

IN THE UNITED STATES DISTRICT COURT DISTRICT OF CONNECTICUT

Colleen Lord and Robert Francis	:	Docket Number:
Talbot, Jr., Co-Administrators of the	:	3:22-cv-00322 VLB
Estate of Carl Talbot	:	
Plaintiffs	:	
	:	
	:	
vs.	:	
	:	
Carlos Padro, Arden Coggins, Nicholas	:	
Belanger, Jeffrey Gibbons, Eddie Daniels,	:	
Nekengie Brookshire, Corron Petaway,	:	
Charles Washington, Malcolm Gatison,	:	
Patrick Davidson, Bii-Ron Wilkes,	:	
Jon Antoine and Margo Zukowska	:	August 18, 2023
Defendants	:	

PLAINTIFFS’ LOCAL RULE 56(a)1 STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

1. Carl ‘Robby’ Talbot Jr. was pronounced dead at Yale New Haven Hospital on March 21, 2019, at 9:40 a.m. after being brought there from the New Haven Correctional Center (NHCC). See, Exhibit 13 State of Connecticut Office of the Chief Medical Examiner Report of Autopsy, Carl Robert Talbot, page 1.
2. The State of Connecticut Office of the Chief Medical Examiner concluded Mr. Talbot’s “Cause of Death” was:

SUDDEN DEATH DUE TO PHYSICAL STRUGGLE WITH RESTRAINT, ATHEROSCLEROTIC AND HYPERTENSIVE CARDIOVASCULAR DISEASE AND MORBID OBESITY.

And his “Manner of Death” was:

HOMICIDE (STRUGGLE/RESTRAINT INVOLVING CORRECTIONS PERSONNEL)

See, Exhibit 13 State of Connecticut Office of the Chief Medical Examiner Report of Autopsy, Carl Robert Talbot, pages 1 and 2 of 6.

3. **Between 7:05 a.m. and 7:24 a.m. on March 21, 2019, Mr. Talbot was (1) sprayed twice with oleoresin capsicum spray (OC spray, also known as pepper spray or chemical agent) directly in his facial area while he was laying on his back in a shower (7:05 a.m.); (2) sprayed directly in his facial area a third time while being placed in an elevator (7:12 am); and (3) sprayed a fourth time in his facial area in his Restrictive Housing Unit cell (7:15 a.m.). See, Exhibits 28,29, 30,31 (Handheld video footage of incident).**
4. **Each time Mr. Talbot was sprayed his face was inches away from the OC cannister. Defendant Padro and the other correctional officer defendants were aware from their training that with regard to “Nozzle to target distance ...It is recommended that the nozzle to target distance not be less than 3 feet. It is the soft tissue of the eyes that are of most concern. This will minimize the hydraulic needle effect, which is nothing more than solid particles travelling at fast speeds penetrating several layers of soft tissue”. See, Exhibits 28, 29, 30, 31 (handheld video footage of incident); Exhibit 14, Connecticut Department of Correction Center for Training & Staff Development Lesson Plan – OC Certification (Revised 5/15/2009), page PO 1728).**
5. **Each “Correctional Officer Defendant” (Carlos Padro, Arden Coggins, Nicholas Belanger, Jeffrey Gibbons, Eddie Daniels, Corron Petaway, Charles Washington, Malcolm Gatison and Patrick Davidson) was certified in the use of OC by the Department of Corrections. See, Exhibit 1, Deposition of Carlos Padro, pages 102-103; Exhibit 2, Deposition of Arden Coggins, page 17;**

Exhibit 3, Deposition of Nicholas Belanger, pages 26, 28-29; Exhibit 4, Deposition of Jeffrey Gibbons, pages 11-13; Exhibit 5, Deposition of Corron Petaway, pages 14-15; Exhibit 6, Deposition of Charles Washington, pages 17-18; Exhibit 10, Training records of Eddie Daniels, page RFP 1517; Exhibit 11, Training records of Malcolm Gatison, Page RFP 1539; Exhibit 12, Training records of Patrick Davidson, pages RFPP 1523, 1535.

6. The Department of Corrections Center for Training and Staff Development's "OC Certification Lesson Plan" (revised 5/15/2009) instructed correctional officers on the use of OC spray and identified the following objectives that would be accomplished by the end of the training session:

"By the end of the training session, the following objectives will have been accomplished:

1. After a lecture and discussion, the staff member will be able to describe the effects produced by exposure to OC.
6. After a lecture and demonstration, the staff member will be able to explain the decontamination and first aid process for a subject that has been exposed to OC.
7. After a lecture and demonstration, the staff member will be able to identify warning signs and risk factors that may warrant EMS. See, Exhibit 14, page PO 1720(emphasis supplied).

7. On March 21, 2019, each Correctional Officer Defendant was trained as to the specific effects produced by exposure to OC listed in the OC Certification Lesson Plan, specifically:

EFFECTS OF OC

OC is an inflammatory that causes mucous membranes to swell. The effects will concentrate on the eyes, respiratory system and skin.

PHYSIOLOGICAL

Eyes: Will close (involuntarily) when OC contacts nerve endings in eyes. This allows for momentary visual impairment. OC will feel like many tiny needles being put in the eyes.

Respiratory System: Will cause uncontrollable coughing when inhaled (aerosol versions). The OC inflames the respiratory tract. Shortness of breath or dyspnea will result. People will complain that they cannot breathe, or that their lungs are on fire. Nose may run excessively. Coughing should usually stop after 5 minutes.

