

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

| | | |
|-------------------|---|----------------------|
| JASON CHAMBERS, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 1:20-cv-377 |
| |) | |
| CHARLES W. SMITH, |) | |
| |) | |
| Defendant. |) | |

FINAL PRE-TRIAL ORDER

Pursuant to the Order of the Court, the attorneys for the parties appeared before Judge Holly A. Brady of the United States District Court for the Northern District of Indiana on May 24, 2022, at 1:30 p.m., for the Final Pretrial Conference pursuant to Rule 16 of the Federal Rules of Civil Procedure. The plaintiff is represented by Terrance Kinnard of Kinnard, Scott, Rowley, Powers. The defendant is represented by Carolyn M. Trier of Trier Law Office, LLC.

Thereupon, the following proceedings were had and the following engagements and undertakings arrived at:

A. JURISDICTION

Jurisdiction is conceded by the parties and found by the Court to be present. The plaintiff's claims are brought pursuant to 42 U.S.C § 1983. The Court has original jurisdiction of this civil action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. § 1988 (proceedings in vindication of civil rights).

B. ISSUES AND JOINT STATEMENT OF CASE

The case is at issue on Plaintiff's Complaint and Demand for Jury Trial and Defendant's Answer to the Complaint and Jury Demand.

In this case, the Plaintiff, Jason Chambers, claims the Defendant, Charles W. Smith, while acting in his capacity as a Fort Wayne Police Officer, violated Jason Chambers' constitutionally protected right to be free from the use of excessive force during an arrest, and that Jason Chambers was damaged as a result. The Plaintiff must prove by the greater weight of the evidence that Charles W. Smith violated his constitutionally protected rights, while acting under color of law, which caused Plaintiff Jason Chambers' claimed damages.

The Defendant, Charles S. Smith, denies he violated the Plaintiff's constitutionally protected rights. The Defendant denies that the Plaintiff sustained any significant or lasting injury. The Defendant is not required to disprove the Plaintiff's claims.

C. PENDING MOTIONS

Two motions are pending:

1. Plaintiff's Motion in Limine; and
2. Defendant's Motion in Limine.

D. PLAINTIFF'S CONTENTIONS

Please see the facts as pled in Plaintiff's Complaint. Stated further, Plaintiff Jason Chambers alleges that Defendant Charles Smith arrested him for operating a vehicle while intoxicated. Chambers does not contest that he was in fact intoxicated, and he later pleaded guilty to that misdemeanor charge.

After the initial investigation at the scene, Smith asked another officer to transport Chambers to the Allen County Jail where a breathalyzer machine was located. Once inside the breathalyzer room, Smith attempted to administer a chemical breath test on Chambers, but Chambers refused to cooperate. Smith ultimately sought and obtained a search warrant for a blood draw, and Smith read that warrant to Chambers. Chambers was still defiant and verbally refused to comply with the blood draw, so Smith summoned a jail detention deputy for assistance.

Throughout the encounter Chambers was verbally disrespectful to Smith, and continually made baseless threats of litigation against Smith and/or the Fort Wayne Police Department. However, Chambers did not act aggressively nor did he verbally threaten any violence toward any individual.

Once the detention deputy arrived, Smith moved toward Chambers, who was seated, and Smith removed handcuffs from his duty belt. Smith held the handcuffs in his right hand and he used his left hand to take control of Chambers' right wrist. Less than one second later, Smith began forcibly striking Chambers' in his face. Smith did not provide any verbal warning nor did he provide any verbal direction until after all three (3) blows were delivered to Chambers' face. After Smith deployed this use of force, Smith then stated loudly, "QUIT FIGHTING; QUIT FIGHTING." Smith delivered the strikes to Chambers' face using the steel handcuffs.

Smith's actions caused Chambers pain, bleeding and injury from the punches.

E. DEFENDANT'S CONTENTIONS

On March 23, 2019, Officer Charles Smith was on patrol in a marked police vehicle. He was traveling northbound on South Lafayette Street approaching East Paulding Road. When Officer Smith arrived at that intersection, he looked to his left and saw a red Buick, which was

facing eastbound on East Paulding Road. The Buick drove up on the curb to the right of the car in front of it and attempted to pass the vehicle. When the Buick saw the marked police car, the Buick backed up and got back into its lane of travel. Officer Smith turned east on East Paulding Road and waited for the Buick to turn so he could conduct a traffic stop.

