

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

MARY WEBB, Individually,)
and in her capacity as)
Administratrix of the)
Estate of Robert A. Webb,)
Plaintiff,)
VS.) CIVIL ACTION NO. 08-C-405-H
RALDIGH COUNTY SHERIFF'S)
DEPARTMENT, RALEIGH COUNTY)
COMMISSION, SHERIFF DANNY)
MOORE, Individually, and in)
his official capacity; CHIEF)
DEPUTY STEVE TANNER,)
Individually, and in his)
official capacity; DEPUTY)
GREG S. KADE, Individually)
and in his official capacity;)
and DEPUTY JOHN E. HAJASH,)
Individually, and in his)
official capacity,)
Defendants.)

(Deposition of Gregory S. Kade)

BROWN REPORTING AGENCY
P.O. Box 5473
Beckley, West Virginia 25801-7509
304/262-4106

COPY

APPEARANCES:

TRAVIS A. GRIFFITH, ESQ.
GRIFFITH LAW OFFICES, PLLC
Suite 400
707 Virginia Street, East
Post Office Box 3865
Charleston, West Virginia 25308
CoCounsel for Plaintiff

MICHAEL A. OLIVIO, ESQ.
ROMANO & OLIVIO, PLLC
813 Quarrier Street
Charleston, West Virginia 25301
CoCounsel for Plaintiff

CHIP E. WILLIAMS, ESQ.
PULLIN, FOWLER, FLANAGAN,
BROWN & POE, PLLC
Suite 201
600 Neville Street
Beckley, West Virginia 25801
Counsel for Defendants
Raleigh County Sheriff's Department,
Raleigh County Commission, Sheriff
Danny Moore, Chief Deputy Steve
Tanner, Deputy Greg S. Kade

KERMIT J. MOORE, ESQ.
BRENSTER, MORHOUS, CAMERON, CARUTH,
MOORE, KERSEY & STAFFORD, PLLC
Post Office Box 529
Bluefield, West Virginia 24701-0529
Counsel for Defendant
Deputy John E. Hajash

B.R.A.

The deposition of GREGORY S. KADE, in the above-
styled matter was taken pursuant to notice for discovery
and/or evidentiary purposes, before H. David Stanley, a
Notary Public within and for the State of West Virginia
at Large, on the 19th day of June, 2009, commencing at
1:42 P.M., EDT, at the law offices of Pullin, Fowler
Flanagan, Brown and Poe, PLLC, 600 Neville Street,
Beckley, West Virginia.

INDEX

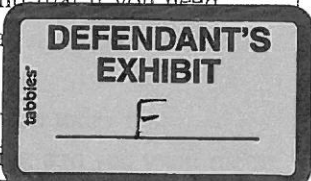
Table with 3 columns: Description, Direct, Cross. Rows include Plaintiff's Witness (Gregory S. Kade), Plaintiff's Exhibits (Kade Depo. Exhibit No. 1, 2), Reporter's Certificate, Errata Sheet, and Signature Sheet.

B.R.A.

1 (Witness Sworn)
2 THEREUPON came,
3 GREGORY S. KADE,
4 called as a witness on behalf of the Plaintiff herein,
5 who, having been first duly sworn according to law,
6 testified as follows:

DIRECT EXAMINATION

7 BY MR. OLIVIO:
8 Q Sir, would you please state your full
9 name for the record?
10 A Gregory Sean Kade.
11 Q Deputy Kade, you were present for John
12 Hajash's deposition earlier today. Is that correct?
13 A That's correct.
14 Q And I assume during that 3 to 3 1/2
15 hours of questioning you got a pretty good idea of the
16 procedures that we follow today?
17 A Yes, sir.
18 Q Okay. You understand that if you need
19 a break for any reason, just speak up?
20 A Yes, sir.
21 Q If I ask you any question and you
22 you're not sure of what I'm asking, is that
23 correct?



1 A I don't think so. I've seen different
2 parts of it but I don't think I've seen the whole entire
3 report.

4 Q Did you know Robert Webb?

5 A No.

6 Q In a personal way at all before this
7 incident?

8 A No.

9 Q Do you know if you ever met the man?

10 A I'm pretty sure I can say I've never
11 met him.

12 Q You may or may not know Mr. Webb had a
13 couple of prior DUI's from my recollection. To the best
14 of your knowledge, you were never involved in any of
15 those stops or arrests?

16 A No.

17 Q Do you have a specific recollection of
18 most of or any of the events that day before this call
19 came in?

20 A I'm not sure of what you're asking me?

21 Q Do you recall what you did during the
22 daytime hours on that July 3rd?

23 A I don't.

1 on an four hour or an eight hour shift?