Skin and Face: Will cause a burning sensation on exposed skin. People with fair complexions may feel greater heat. Areas around the eyes, nose and mouth remain red longer due to mucous membranes becoming inflamed.

The physiological effects of OC can cause confusion and disorientation. The subject feels pain, along with a loss of breath. Some common signs of someone being affected by OC is that their hands will go to their face, upper body will go forward, subject gropes around for the ground, subject will go to hands and knees, and hearing impairment (auditory exclusion) which may explain (not excuse) a lack of response to verbal commands.

PSYCHOLOGICAL

Panic: restrictions of breathing may cause victims to panic, resulting in hyperventilation and anxiety attacks. Fears of blinds, suffocation and helplessness add to the stress the subject is under. This may explain (not excuse) a lack of response to verbal commands. (Emphasis in originals).

See, Exhibit 14, OC Certification Lesson Plan pages PO 1721-1722;

Exhibit D, Deposition of Jeffrey Gibbons, pages 85-92); Exhibit 6,

Deposition of Charles Washington, pages 58-61.

8. After being sprayed a third and fourth time by the defendant Padro, between approximately 7:12 am and 7:18 am, Mr. Talbot repeatedly exhibited in his cell the following symptoms to the Correctional Officer Defendants Padro, Daniels, Belanger, Gibbons, Coggins and Petaway: confusion, panic, pain,

his hands went to his face, his upper body went forward, he groped around for the ground, he went to his hands and knees, and he was unable to sit quietly on his bunk though directed to do so by the defendants. See, Exhibits 30, 31, 32 (Handheld video footage of incident).

9. Between 7:12 a.m. and 7:18 a.m. none of the Correctional Officer Defendants in or around the cell (Padro, Daniels, Belanger, Gibbons, Coggins and Petaway) initiated any steps to provide decontamination procedures to Mr. Talbot. See, Exhibits 29, 30, 31, 32, 33 (Handheld video footage of incident).
10. The Correctional Defendants (Padro, Daniels, Belanger, Gibbons, Coggins and Petaway) were aware that Mr. Talbot had been sprayed and required medical attention and decontamination. See, Exhibits 28, 29, 30, 31, 32 (Handheld video footage of incident); Exhibit 4, Deposition of Jeffrey Coggins, Page 51);
11. At 7:12 a.m. Defendant Padro states to Defendants Coggins, Daniels, Belanger and Gibbons “Call the nurse have her come here and check him out”, and tells Mr. Talbot “Listen, listen the nurse is going to check you out, OK”, and “the nurse is going to set you up”, and Coggins acknowledges that medical is needed and is coming by stating “Medical’s coming out”, and “you want medical?”. See, Exhibits 29, 30 (Handheld video footage of incident); Exhibit 2, Deposition of Arden Coggins, pages 267-268);
12. At 7:14 a.m. Defendant Padro sprays Mr. Talbot for a fourth time, positioning the OC cannister only inches away from Mr. Talbot’s face at the time of discharge. See, Exhibit 30 (Handheld video footage of incident).

13. **Defendant Nurse Zukowska arrives at Mr. Talbot’s cell at 7:17 a.m. and is informed by Lt. Padro that he requires decontamination; however, she brought no saline solution to begin the decontamination process, and she leaves the cell. See, Exhibits 31, 32 (Handheld video footage of incident).**
14. **Each Correctional Officer defendants was required to adhere their conduct to the requirements of State of Connecticut Department of Correction Administrative Directive 6.5, “Use of Force” (Exhibit 15) and 6.5A, “Authorized Armory Items utilized during Use of Force Situations” (Exhibit 16). Exhibit B, Deposition of Arden Coggins, pages 23-25; Exhibit 3, Deposition of Nicholas Belanger, pages 25, 27-28; Exhibit 4, Deposition of Jeffrey Gibbons, pages 44-45; Exhibit 6, Deposition of Charles Washington, pages 19-20.**
15. **Exhibit 15, Administrative Directive 6.5 on Use of Force cites as “Authority and Reference” for the provisions of the Directive the following citations:**
 - a. **United States Constitution, Eighth Amendment:**
 - i. **Whitley v. Albers, 475 U.S. 32 (1986) and,**
 - ii. **Hudson v. McMillain, 503 U.S. 1,(1992).**

See, Exhibit 15, State of Connecticut Department of Correction Administrative Directive 6.5., page 1 of 6.
16. **Each of the Correctional Officer Defendants was aware that Mr. Talbot had been sprayed with OC and thereby required medical attention, specifically flushing of his eyes, removal from the contaminated cell for evaluation and treatment by medical staff, a shower, and a change of clothing. DOC Administrative Directive 6.5A, as well as the specific training provided in their OC Certification Lesson Plan mandated that they provide to Mr. Talbot the**

following decontamination efforts:

Decontamination. Decontamination of any exposed person and the contaminated area shall be accomplished as soon as practical and consistent with the safe and secure operation of the facility upon restoration of control of the incident. Decontamination of any exposed person shall include at a minimum:

- i. flushing of the eyes;
- ii. a shower (when available);
 - i. If a shower is not available, or practical due location of showers or posing a security risk to safety and security, the supervisor on scene shall at a minimum ensure that the inmate exposed to chemical agent is to be removed from the affected area and brought to a medical screening room for evaluation and treatment by medical staff;
- iii. change of clothing;
- iv. medical attention;
- v. removal of the person from the area if possible.