The Buick turned southbound on South Lafayette Street. Officer Smith activated his overhead lights. The Buick continued to travel southbound on South Lafayette Street. Officer Smith activated his emergency siren. Officer Smith had his emergency lights and siren activated for a long time before the Buick pulled to the shoulder of the road. Once on the shoulder, the Buick continued for approximately 100 yards before coming to a stop. Officer Smith had his lights and periodically his siren activated for approximately 45 seconds before the vehicle came to a stop.

Officer Smith approached the driver and asked for his license. The driver was Jason Chambers. When Mr. Chambers was trying to retrieve his license, his finger dexterity was slow and clumsy. Mr. Chambers' speech was thick tongued and mumbled. Officer Smith asked Mr. Chambers if he had anything to drink. Mr. Chambers stated that he had a shot of liquor.

Officer Smith observed a small child in the back seat who was later identified as Mr. Chambers' daughter. The front seat passenger was identified as Atoya Armstrong. Officer Jacob Lemish was also on scene.

Officer Smith asked Mr. Chambers to step out of the vehicle. Officer Smith told Mr. Chambers that he wanted to make sure he was not intoxicated.

Officer Smith conducted a Lack of Smooth Pursuit and observed Nystagmus in both eyes. The portable breath test showed that Mr. Chambers over twice the legal limit. Officer Chambers asked Mr. Smith to turn around and place his hands behind his back. While Officer Smith was

handcuffing Mr. Chambers, he continuously turned towards Officer Smith. Officer Smith believed this to be a target glance, which Officer Smith knew from his training and experience to be a pre-attack indicator.

While Officer Smith was conducting a search incident to arrest, Mr. Chambers kept asking Officer Smith why Officer Smith was taking “shit out of his wallet” and kept saying “just take me to jail”. Officer Smith knew that this excessive repetition is a pre-attack indicator. Mr. Chambers’ attitude began to escalate, which was evident from his tone and his two pre-attack indicators.

Officer Smith asked Officer Lemish to transport Mr. Chambers to the Allen County lock-up as Mr. Chambers is a large man and Officer Lemish had a larger prisoner transport. Officer Smith met Officer Lemish at the Allen County Lock-up. Mr. Chambers was checked in by lock-up staff and then they proceeded to Room B90 to take the certified breath test.

When they arrived at Room B90, Officer Smith read Mr. Chambers the Indiana Implied Consent. At first Mr. Chambers agreed to take the certified breath test. Officer Smith noted Nystagmus in all three tests in both eyes, which indicated that Mr. Chambers’ blood alcohol would be over .15. Mr. Chambers refused to do the walk and turn. Mr. Chambers indicated that he would not do the certified breath test and stated that he just wanted to go to his cell.

Officer Smith read Mr. Chambers his Miranda warning. Mr. Chambers admitted to drinking and stated alcohol has been a problem for him. Mr. Chambers stated he was on probation, and the reason that he is unable to get off probation is because of his drinking problem. Mr. Chambers refused to take the certified breath test and stated that he wanted to go to his cell. Officer Smith reminded Mr. Chambers of the consequences of refusing the chemical test. Mr. Chambers did not care and wanted to go to his cell.

Officer Smith began to obtain a search warrant for the blood draw. Mr. Chambers was taken to his cell while Officer Smith obtained the search warrant. Once Officer Smith obtained the search warrant, Officer Smith attempted to wake Mr. Chambers up in his cell but he appeared to be passed out from the alcohol. After shaking him multiple times and yelling his name, Officer Smith was able to wake up Mr. Chambers.

Officer Smith escorted Mr. Chambers back to Room B90. The jail nurse asked Mr. Chambers to take off his sweatshirt. Mr. Chambers refused. Officer Smith gave Mr. Chambers a copy of the search warrant and then read the search warrant to Mr. Chambers. As Officer Smith was reading the search warrant to Mr. Chambers, Mr. Chambers began to say he would not give his blood and stated they could not take blood from him. Officer Smith tried to reason with Mr. Chambers and explained that this was a court order and that they must get the blood from him. Mr. Chambers continued to be verbally combative and his demeanor started to become aggressive. Officer Smith read Mr. Chambers the search warrant a second time.

