

EXHIBIT 1

Subject: McAdam v Warmuskerken, et al
From: "Andrew J. Brege" <abrege@cnda-law.com>
Date: 5/1/2012 4:49 PM
To: 'Joshua Fahlsing' <joshfahlsing@gmail.com>, Steve Vander Ark <steve.vanderark@gmail.com>
CC: "jolkema@jrlaf.com" <jolkema@jrlaf.com>, Darlene Rosema <drosema@cnda-law.com>, Allan Vander Laan <avanderlaan@cnda-law.com>, Pat Aseltyne <paseltyne@jrlaf.com>

Mr. Vander Ark and Mr. Fahlsing:

Pursuant to Judge Neff's request, attached please find our proposed statement of facts for your review. As you can see, most of the facts are taken from your complaint, with corresponding citations to depositions, video, and other records. These have already been reviewed and approved by co-defendants' counsel. If we cannot agree on the facts, my plan is to use this statement in support of our motion, and then pursuant to Judge Neff's civil guidelines, you can file a counter-statement in your response.

Let me know if you have any trouble opening the document. By y calculation, our motion is due on May 3. If we do not hear back from you by noon that day, I will use this as our statement of facts and assume you will file a counter-statement.

If you have any questions or concerns, do not hesitate to contact me.

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Attachments:

Statement of Facts.pdf

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STATEMENT OF FACTS

Plaintiff filed his First Amended Complaint on May 11, 2011. The Complaint names the City of Ludington and its then officer Matthew Warmuskerken (Officer Warmuskerken now works for Mason County Sheriff's Department), Mason County and Mason County Sheriff Deputies Derek Wilson and Oscar Davila. The City of Ludington was voluntarily dismissed by Plaintiff. Pursuant to this Court's filing requirements, the following is a list of the facts of this case, with reference to the supporting evidence:

1. Shortly after midnight on July 20, 2009, Susan McAdam was driving her vehicle and was subsequently stopped by Ludington Police Officer Matthew York for having inoperable taillights. (**Exhibit 1**, York dep at 13).

2. Plaintiff was a passenger in his mother's vehicle. (**Exhibit 2**, Ludington Police report; **Dkt. No. 1**, Complaint at ¶ 15).

3. Officer York activated his overhead lights and Ms. McAdam stopped her vehicle. (**Exhibit 1**, York dep at 13; **Dkt. No. 1** at ¶ 18).

4. Officer York asked Ms. McAdam for her driver's license, registration and proof of insurance. (**Exhibit 2**, Ludington Police report; **Exhibit 3**, Video¹; **Dkt. No. 1** at ¶ 19).

5. Ms. McAdam stated she did not have a drivers license with her, but produced other documentation. Officer York asked Ms. McAdam to step out of her vehicle. He escorted her to the rear of the vehicle. Officer York asked Ms. McAdam if she had consumed any alcohol. She responded that she had two drinks at her mother's house. (**Exhibit 2**, Ludington Police report; **Exhibit 3**, Video; **Dkt. No. 1** at ¶¶ 20-22).

6. Shortly after the stop, Mr. McAdam got out of the passenger side of the vehicle

¹The video is being served traditionally.

and walked towards Officer York and his mother. Mr. McAdam is 6'7", and weighed approximately 225 pounds at the time. (**Exhibit 4**, Pl Dep at 57, 99-100).

7. Officer York asked Mr. McAdam what he wanted. Mr. McAdam stated he just wanted to check on his mom. Officer York indicated that she was okay and asked Mr. McAdam to get back in the vehicle, which he did. (*Id.* at 101; **Exhibit 3**, Video; **Dkt. No. 1** at ¶¶ 23-24).

8. A short time later Mr. McAdam got out of the vehicle and approached Officer York and his mother. Officer York told Mr. McAdam to stay in the car. Mr. McAdam stated he did not have to stay in the car but could walk home. (**Exhibit 4**, Pl dep at 101; **Exhibit 3**, Video; **Dkt. No. 1** at ¶¶ 27-28).

9. Officer York told Mr. McAdam to walk away. Mr. McAdam responded that he would do so. During this discussion, Officer York contacted dispatch and requested another unit at his location. (**Exhibit 3**, Video; **Dkt. No. 1** at ¶¶ 29-30).

10. Shortly thereafter, Officer Warmuskerken arrived at the scene in a marked Ludington patrol vehicle. When Officer Warmuskerken arrived, Officer York told dispatch, "we're calming down here." The video shows Mr. McAdam approaching Officer Warmuskerken. He was told to sit back in the car. Mr. McAdam stated he did not need to get back into the car. (**Exhibit 4**, Pl dep at 101-105; **Exhibit 3**, Video; **Dkt. No. 1** at ¶¶ 31-34).

11. Mr. McAdam took his Apple iPhone and began recording his encounter with Officer Warmuskerken by putting the iPhone near Officer Warmuskerken's face. (**Exhibit 5**, Warmuskerken dep at 40-42; **Dkt. No. 1** at ¶¶ 34, 36).

12. Officer Warmuskerken states that he moved Mr. McAdam's hand to get the iPhone from in front of his face, as it could be used as a weapon. (**Exhibit 5**, Warmuskerken dep

at 40-42).

13. Officer York told Mr. McAdam that he was interrupting his investigation and needed to leave. At that point Mr. McAdam began walking away. He was followed by Officer Warmuskerken. (**Exhibit 3**, Video; **Dkt. No. 1** at ¶¶ 37; **Exhibit 5**, Warmuskerken dep at 44).