See, Exhibits 28, 29, 30, 31, 32, 33 (Handheld video footage of incident); Exhibit 16 (Administrative Directive 6.5A); Exhibit 14, (OC Certification Lesson Plan page 000940) See, Exhibit 2, Deposition of Arden Coggins, pages 267-268); Exhibit 6, Deposition of Charles Washington, pages 47-48, 62-63, 91-92 (decontamination means “..clean cell, shower, medical will look, check ‘em...flushing of the face...that’s the process); pages 202-204. Exhibit 5, Deposition of Corron Petaway, pages 65, 87, 92-100 (“according to the – Use of Force, that is the call”).

17. All Correctional Officer Defendants were required to determine, after asking Mr. Talbot, if he had any pre-existing medical conditions that would require referral for medical attention. Each Correctional Officer Defendant was required to, but did not, take the following steps to safeguard Mr. Talbot’s physical well-being:

“On a subject exposed to OC, after the subject has been properly restrained, staff will remove them from the contaminated area. Monitor that he subject is breathing normally. Ask subject if they have any pre-existing medical conditions, to include:

- a. Heart problems;
- b. Respiratory problems;

- c. Lung problems;
- d. Diabetes;
- e. High Blood Pressure

If any of these conditions exist, seek medical attention. In addition, staff should seek medical attention for subjects exposed to OC if:

- a. The subject is under the influence of drugs or alcohol;
- b. The subject is having significant difficulty breathing (ask subject question, if they can answer then they are most likely not having difficulty breathing)
- c. The subject loses consciousness (apply CPR as necessary)
- d. The subject has shallow breathing combined with sweating.
- e. **THE SUBJECT REQUESTS MEDICAL ATTENTION**

Once a subject is removed from the contaminated area follow these decontamination procedures;

- i. Remove contaminated clothing.
- ii. Flush face and eyes with cool water.
- iii. Continually re-assure subject that effects will wear off shortly.
- iv. Monitor subject activity and breathing, encourage normal breathing.
- v. **DO NOT ALLOW SUBJECT TO RUB EYES.**
- vi. Do not apply salves, ointments or creams to decontaminate. These will trap the OC to the skin causing increased effects.

See, Exhibits 30, 31, 32, 33 (Handheld video footage of incident); Exhibit 14 (OC Certification Lesson Plan page PO 1728-1729); Exhibit 5, Deposition of Corron Petaway, page 105;

18. None of the Correctional Defendants in or adjacent to the cell at or prior to 7:18 a.m. (Padro, Daniels, Belanger, Gibbons, Coggins and Petaway), nor Defendant Zukowska provided to Mr. Talbot the medical attention required by Administrative Directive 6.5 A (Decontamination”) though each of them knew that (1) Mr. Talbot had been repeatedly sprayed with OC; (2) Mr. Talbot’s clothing was contaminated with OC; (3) Mr. Talbot’s cell was contaminated with OC; and (4) Mr. Talbot was exhibiting the effects of OC exposure. See,

Exhibits 30, 31, 32, 33 (Handheld video footage of incident); Exhibit 5, Deposition of Corron Petaway, page 64.

- 19. Mr. Talbot's medical records from his incarceration at NHCC from September 2018 until January 2019, and from his re-admission screening dated 3/20/2019 were replete with references to his obesity, respiratory problems (specifically asthma, and sleep apnea), for which he received medications in addition to utilizing a CPAP/Bi-PAP machine that was in his cell. He was suffering from withdrawal symptoms and required mental health medications. See, Exhibit 21. Talbot Medical Records 2018-2019; Exhibit 22, Talbot Mental Health Screening by Dr. Scott Mueller upon admission signed 3/20/19 at 4:21 pm.**
- 20. Defendant Nurse Zukowska treated Mr. Talbot while he was assigned to NHCC from September 2018 – January 2019 and in her capacity she had access to his medical records detailing his respiratory issues, asthma and sleep apnea. In October 2018 Nurse Zukowska specifically referred to Mr. Talbot's use of a CPAP machine that was stored in his cell in a medical note she authored ("...Staff reported he is not using his CPAP machine which is stored in his cell") See, Exhibit 17, Medical Note by defendant Zukowska dated October 17, 2018.**
- 21. Beginning at 7:18 a.m. the Correctional Officer Defendants (Padro, Coggins, Gibbons, Belanger, Petaway, Washington, Davidson) collectively engaged in a physical effort to apply "In-cell" restraints to Mr. Talbot. In so doing, numerous defendants restrained Mr. Talbot's arms, legs and mid-section,**

preventing him from moving. Weight and pressure was directly applied to Mr. Talbot's body while he is on his stomach by defendant Washington in the presence of the other defendants. During this time defendant Washington is seen sitting or leaning his body weight upon Mr. Talbot until directed by Lt. Coggins to cease doing so. See, Exhibit 32 (Handheld video footage of incident); Exhibit 2, Deposition of Lt. Coggins, pages 302-303 "That's why I directed Officer Washington to get off of him, because he was pressing down on his body...So I directed Washington to get off of him"); Exhibit 6, Deposition of Charles Washington, pages 141 ("I do recall it – I do recall putting my body weight on him"); page 144 ("...are you putting your body weight on Mr. Talbot now? In my opinion, I think I did; but I think I lost balance at that point is what made me lean backwards that way...So I might – I might so at this point, I do have lean on him") page 153 ("The position he was in at the time on his stomach..."); pages 221-222 ("There was a point that I did lean on him, put my weight on him, and the bounce part was his leg came up and repositioning") pages 32-34 ("Defendant Washington was found to have violated DOC regulations '...when he leaned his body weight on IM Talbot while attempting to disassemble the in-cell restraint setup and while stating "light work" as he exited the cell following IM Talbot's in-cell restraint placement", a finding that Washington did not challenge).