Mr. Chambers weighed approximately 60 pounds more than Officer Smith. Mr. Chambers was becoming agitated. Officer Smith decided to handcuff Mr. Chambers' wrists to the chair. This would limit his range of motion and they would be able to better control his limbs so the nurse could draw the blood. This would also prevent Mr. Chambers from being able to effectively fight or fling his arms while the nurse had a needle in her hand, lowering the risk of someone getting stuck with the used needle. Officer Smith retrieved a pair of handcuffs with his right hand and grabbed Mr. Chambers' right wrist with his left hand.

As soon as Officer Smith touched Mr. Chambers' right wrist, Mr. Chambers violently pulled it away from Officer Smith and shifted his weight in the chair. Officer Smith assumed he was shifting his weight in an attempt to gain leverage to strike Officer Smith with his left hand.

Officer Smith believed this because of the pre-attack indicators that Mr. Chambers had displayed, his excessive repetition that they would not get blood from him, and his increasing agitation. Officer Smith was very close to Mr. Chambers and did not have time to retreat. Officer Smith quickly delivered two closed fist jabs with his right hand into Mr. Chambers' head while giving him loud clear verbal commands to stop fighting. After delivering the strikes, Mr. Chambers was stunned and Officer Smith was able to gain control of his right wrist. Officer Smith quickly handcuffed the right wrist to the chair and then his left wrist.

The nurse was then able to get the blood draw. Mr. Chambers made threats towards Officer Smith and stated that he wanted Officer Smith to die a horrible death. Officer Smith saw a cut on Mr. Chambers' forehead. The cut was very minor at approximately 1/8th of an inch long or smaller.

Officer Lemish transported Mr. Chambers to St. Joe Hospital for medical clearance. At St. Joe Hospital, Mr. Chambers denied loss of consciousness. Mr. Chambers did not have a headache, did not have any neck pain, denied any injuries other than the cut on his forehead, and the bleeding had stopped. No focal neurological deficits were observed. He had a .5 centimeter laceration on his forehead with no active bleeding. The laceration was very small and did not require repair. Mr. Chambers was cleared for admission to the Allen County Jail.

Excessive force claims stemming from an arrest or investigatory stop must be analyzed under the Fourth Amendment's "objective reasonableness" standard. *Graham v. M.S. Conner*, 490 U.S. 386, 395 (1989). This analysis requires an inquiry into "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Id.* at 397. Courts must examine the reasonableness of the actions "from the perspective of a reasonable officer on the scene, rather

than with the 20/20 vision of hindsight.” *Id.*

It is well settled that an “officer who has the right to arrest an individual also has the right to use some degree of physical force or threat of force to effectuate the arrest.” *Stainback v. Dixon*, 569 F.3d 767, 772 (7th Cir. 2009) (citing *Graham*, 490 U.S. at 396). “The nature and extent of the force that may be used depends upon the circumstances surrounding the arrest, including ‘the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.’” *Id.* When circumstances are tense, uncertain, and rapidly evolving, police officers often must make split-second decisions about the amount of force that is necessary. *Williams v. Brooks*, 809 F.3d 936, 944 (7th Cir. 2016).

The issue in dispute in this case is whether, in light of the facts and circumstances known to Charles Smith at the time, Charles Smith’s use of force against Jason Chambers was objectively reasonable. Objective reasonableness must be determined from the “totality of the circumstances” viewed from the perspective of a reasonable police officer at the scene. *Payne v. Pauley*, 337 F.3d 767, 778 (7th Cir. 2003). The “totality of the circumstances” includes the information known to the officer at the time he decided to use force. *Sherrod v. Berry*, 856 F.2d 802, 804-805 (7th Cir. 1988). In *Sherrod*, the Seventh Circuit specifically stated:

“When a jury measures the objective reasonableness of an officer’s action, it must stand in his shoes and judge the reasonableness of his actions based upon the information he possessed and the judgment he exercised in responding to that situation.” *Id.* at 804-805 (emphasis in original).