14. Officer York told Officer Warmuskerken that he could let Mr. McAdam go, that he just did not want him around. (**Exhibit 3**, Video; **Dkt. No. 1** at ¶ 38).

15. At about this time, Deputies Wilson and Davila arrived at the scene in a marked Mason County Sheriff's patrol car. They got out of their vehicle and approached Mr. McAdam. Officer York advised the deputies that Mr. McAdam needed to leave. The deputies responded "we'll take him." (**Dkt. No. 1** at ¶¶ 39-40).

16. After walking a short distance away, Mr. McAdam stopped, turned around and asked if he could get his two dogs which were in the backseat of his mother's vehicle. (**Exhibit 4**, Pl dep at 114).

17. One of the deputies told Mr. McAdam that it was his last opportunity to leave or he was going to jail. (*Id.* at 114-116; **Dkt. No. 1** at ¶ 42).

18. Mr. McAdam turned around and began walking away from the scene, but then stopped and started recording again. Deputies Wilson and Davila and Officer Warmuskerken began to approach Mr. McAdam. Deputy Davila informed him he was under arrest. (**Exhibit 5**, Warmuskerken dep at 50-51).

19. The Deputies approached Mr. McAdam and tried to handcuff his hands. He resisted and was taken to the ground. (*Id.* at 52).

20. Officer Warmuskerken was acting as an assisting officer to the arrest made by

Mason County. (**Exhibit 5**, Warmuskerken dep at 51).

21. After being taken to the ground, the officers were only able to get one of Mr. McAdam's wrists into a handcuff. (**Dkt. No. 1** at ¶ 47).

22. Mr. McAdam was told several times by the officers to stop resisting, or he might be tased. (**Exhibit 5**, Warmuskerken dep at 54-56).

23. Officer Warmuskerken used his taser first and drive stunned Mr. McAdam in the left shoulder area. (*Id.* at 56-57, 107-108; **Exhibit 6**, Davila police report).

24. One of the deputies used his taser to drive stun Mr. McAdam when he continued his resistance to their commands. (**Dkt. No. 1** at ¶¶ 50-51; **Exhibit 2**, Ludington police report).

25. Mr. McAdam still resisted being handcuffed so at that point Deputy Davila inserted a cartridge into his taser and deployed taser probes into Mr. McAdam's back. (**Dkt. No. 1** at ¶ 53).

26. Mr. McAdam was then handcuffed and escorted back to the deputy's patrol car. (See, generally, **Exhibit 5**, Warmuskerken dep at 44-64; **Dkt. No. 1** at ¶ 55).

27. Officer Warmuskerken received minor facial injuries as a result of this encounter. (**Exhibit 7**, Photo of Warmuskerken).

28. Mr. McAdam was taken by the Mason County deputies in their patrol vehicle to Memorial Medical Center to be checked per policy. Officer Warmuskerken followed in his patrol vehicle. (**Dkt. No. 1** at ¶¶ 56-57).

29. While in the emergency room, one of Mr. McAdam's wrists was locked to the hospital bed. (**Dkt. No. 1** at ¶ 60).

30. Though he was loud and yelling, Mr. McAdam was initially compliant at the hospital. (**Exhibit 5**, Warmuskerken dep at 75-76; **Exhibit 8**, Holmes dep at 10-15; **Exhibit 9**,

Russell dep at 10-13).

31. Mr. McAdam was observed to be angry, uncooperative, and agitated by the nursing staff. (**Exhibit 10**, Luft dep at 21; **Exhibit 8**, Holmes dep at 10; **Exhibit 11**, Memorial Medical Center EDM Patient Record).

32. Mr. McAdam asked for his iPhone, and was told by a Mason County Sheriff Deputy he would not be getting it back because it was evidence. (**Dkt. No. 1** at ¶ 63-64; **Exhibit 5**, Warmuskerken dep at 75-76).

33. Mr. McAdam became very agitated, started acting aggressive, and attempted to get up. (**Exhibit 5**, Warmuskerken dep at 77).

34. When told to lie down, Mr. McAdam began to sit up, and was told by at least one officer that he would be tased again if he did not comply. (**Exhibit 4**, McAdam dep at 137; **Dkt. No. 1** at 66).

35. As Mr. McAdam attempted to get up, Deputy Wilson attempted to drive stun him. (**Exhibit 12**, Wilson dep at 53-54).

36. Mr. McAdam batted Deputy Wilson's arm away as he tried to drive stun Mr. McAdam. (*Id.*).

37. After seeing Mr. McAdam swat Deputy Davila's hand away, Officer Warmuskerken drive stunned Plaintiff in the thigh. Mr. McAdam complied and laid back down. (**Exhibit 5**, Warmuskerken dep at 77-79; **Exhibit 12**, Wilson dep at 53-54; **Dkt. No. 1** at ¶ 70).

38. Mr. McAdam was discharged from Memorial Medical Center and transported to the Mason County Jail. (**Dkt. No. 1** at ¶ 72).

39. Mr. McAdam was initially charged with "Assaulting/Resisting/Obstructing" Officer York in the performance of his duties, in violation of M.C.L. § 750.81d. (**Exhibit 13**,

Felony information; **Exhibit 14**, Felony complaint).

40. On October 7, 2009, Mr. McAdam pled guilty to assault and battery against Officer Warmuskerken in violation of MCL 750.81. (**Exhibit 15**, Plea Transcript at 4-8; **Exhibit 16**, Judgment of Sentence; **Exhibit 17**, Plea Agreement).