22. At 7:21 a.m. Lt. Padro ordered that Mr. Talbot be 'flipped over', and he is then seen on his back. See, Exhibit 32 (Handheld video footage of incident); See, Exhibit 2, Deposition of Arden Coggins. Page 309 ("After they said 'flip him over', I knew he was on his back").

23. Each of the Correctional Defendants involved in the physical effort to apply In-cell restraints (Padro, Coggins, Gibbons, Belanger, Petaway, Washington, Davidson, Gatison) were OC certified and knew that there were medical risk factors associated with using physical force to restrain a person who has been sprayed with OC. As a result of their OC certification training by the DOC these Correctional Defendants were aware that:

“Some physical factors make subjects more susceptible to problems associated with OC...One issue in the Law Enforcement community regarding the use of OC is that of Position Asphyxia.

Positional Asphyxia is when a person cannot breathe due to mechanical pressure that compresses a subject’s body, keeping them from being unable to breathe. The situation usually occurs during violent struggles between staff and subject’s where the subject is restrained and placed on their stomach.

A person who is being restrained by staff who has been sprayed with OC is going to have difficulty breathing to begin with. Applying mechanical compression and placing the subject on their stomach increases the breathing difficulty. A natural reaction to not being able to breathe is to struggle more violently, which will cause the staff member to think that the subject may be resisting. As discussed in the Behavior Management lesson Relative/Assaultive Countermeasures, when talking of stabilizing the subject “At no time should staff place their body weight on an inmate in a manner that will inhibit their breathing ability” and “staff will be expected at all times to be cognizant of the physical condition of the inmate (i.e. responsiveness).” (Emphasis in original).

There are some factors that increase an individual’s susceptibility to Positional Asphyxia. They are:

- a. Obesity**
- b. Alcohol and Drug Use**
- c. Enlarged hearts (where cardiac arrhythmia can result from low oxygen and stress)**

These factors are compounded when the subject is sprayed with OC and placed on their stomach with mechanical pressure. As soon as the person is restrained, get them off their stomach and begin the decontamination first aid process.

These factors can also present itself during a transport of a restrained subject. Place the subject in a position that will allow normal breathing.

Never transport someone who has been exposed to OC on her face or stomach. Constant monitoring of the subject is critical. Never leave a contaminated subject alone. Lastly, inform the receiving agency/facility that the subject has been exposed to OC so that they can continue the monitoring and first aid. See, Exhibit 14, OC Certification Lesson Plan, pages PO 1729-1730; Exhibit 6, Deposition of Charles Washington, pages 152-155.

- 24. At 7:24 a.m. Mr. Talbot was placed in In-cells and the defendant Coggins states “Good Job, Good Job” to each of the Correctional Officer Defendants (Petaway, Washington, Davidson, Gibbons, Gatison) as they leave the cell. Coggins asks each of the Correctional Officer defendants if they are “OK” but never inquires of Mr. Talbot if he needs any medical care, nor do any of the other Correctional Officer Defendants (Padro, Petaway, Washington, Davidson, Gibbons Gatison). See, Exhibit 33 (Handheld video footage of incident); Exhibit 2, Deposition of Arden Coggins, page 310 (“Do you say at that point, ‘Talbot are you okay’? No I do not. At any point do you say that? No, I believe not”).**
- 25. At 7:24 a.m. Defendant Washington states “light work right there, light work”, and no Correctional Officer Defendant expresses any concern for the medical well-being of Mr. Talbot nor offers any medical assistance to him though he has been subjected to OC spray and remains in an area contaminated with OC spray. See, Exhibit 33 (Handheld video footage of incident); Exhibit 6, Deposition of Charles Washington, pages 198-199.**
- 26. At 7:24 a.m., while defendants Padro, Coggins, Washington, Gatison, Davidson, Gibbons and Petaway and Zukowska are in the cell, Mr. Talbot is lying on his back, chained, and not moving. According to the defendants,**

they did not hear Mr. Talbot speak out or scream, or in any way orally communicate from the point in time the application of In-cell restraints began at 7:18 a.m. until the time they left him in the cell at 7:24 a.m. See, Exhibit 1, Deposition of Carlos Padro, page 318 (“as soon as he lay down and said ‘good night guys’ he stopped talking”); Exhibit 2, Deposition of Arden Coggins, pages 304-305 (“So at this point, it’s about two minutes since the first officers entered the cell and began the application of the force...now about two minutes and 30 seconds. Have you heard Mr. Talbot say anything? No. Have you heard him scream out in pain at all? No. Or complain of his eyes burning? No. We’re now about three minutes into the process and do you hear anything from Mr. Talbot? No.”); Exhibit 3, Deposition of Nicholas Belanger, pages 67-68, 71-72; (between 7:18:33 and 7:21:33 a.m. he “ha[s] not” heard Mr. Talbot’s voice at all in the time period); Exhibit 5, Deposition of Corron Petaway, pages 141-145;

27. Mr. Talbot remains unresponsive to any verbal or physical stimuli after application of the In-cell restraints and at 7:23/7:24 a.m. defendant Nurse Zukowska enters the cell and states “Talbot I’m going to...okay?”...”Talbot”...”Talbot”...”Talbot can you say anything”...”Talbot”...”Allright Talbot”, however Mr. Talbot fails to respond in any way to Nurse Zukowska. See, Exhibit 33 (Handheld video footage of incident); Exhibit 7, Deposition of Malgorztea Zukowska, page 213. Exhibit 6, Deposition of Charles Washington, pages 197-198).