Charles Smith did not violate Jason Chamber’s Fourth Amendment constitutional rights. Charles Smith is entitled to qualified immunity. Charles Smith did not violate clearly established law. Charles Smith was entitled to use reasonable force to effectuate Jason Chamber’s arrest. A

reasonable officer in similar circumstances would believe that Charles Smith's use of force was lawful.

Jason Chambers is not entitled to compensatory or punitive damages. Jason Chambers did not sustain any significant or lasting injury. Punitive damages may only be assessed "when the defendant's conduct is shown to be motivated by evil intent, or when it involves reckless or callous indifference to the federally protected rights of others." *Merritt v. De Los Santos*, 721 F.2d. 598, 601 (7th Cir. 1983) (citing *Smith v. Wade*, 461 U.S. 30 (1983)). Charles Smith's actions were not motivated by evil motive or intent, and his actions did not involve reckless or callous indifference to the federally protected rights of Jason Chambers. The plaintiff has no claim for punitive damages.

F. CONTESTED ISSUES OF FACT

1. Whether Charles Smith used excessive force against Jason Chambers on March 23, 2019.
2. Whether Jason Chambers sustained compensatory damages as a result of a violation of his Fourth Amendment Constitutional rights and, if so, what dollar amount should be awarded as compensatory damages.
3. Whether Charles Smith acted maliciously or wantonly in violating Jason Chambers' Fourth Amendment Constitutional rights and, if so, what dollar amount should be awarded as punitive damages against Charles Smith.

G. CONTESTED ISSUES OF LAW

1. Whether Charles Smith is entitled to qualified immunity on the excessive force claim.

H. STIPULATIONS

1. On March 23, 2019, Charles Smith was acting “under color of law” under 42 U.S.C. Section 1983.
2. The authenticity of exhibits.

I. EXHIBITS

1. Plaintiff’s List of Trial Exhibits:

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| 1. 62nd Academy DTs ILEA Lesson Plan (4) | The defendant objects to the admissibility of this exhibit. |
| 2. Fort Wayne Police Dept. Use of Force Policy PD97-2401 | The defendant objects to the admissibility of this exhibit. |
| 3. FWPD – Academy – PowerPoint Use of Force | The defendant objects to the admissibility of this exhibit. |
| 4. CharlesSmith_201903231746_Car14433F_47154497 (dashcam footage from Defendant patrol car) | |
| 5. RyanTosland_201903232017_Car28699F_7893234 (dashcam footage from Officer Ryan Tosland – interior camera) | |
| 6. Memorandum of Sgt. Juan Barrientes to Chief Reed 11202017 | The defendant objects to the admissibility of this exhibit. |
| 7. X2Download.com-Exhausting All Measures Before Shooting Capt. Barrientes community course on use of force broadcast to YouTube.com | The defendant objects to the admissibility of this exhibit. |
| 8. Jail B90A_03-23-2019_71444_1 (video depicting events at the Allen County Jail/Detention Center) | |
| 9. Five (5) photographs of Chambers’ injuries | |
| 10. Charles Smith’s Supplemental Narrative written at 7:10 p.m. | |

11. Charles Smith's Use of Force Review written at 11:53 p.m.

2. Defendant's Exhibits May Include Any or All of the Following:

1. Two files of video from the Allen County Jail Room B-90 dated 03/23/2019;
2. 19F032678 FWPD Info Radio Traffic;
3. 19F032678 FWPD Records Radio Traffic;
4. 19F032678 FWPD SE Radio Traffic;
5. 19F032678 Tow Truck;
6. Officer Charles Smith's FWPD in-car camera video for Control No. 19F032678;
7. Officer Jacob Lemish's FWPD in-car camera video for Control No. 19F032678;
8. Officer Ryan Tosland's FWPD in-car camera video for Control No. 19F032678;
9. Consolidated Communications Partnership Call Detail Report for Call Number A19100437;
10. Allen County Sheriff's Department Authorized Vehicle Release for 2002 Buick LeSabre;
11. Fort Wayne Police Department Tow Release Form dated 3/28/19 for a Buick LeSabre;
12. Five photos of Jason Chambers;
13. Fort Wayne Police Main Names Table for Jason Chambers;
14. Fort Wayne Police Law Incident Table for Incident Number 19F032678;
15. Radio Log for date of 03/23/19;
16. Law Supplemental Narrative, City of Fort Wayne Tow and Inventory Form by Officer Charles Smith;
17. Law Supplemental Narrative for Incident Number 19F032678 by Officer Jacob Lemish;
18. Law Supplemental Narrative for Incident Number 19F032678 by Officer Charles Smith;

