff submits that as a prevailing party, he is entitled to every favorable inference from this testimony, particularly since such proof was wrung from adverse witnesses.

- There are professional and minimum police standards of care, practices and procedures that are **supposed to be followed and complied with**. Inv. Hawley [A 160]; Chief Zikuski [A925-26, 929].
- All police **must comply** with these minimum standards of care, code of conduct, of police practices and procedures. PO Charpinsky [A208-09].

- There is a **minimum acceptable level of safety and performance** in how SWAT operates. PO Charpinsky [A211].
- According to standards of care and police practices, police are **never allowed to unnecessarily expose members of community to unnecessary danger**, including excessive force. PO Charpinsky [A 209-210]; Capt. Hendrickson [A435-36]; PO Spano [A614-15]; PO Miller [A678-79, 931]; Inv. Hawley [A162-63]; Chief Zikuski [A931].
- It is a **violation** of police standards, practices and procedures for a police department to fail to gather and provide sufficient and proper intelligence. Chief Zikuski [A958-59].
- Police **must** obtain and use all available and reliable intelligence. Chief Zikuski [A954-55]
- Good intelligence, like planning, is **critical** to the success of a raid. Capt. Hendrickson [A457].
- Proper planning is **required** by police standards of care, good and accepted practices. Chief Zikuski [A959].
- It is **critical** to plan from the beginning to end for all tactical situations. Capt. Hendrickson [A448].
- Standards of procedures **should cover** every aspect of the raid, from intelligence gathering to contingencies for the unexpected. Capt. Hendrickson [A450].
- SWAT **has to** plan thoroughly and execute the plan with required surprise and speed. Capt. Hendrickson [A468].
- SWAT **has to have** different contingency plans so if something goes wrong, can abort and convert to a different tactic. Capt. Hendrickson [A473-74].

- No records of a meeting or briefing before raid, and NO discussion of alternative or backup plans, or what to do if problems breaching door [A331-32]. **NO record of any plan.**
- Failure to have adequate personnel is a **violation** of police standards, practices and procedures. Chief Zikuski [A979].
- Proper planning and preparation includes surveillance. Capt. Hendrickson [A451-53].
- Part of proper preparation is pre-raid surveillance, selection of the proper number of qualified team members and specialty equipment. Capt. Hendrickson [A451-52].
- Surveillance **complies** with police standards, practices and procedures. Chief Zikuski [A962].
- Obtaining layout of apartment before send people out on a mission **complies** with the requirements of police standards of care, practices and procedures. Chief Zikuski [A961].
- Police can **never** do too much reconnaissance. Capt. Hendrickson [A457].
- Where a confidential informant is used, **good and accepted practice requires obtaining corroborating information and more intelligence** before sending out police. Chief Zikuski [A973-74].
 - While better likelihood of success with more information, Chief Zikuski [A963], no layout/building plans or intelligence regarding interior, PO Miller [A697]; PO Charpinsky [A321], and no surveillance or reconnaissance. Inv. Hawley [A370-71, 347]; PO Miller [A686]; and no corroboration of confidential informant. Chief Zikuski [A974-75, 895, 997].
- To ensure safety, police **must have** all necessary equipment. Chief Zikuski [A977-78]
- Police standards, practices and procedures **require** bringing different tools and specialty equipment. Capt. Henderson [A470-71, 452]

- No discussion about what battering rams to bring, PO Charpinsky [A238] and did not know in advance what would fit. PO Charpinsky [A 321].
- SWAT has protective equipment, such as shields, to protect the officers and **normally bring and use**. Chief Zikuski [A 995-96].
 - Not done here. PO Charpinsky [A225].
- **Supposed** to use the least amount of necessary force, and unnecessary or excessive force **violates** police standards of care, practices and procedures. Inv. Hawley [A162-63]; PO Miller [A677-79]; Chief Zikuski [A931, 929]; PO Charpinsky [A209-10]; Capt. Hendrickson [A435-36]; PO Spano [A614-15].
- SWAT authorized to use less than lethal weapons. Inv. Hawley [A166]. Different types of non-lethal weapons: beanbag shotgun, TASER, gas. PO Charpinsky [A231-235, 323].
 - Not given to Miller. PO Miller [A699-701].
- If an operation **violates** police standards, practices and procedures, it is not successful, and this was an unsuccessful operation. Chief Zikuski [A983, 980].
- When police **violate** their standards, practices and procedures, people can be harmed. Chief Zikuski [A926]. Causes of death and injury include poor planning, briefing, improper tactics and poor execution. Capt. Hendrickson [A474-76].

Respectfully submitted,

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