28. Defendant Zukowska testified that upon entering the cell Mr. Talbot was not

“screaming in any way that he’s in pain from – the spray”, he does not “complain of his eyes”, he does not “complain of his skin burning”, he “is not coughing”, though she hears “other officers coughing in the cell”. See, Exhibit 7, Deposition of Malgorztea Zukowska, pages 213-214.

29. At the time of this incident Defendant Zukowska had been provided information on ‘the medical part’ of OC decontamination, specifically that if an inmate had been exposed to OC spray in a cell “the cell was now contaminated with the OC spray”, and “the person’s clothing would be contaminated as well”, and their “face or the skin around their face” would also be contaminated.” See, Exhibit 7, Deposition of Malgorztea Zukowska, pages 32-35. She was also familiar with “the effects” of OC spray, that “at a minimum’ the decontamination process requires that ‘the person’s eyes be flushed”, a “shower be provided if available”, and the “person be removed from the room” so the person “will not be, you know, exposed to constant coughing...-- you know, because – also it’s on the wall, if you touch the wall, touch your skin, or something like that but – so it’s just a precaution, you know...maybe a half an hour. It’s aired out; washed. That’s what they do.” See, Exhibit 7, Deposition of Malgorztea Zukowska, pages 36-35.

30. Plaintiff’s expert, Kamran Loghman, invented OC spray in the 1980’s and opines that:

“In my professional opinion Mr. Talbot became nonresponsive during restraint and immediately at the end of the restraining process as evident in the video (19:18 minutes). At this time, the subject is no longer complaining, nor moving or jittering as he did before. This is not because Mr. Talbot suddenly became compliant. As described earlier under the section “Physiological and Psychological effects of

Overexposure,” It is virtually impossible to be relaxing and restful when the subject has been exposed to excessive amount of spray”. See, Exhibit 18, Expert Report of Kamran Loghman, page 26).

- 31. Although Mr. Talbot was not ‘decontaminated’ as that term is defined in the Administrative Directive 6.5A (Exhibit 16) and the OC Certification Lesson Plan of the DOC (Exhibit 14), Lt. Padro announced at 7:24 a.m. to the Correctional Officer defendants present (Coggins, Washington, Petaway, Gibbons, Gatison, Davidson) and to Nurse Zukowska “Alright, he’s fine he’s been contaminated – Are you ready to go?”. See, Exhibit 33 (Handheld video footage of incident).**
- 32. Despite each defendant present being aware that Mr. Talbot has received none of the required medical care mandated by Administrative Directive 6.5a regarding decontamination, none of the defendants present provided any medical care to Mr. Talbot in order to decontaminate him, remove him from the contaminated area or bring him to a medical screening room to be evaluated by medical staff. See, Exhibits 30, 31, 32, 33 (Handheld video footage of incident).**
- 33. Each of the Correctional Officer defendants present at 7:24 a.m. (Padro, Coggins, Washington, Petaway, Gibbons, Gatison, Davidson) filed out of the cell, as did defendant Nurse Zukowska. Mr. Talbot remained alone in the cell, on his back, unresponsive, not moving, and not reacting in any manner to the OC spray that has not been remediated and is covering his facial area, eyes, mouth, and clothing, and contaminates the air in his cell See, Exhibit 33 (Handheld video footage of incident); Exhibit 18, Expert Report of Kamran**

Loghman. Exhibit 6, Deposition of Charles Washington, pages 189-190 (At the time of order from Lt. Padro to move Mr. Talbot's leg, Mt. Talbot was "dead weight", and Mr. Talbot did not participate in the motion to bend his legs, and the CO's were required to "repositioned them").

34. Defendant Nurse Zukowska and Lt. Padro re-enter Mr. Talbot's cell at 7:26:35 for approximately 35 seconds. She testified that "...I check again and I spoke to him. I will talk mental health, you know about your phone call issue, you know, who you want to call. Nothing. You know, it was just that's it." And when she testified 'nothing' she meant that "there was no verbal response", he "didn't open his eyes and blink and acknowledge you" and "he didn't move his hands and try to wave" and he "wasn't screaming out of discomfort from having been sprayed" and he wasn't "coughing" or "sneezing". See, Exhibit 34 (Video of Hallway Inspections between 7:26 a.m. and 9:00 a.m.); Exhibit 7, Deposition of Malgorztea Zukowska, pages 257-259.

35. Defendant Nurse Zukowska testified that '...other than his lack of movement' or his "lack of verbal communication", there was "no indication of any distress" and "That was him. He was always, liking to play opossum for certain situations". See, Exhibit 7, Deposition of Malgorztea Zukowska, page 259.

36. At no time during her short re-visit to the cell did defendant Nurse Zukowska "give him any more decontamination solution", and at no time did Lt. Padro say to her that "Mr. Talbot should be removed from the cell", or "that his clothes should be taken off" or "that he should be showered" or "mention

anything about protocols from DOC”. Nurse Zukowska testified “They do their job. We do our job”. See, Exhibit 7, Deposition of Malgorztea Zukowska, page 260-261.