19. Law Supplemental Narrative for Incident Number 19F032678 by Officer Ryan Tosland;
20. Law Supplemental Narrative for Control Number 19F032678 by Officer Charles Smith, Use of Force Review;
21. Search Warrant Affidavit, In Re The Investigation of 19F032678 for the blood draw of Jason Chambers;
22. Search Warrant, In Re The Investigation of 19F032678 for the blood draw of Jason Chambers;
23. Jason Chambers' Allen County Jail and jail health records, 417 South Calhoun Street, Fort Wayne, Indiana 46802;
24. Jason Chambers' St. Joe Hospital records, 700 Broadway, Fort Wayne, Indiana 46802;
25. Itemized statement of charges from St. Joseph Hospital;
26. Jason Chambers' records and prison health records from the Indiana Department of Correction;
27. Deposition of Jason Chambers;
28. All filings, pleadings, judgment of conviction, including Affidavit of Probable Cause, Information for Operating a Vehicle While Intoxicated, Information for Plea Agreement, and Plea of Guilty in *State of Indiana v. Jason Chambers*, Cause No. 02D04-1903-CM-1198 for Class A Misdemeanor: Operating a Vehicle While Intoxicated Endangering a Person;
29. All filings, pleadings, and judgment of conviction in *State of Indiana v. Jason Chambers*, Cause No. 02D04-1702-F6-113 for Class 6 Felony: Domestic Battery defendant has a prior conviction for any sort of battery;
30. All filings, pleadings, and judgment of conviction in *State of Indiana v. Jason Chambers*, Cause No. 02D05-1009-CM-5503 for Class A Misdemeanor: Driving While Suspended (prior within 10 years);
31. All filings, pleadings, and judgment of conviction in *State of Indiana v. Jason Chambers*, Cause No. 02D04-0706-CM-3880 for Class B Misdemeanor: Battery;
32. All filings, pleadings, and judgment of conviction in *State of Indiana v. Jason Chambers*, Cause No. 02D04-0403-FD-168 for Class D Felony: Possession of Cocaine or Narcotic Drug; and Class A Misdemeanor: Possession of Marijuana Hash Oil or Hashish;

33. All filings, pleadings, and judgment of conviction in *State of Indiana v. Jason Chambers*, Cause No. 02D04-0311-CM-9483 for Class C Misdemeanor: Operating Vehicle with BAC of .08% - .14%; and
34. All filings, pleadings, and judgment of conviction in *State of Indiana v. Jason Chambers*, Cause No. 02D04-0209-FB-172 for Class B Felony: Dealing in Cocaine or Narcotic Drug.

J. **WITNESSES**

1. **Plaintiff's Witness List:**

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|--|---|
| 1. Captain Juan Barrientes Fort Wayne Police Department 1 East Main Street Ste 108 Fort Wayne IN 46802 | The defendant objects to this witness. |
| 2. Deputy Chief Mitchell McKinney Fort Wayne Police Department 1 East Main Street Ste 108 Fort Wayne IN 46802 | The defendant objects to this witness. |
| 3. Lt. Christopher Reed Fort Wayne Police Department 1 East Main Street Ste 108 Fort Wayne IN 46802 | The defendant objects to this witness. |
| 4. Celie R. Hewitt, R.N. 6431 Velmar Drive Fort Wayne, IN 46835 | |
| 5. Charles W. Smith c/o Carolyn Trier PO Box 5528 Fort Wayne IN 46895 | |
| 6. Officer Ryan Tosland Fort Wayne Police Department 1 East Main Street Ste 108 Fort Wayne IN 46802 | |