37. Mr. Talbot never receives any further medical care from any of the Correctional Officer defendants or Nurse Zukowska. His eyes are never flushed with cool water. He is not placed in a shower. He is not removed from the affected area (the contaminated cell) and brought to a medical screening room for evaluation and treatment by medical staff. His contaminated clothing is not removed or changed. He received no medical attention other than a few drops in his eyes. See, Exhibit 33 (Handheld video footage of incident).
38. Defendant Corron Petaway was outside Mr. Talbot’s cell when Nurse Zukowska and Lt. Padro re-entered the cell at 7:26:35 and again conducted a 1 second walk-by tour inspection at 7:29:18 and on both occasions he knew that Mr. Talbot’s had been sprayed with OC, his clothing had not been changed, the cell was contaminated, and Mr. Talbot should have been removed, but he “didn’t say anything to the supervisor about getting him out of the decontaminated cell (sic)”. See, Exhibit 5, Deposition of Corron Petaway, pages 97-101.
39. Plaintiff’s medical expert, Dr. Brian Swirsky, a cardiologist, opined that:

“If the correctional officers recognized respiratory arrest (by observation of lack of breathing) or had nurse Zukowska identified respiratory arrest (and likely cardiac arrest), then prompt resuscitation efforts to include physical decontamination, removal from the contaminated environment, CPR to include assisted ventilation, chest compression, removal of physical restraints, and timely notification to

EMS, then it is my opinion that, more likely than not, Mr. Talbot would have survived on 03/21/19.” See, Exhibit 19, Expert report of Dr Swirsky, page 4.

- 40. Lt. Padro testified that “...the correctional officers...who participated ...are all subject to the same Administrative Directives that [he was]”. See, Exhibit 1, Deposition of Carlos Padro, page 83.**
- 41. Captain Marco Perez investigated this incident on behalf of the DOC Security Division and found that he would have charged Lt. Padro with violating “6.5 Use of Force” based on “...his failure to decontaminate the inmate”, and he testified that “on camera, it’s clear that Lieutenant did not decontaminate the inmate. That is a clear violation”, and that “Mr. Talbot had not been decontaminated under the definition of these regulation” and “...no supervisor ensured to make sure that he was decontaminated”, and “...no correctional officer who was involved in this matter did anything to ensure that Mr. Talbot be decontaminated under these regulations”. See, Exhibit 26, Deposition of Captain Marco Perez, pages 120,124,154.**
- 42. Captain Perez did not charge any of the correctional officers or the other supervisor on scene (Lt. Coggins) though the decontamination provision requirements were “...binding on Lieutenant Coggins” and “on every one of the CO’s that were present”, and testified that “In hindsight, Lieutenant Coggins could have probably been violated as well”. See, Exhibit 26, Deposition of Captain Marco Perez, pages 157-161).**
- 43. Lt. Arden Coggins was a lieutenant and supervisor on scene along with Lt. Padro. See, Exhibit 2, Deposition of Arden Coggins, pages 214-216.**

44. Lt. Coggins testified that at the time he left him in the cell Mr. Talbot “obviously did not seem fine” and was “unresponsive”, “absolutely quiet...lying on his back”, “hadn’t spoken or made sounds for 15 or 20 minutes”...not responding to any verbal commands or discussions“, was “...lying on his back in five-point restraints in-cells, not speaking, not moving, not screaming, in his view, he was not a threat at all to any of the officers” and “...at that point in time control of the incident had been restored”. See, Exhibit 2, Deposition of Arden Coggins, pages 323, 337-338, 350-351.
45. Lt. Coggins testified that he had a “responsibility to make sure that everybody is okay during an incident. If anybody displays any kinds of acts of maybe having trouble breathing or can’t see or needs removal from a situation, as a supervisor I’ll make sure everyone is safe during the incident” and that “continually assess the well-being of both staff and inmate” means “throughout the use of force continuously”. See, Exhibit 2, Deposition of Arden Coggins, pages 342-343.
46. Lt. Coggins testified that he has “...always been aware of his duty to intervene for as long as he has been on the department staff” and that his understanding of his duty is accurately stated as “Any DOC employee regardless of rank who witnesses another DOC employee using what the witnessing employee objectively notes to be excessive of illegal use of force shall intervene and attempt to stop that DOC employee from using such force”, and that “...his understanding is that this “...has been [his] duty for

as long as [he] has been a supervisor”. See, Exhibit 2, Deposition of Arden Coggins, pages 176-178.

47. Lt. Coggins testified that he was aware that when a prisoner has been sprayed there is a requirement that their clothing be removed”, that he “understood that until a person is properly decontaminated, they will still feel the effect of that use of force in the OC spray on them”, and that the air in [Talbot’s] cell had been contaminated by OC spray”, and that “...when he left the cell and the door would be closed that Mr. Talbot would be in the room with that contaminated air” See, Exhibit 2, Deposition of Arden Coggins, pages 343-347.
48. Lt. Coggins is aware that intent of the decontamination requirements in Administrative Directive 6.5A is “...to prevent harm or further harm to the inmate” and that “this provision exists so that an inmate who has been subjected to OC spray will not continue to suffer the effects of OC spray”. See, Exhibit 2, Deposition of Arden Coggins, pages 348-349.
49. Lt. Coggins testified that he “didn’t pay attention to whether the nurse performed any physical checks on Mr. Talbot’s well-being”, however he did see her “..decontaminate with saline and rinse his eyes out”, but that “..based on his training and experience, and his own definition of what ‘flushing of the eyes is’, what he saw Nurse Zukowska do did not meet his understanding of what was required by ‘flushing of the eyes’. See, Exhibit 2, Deposition of Arden Coggins, pages 338, 356, 358-360.
50. Lt. Coggins testified that once control of the incident had been restored,

“...the decontamination process for Mr. Talbot was required to begin” and that there were “certain minimum requirements with regard to decontamination of an exposed person that were required to take place”. See, Exhibit 2, Deposition of Arden Coggins, pages 351-352.

- 51. Lt. Coggins testified that he “left the cell nonetheless without Mr. Talbot receiving any flushing of his eyes as he understood he was to receive” pursuant to Administrative Directive 6.5A. See, Exhibit 2, Deposition of Arden Coggins, pages 359-360.**
- 52. Lt. Coggins testified that a shower was available to Mr. Talbot “on the other end of the hall – of the corridor...maybe 15 feet” away from his cell, and there was no reason Mr. Talbot “...could not have been escorted under the supervision of one or more correctional officers to that shower that was available 15 or so feet down the hallway”, and that he “...had other situations where inmates in the restrictive housing unit have had the need for a shower and been escorted there by guards”. See, Exhibit 2, Deposition of Arden Coggins, pages 360-361.**
- 53. Lt. Coggins testified that “he did not order [a shower] to happen”, he “knew it was a requirement of the policy”, he “knew it was available” and, despite that he “did not take any steps to get Mr. Talbot to the available shower down the hall in Foxtrot”, though he knew Mr. Talbot was an “exposed person” and he “needed decontamination”. See, Exhibit 2, Deposition of Arden Coggins, pages 360-361.**
- 54. Lt. Coggins testified that he understood that “...from the time he became a**

supervisor that he had an independent duty to safeguard the well-being of an inmate” and that if he saw that “...someone else is doing something who is a supervisor or another correctional officer failing to do something that’s required under these regulations” he had a “...duty to intervene and prevent another correction officer from violating what he understood to be the clear terms of the policy”. See, Exhibit 2, Deposition of Arden Coggins, pages 363-364.

55. Lt. Coggins testified that “I’m saying that – I’m saying that we did not correctly decontaminate Mr. Talbot, and I don’t know why he wasn’t escorted down the hallway and put in the shower. It wasn’t authorized and he was left in the cell which he should have been changed out”. See, Exhibit 2, Deposition of Arden Coggins, page 364.

56. Lt. Coggins testified that “all of this happened despite [his] knowledge of these regulations”, and “despite his authority as a supervisor to order any of these things to happen”. See, Exhibit 2, Deposition of Arden Coggins, page 365.

57. Lt. Coggins testified that he had “...the authority to require that Mr. Talbot’s eyes be flushed out with water”, and he “did not undertake any steps in order to meet the requirements of this policy though he had the power to do it”. See, Exhibit 2, Deposition of Arden Coggins, page 365.

58. Lt. Coggins testified that he “...could have taken him down to the shower or ordered him taken down to the shower because it was available but [he] didn’t”, and he “...knew he had that authority but he didn’t exercise it” and

“...that was a decision he made”. See, Exhibit 2, Deposition of Arden Coggins, page 365.

- 59. Lt. Coggins testified that “...at a minimum he could have insured that Mr. Talbot who had been exposed to the chemical agent was removed from the affected area”, but he “...chose not to”. See, Exhibit 2, Deposition of Arden Coggins, page 366.**
- 60. Lt. Coggins testified that he “...could have brought [Talbot] to a medical screening room for evaluation on [his] order” and that he was aware of that authority vested in him but he chose not to, and that Talbot “...could have been treated by medical staff in that medical screening room who could have evaluated his breathing or his cardiac or any of his other potential complications”, but “...[he] did not afford him that opportunity”, and under these regulations he “...not only had the authority to do that but also the duty to do that”, and he chose not to”. See, Exhibit 2, Deposition of Arden Coggins, page 367.**
- 61. Lt. Coggins testified that with regard to his authority and duty to order that decontamination efforts be undertaken for Mr. Talbot, “...the same is true with the change of clothing”. See, Exhibit 2, Deposition of Arden Coggins, page 367.**
- 62. Lt. Coggins testified that as part of his “...duty to safeguard inmates under your supervision and control, [he] never asked Mr. Talbot if he was okay?” See, Exhibit 2, Deposition of Arden Coggins, page 369.**
- 63. Lt. Coggins testified that with regard to the decontamination requirement**

pertaining to “Removal of the person from the affected area if possible”, there was nothing about the removal of Mr. Talbot from the contaminated cell “...that would not have been possible had [he] ordered it”, that he had “...sufficient personnel there to escort him” and he had “...the authority under all of the regulations there to order Mr. Talbot removed”, and “...being aware of all that [he] chose not to do it”. See, Exhibit 2, Deposition of Arden Coggins, page 370.

64. **Administrative Directive 2.17** entitled “Employee Conduct” states that the following behavior “...shall be strictly prohibited”:

30. Failure to properly conduct tours and/or inmate counts. See, Exhibit 20, Administrative Directive 2.17, pages 000015 and 000017.

65. **Lt. Arden Coggins testified that this provision applies to “...the failure to properly evaluate an inmate who has been placed in in-cells in the Restricted Housing Unit” and “...it’s prohibited to fail to do a tour effectively or according to standards”. See, Exhibit 2, Deposition of Arden Coggins, page 140.**

66. **Administrative Directive 6.5A sets forth the “Procedures Required to Monitor an Inmate on In-Cell Restraint Status” and states:**

- i. Staff shall observe the inmate, at a minimum, every 15 minutes, or continuously if required by the Health Services Unit.**
- ii. Such observation checks shall be documented on CN 6502 Restraint Checklist.**

See, Exhibit 16, Administrative Directive 6.5A, page 000936.