7. Det./Trooper Matthew Teusch
Indiana State Police
5811 Ellison Road
Fort Wayne, IN 46804
8. Jason Chambers
c/o Terrance Kinnard
Kinnard Scott Rowley Powers
320 N. Meridian Street Ste 406
Indianapolis, IN 46204

2. Defendant's Witnesses May Include Any or All of the Following:

1. Jason Chambers, plaintiff
2. Atoya Armstrong, witness
3. Makayla Chambers, witness
4. Officer Charles W. Smith - The officer's investigation and observations of the events that occurred on March 23, 2019, regarding the plaintiff.
5. Officer Chris Lichtsinn - The officer's investigation and observations of the events that occurred on March 23, 2019, regarding the plaintiff.
6. Officer Ryan Tosland - The officer's investigation and observations of the events that occurred on March 23, 2019, regarding the plaintiff.
7. Officer Jacob Lemish - The officer's investigation and observations of the events that occurred on March 23, 2019, regarding the plaintiff.
8. Celie (person who drew the plaintiff's blood) – Her observations of the events that occurred on March 23, 2019, regarding the plaintiff.
9. Unnamed Allen County Correction Officer – His observations of the events that occurred on March 23, 2019, regarding the plaintiff.
10. Randy Raypole, Director of City of Fort Wayne Communications / Records Division – Authenticate records and recordings.
11. Juatanne Gersos, Deputy Director of City of Fort Wayne Communications / Records Division – Authenticate records and recordings.
12. Susanna Roth, Dispatcher, City of Fort Wayne Communications / Records Division – Authenticate records and recordings.

13. Lacy Koncor, Dispatcher, City of Fort Wayne Communications / Records Division – Authenticate records and recordings.
14. Any and all Allen County Jail staff members that had contact with Jason Chambers while Jason Chambers was incarcerated at the Allen County Jail – Any and all examinations of the plaintiff, medical or nursing treatment of the plaintiff, and observations and conversations with the plaintiff.
15. Any and all St. Joseph Hospital health care providers and personnel that provided Jason Chambers medical care and treatment, St. Joseph Hospital, 700 Broadway, Fort Wayne, Indiana 46802, including Dr. Nicholas Leonowicz and Robyn Weilbaker, NP – Any and all examinations of the plaintiff, medical or nursing treatment of the plaintiff, and observations and conversations with the plaintiff.
16. Any and all Indiana Department of Correction jail staff, health care providers, and personnel that provided Jason Chambers medical care and treatment, while within the Indiana Department of Correction – Any and all examinations of the plaintiff, medical or nursing treatment of the plaintiff, and observations and conversations with the plaintiff.
17. Any and all doctors and/or health care personnel that provided Jason Chambers medical treatment and/or services – Any and all examinations of the plaintiff, medical or nursing treatment of the plaintiff, and observations and conversations with the plaintiff.
18. All persons identified in the plaintiff’s initial disclosures.
19. All persons identified in plaintiff’s answers to interrogatories and responses to the defendant’s request for production of documents.
20. All persons identified in defendant’s answers to interrogatories and responses to the plaintiff’s request for production of documents.
21. Any records custodian necessary for any documents identified in Section “F” below.
22. Any and all witnesses listed by the plaintiff (and not objected to by the defendant).

K. JURY INSTRUCTIONS

The attorneys are currently working on the proposed final jury instructions.

L. AMENDMENTS

No further amendments to the pleadings are anticipated.

M. TRIAL BRIEFS

Trial Briefs have been filed.

Plaintiff's Trial Brief was filed on May 2, 2022 (ECF No. 29).

Defendant's Trial Brief was filed on May 9, 2022 (ECF No. 34).

N. PRE-TRIAL ORDER

This order will control the course of the trial and may not be amended except by consent of the parties or by order of the Court to prevent manifest injustice. The pleadings will be deemed merged herein.

O. SETTLEMENT

The parties have not reached a settlement agreement. The parties will advise the Court immediately if settlement is reached.

P. TRIAL

The probable length of trial is two days. The case is set for jury trial beginning on Tuesday, June 7, 2022.

Entered this 24th day of May, 2022.

s/Holly A. Brady
JUDGE HOLLY A. BRADY
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

APPROVED:

**KINNARD, SCOTT, ROWLEY,
POWERS**

s/Terrance Kinnard

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