67. **The process of conducting an inspection of an inmate in the Restricted Housing Unit involves looking through the inmate’s cell window and**

confirming that the inmate is 'live, breathing flesh'. If the inmate is up and moving around, the task can take very little time. If, however, the inmate is asleep, the corrections officer must observe the inmate long enough to see the inmate's chest rise and fall from the intake of oxygen and the inspecting correctional officer must remain at the window until that breathing pattern is confirmed. In addition, the officer needs to observe that the integrity of the In-cell restraints has not been compromised. Estimates of the time required to perform a satisfactory wellness check are 'about a minute or two'. See, Exhibit B, Deposition of Arden Coggins, pages 50-58; Exhibit 4, Deposition of Jeffrey Gibbons, pages 69, 72-73 (purpose of inspection is to observe 'live breathing flesh' and tour requires that he "stop", "position myself to the side of the window so I can see inside towards the bunk", and would take "five to ten seconds of being up at the window and looking "to observe the chest fall" and tour could take "maybe 30 seconds" to confirm inmate is breathing"). Exhibit 5, deposition of Corron Petaway, pages 74, 76. ("he needs to see 'someone's chest go up and down', he "...just take a nice, hard stare and if I see something that's not—I don't – not right, then I will report it –" but that he's "...actually close enough to the window to stare if the chest is going up or down"); Exhibit 1, Deposition of Carlos Padro, pages 122-125 ("You have to really take a close look and really try to see what's going on...", "you have to look long enough to – to be confident that he is alive and he is okay"..."As soon as you see something. I could be five seconds. It could be longer").

68. The purpose of the 15-minute inspection is to ensure the well-being of the

inmate and to ensure that a supervisor is called to then provide medical care to the inmate in a timely manner should the inmate be in medical distress See, Exhibit 2, Deposition of Arden Coggins, page 50; Exhibit 5, Deposition of Corron Petaway, pages 29-30; Exhibit 8, Deposition of Bii-Ron Wilkes, page 38-39 (Purpose is to “make sure the inmate is not in distress” and “doesn’t need medical care” and “need to take it seriously” because “an inmate’s life could depend on it”); Exhibit 9, Deposition of Jon Antoine, pages 31-32, 47.

69. After Mr. Talbot was left alone at 7:24 a.m. in his cell video surveillance tapes establish that defendants Corron Petaway, Bii-Ron Wilkes and Jon Antoine (‘Hallway Inspection defendants’) were assigned the duty of conducting 15-minute ‘wellness’ checks to establish that Mr. Talbot was at the time of each inspection ‘live, breathing flesh’. See, Exhibit 34 (Video of Hallway Inspections between 7:26 a.m. and 9:00 a.m.).

70. Video evidence establishes that the Hallway Inspection defendants only performed the following inspections between 7:30 a.m. and 9:00 a.m.:

<u>Time of Inspection</u>	<u>Defendant</u>	<u>Length of Inspection</u>
1. 7:29:18	Corron Petaway	1 second
2. 7:54:27	Bii-Ron Wilkes	1-2 seconds
3. 8:00	Bii-Ron Wilkes	In dark – unknown
4. 8:12:17	Bii-Ron Wilkes	10 seconds
5. 8:28 56	Jon Antoine	2 seconds
6. 8:46:19	Jon Antoine	1-2 seconds
7. 8:58:47	Jon Antoine	Less than one second

See, Exhibit 34 (Video of Hallway Inspections between 7:26 a.m. and 9:00 a.m.).

71. A “Restraint Checklist” (See, Exhibit W, Restraint Checklist dated 3-21-19)

that purports to record the inspections performed by the Hallway Defendants (Petaway, Wilkes, Antoine) is falsified. Defendants Petaway and Antoine cannot verify the information included on the checklist attributed to them, and their initials and names were forged by some unknown person. See, Exhibit 5, Deposition of Corron Petaway, pages 167-172; Exhibit 9, Deposition of Jon Antoine, pages 165-168.

72. Mr. Talbot was discovered 1 minute and 30 seconds after defendant

Antoine’s 8:58:47 inspection by Lt. Angel Champion and was not breathing and was essentially lifeless. At 9:06 a.m. Mr. Talbot was described by AMR ambulance personnel a “pulseless and apneic...patient’s face was cold and blue...plaintiff’s jaw was stiff and tongue was swollen”. See, Exhibit 24, AMR Report, page 1669. The New Haven Fire Department report of this incident states that “Pt was heavily peppered sprayed upon arrival” and that the first responders “...started coughing and sneezing from potential pepper spray being sprayed before we arrived”, and there was a essence of heavy pepper spray upon arrival”. Exhibit 25, New Haven Fire Department Report, pages 1691, 1692, 1695; Exhibit 34 (Video of Hallway Inspections between 7:26 a.m. and 9:00 a.m.).

73. Plaintiff’s expert Dr. Swirsky opines that Mr. Talbot died sometime between

7:24 a.m. and 8:00 a.m., based in part because of the presence of rigor mortis at the time he was discovered by paramedics. See, Exhibit 19, Expert report of Brian Swirsky, page 4.

74. Plaintiff's expert Conor McCourt opines that based on video forensic comparison of images taken of Mr. Talbot at approximately 7:25 a.m. and when he is discovered at approximately 9:00 a.m., an analysis of his clothing and hands establishes that "...the random folds on the left side of Carl Talbot's prison inmate uniform did not change" and "Carl Talbot's right hand/lower left body position is virtually the same in the "Before" and "After" images. His expert disclosure states that 'to a reasonable degree of scientific probability, "...it is unlikely that Mr. Talbot physically moved from his prone position between the time of the taking of those video images". See, Exhibit 27, Report of Conor McCourt, page 12 of 13; Plaintiff's 26(a)(2) Disclosure, page 2.

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CERTIFICATION

I hereby certify that on August 18, 2023, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's system.

/s/ Arthur C. Laske, III
Arthur C. Laske, III, Esq.