2 A I don't recall.

3 Q Was that a regularly scheduled day off
4 from your normal Department duties as a patrol officer?

5 A Yes. I was off duty through road
6 patrol.

7 Q Do you recall if you worked the day
8 before July 3rd?

9 A I don't recall.

10 Q Have you ever gone back to look at
11 payroll records or schedule records or anything?

12 A No.

13 Q Do you recall what time your shift
14 started that day or evening?

15 A At the hotel?

16 Q Yes.

17 A I don't, I don't.

18 Q Do you know if you were planning on
19 being there most of the night? Was it a night rotation
20 for you?

21 A Night rotation? What do you mean?

22 Q The hotel security job on July 3, were
23 you going to be there the rest of the evening?

1 Q You heard Mr. Hajash this morning
2 talking about the security job over at the Holiday Inn
3 Express. I'm going to ask you some questions about that.
4 How long had you been working that security position?

5 A Not very long. I'm not sure.

6 Q From what I understood this morning,
7 was that a Department sanctioned job?

8 A It was paid through the Department.

9 Q It wasn't a moonlighting job that the
10 Department didn't know about?

11 A Oh, no.

12 Q You were there wearing your uniform and
13 with a cruiser on site. Am I correct?

14 A That's correct.

15 Q So in essence, the Department was okay
16 with showing a law enforcement presence over at the
17 Holiday Inn Express?

18 A Yes.

19 Q How long would your shift there
20 typically be?

21 A I think sometimes we split it up into
22 four hour blocks and sometimes it was eight.

23 Q Do you recall on July 3rd if you were

1 A I don't remember if it was a full shift
2 or not. I know it would have been at least four hours.

3 Q Without pinning you down to a time, can
4 you recall if it was daylight or dark when you started
5 that security job?

6 A I'm not sure.

7 Q Okay. Do you recall if you were close
8 to the end of the shift when this call comes in sometime
9 after midnight?

10 A It possibly could have been close if it
11 was a four-hour block.

12 Q Did you have any active responsibil-
13 ities at the hotel security job other than just be a
14 presence there?

15 A Just maintain the security and that's
16 it.

17 Q Was it something where you had to make
18 rounds every so often and make sure doors were locked or
19 you know, things weren't being tampered with?

20 A You really couldn't make rounds, no,
21 because it was a construction area.

22 Q Just your presence there --

23 A Just your presence and just try to see

1 dispatch while you were en route after leaving the hotel
 2 and prior to exiting your car?
 3 A I don't have a number.
 4 Q Was it pretty open communication,
 5 though?
 6 A As far as open as in?
 7 Q Were you ever trying to reach dispatch
 8 and they were unavailable?
 9 A I don't recall.
 10 Q Do you recall receiving numerous
 11 updates?
 12 A Yes.
 13 Q Did you ever give any consideration to
 14 asking dispatch to call the residence for a status, the
 15 people who were actually living there?
 16 A Are you saying did I ask or did I think
 17 about asking them to call?
 18 Q Yeah.
 19 A I don't recall.
 20 Q Have you ever been trained, advised,
 21 instructed, whatever you were, that that is an option to
 22 ask someone to call the residence so that you have a
 23 better idea of what you're walking into?

1 A I can't say. I don't recall.
 2 Q But you, yourself, have done that in
 3 other occasions?
 4 A Yes.
 5 Q Have you ever been instructed not to do
 6 that?
 7 A Not that I recall.
 8 Q Did dispatch give a description at all
 9 of what Mr. Webb may have looked like, his physical
 10 appearance?
 11 A If I remember correctly, it was a tall
 12 male with long hair. As far as the clothing description,
 13 I don't recall.
 14 Q Were you wearing a protective vest when
 15 you arrived at the scene or did you retrieve that from
 16 your vehicle?
 17 A I had one on but I don't know if I
 18 retrieved it when I arrived or before I left the hotel.
 19 Q And, obviously, we understand that
 20 your car did have a shotgun in it somewhere.
 21 A That's correct.
 22 Q Was that secured in the trunk?
 23 A I think it was in the rack up front.

1 A Well, mostly for businesses, like if
 2 there's a panic alarm.
 3 Q Okay. What about domestic violence
 4 situations in the home? The reason I'm asking is a
 5 retired officer asked did they do this because it was his
 6 pattern to ask dispatch to call a residence before he
 7 walked up and knocked on the door. I'm just curious if
 8 anybody's ever taught you-all or talked about that?
 9 A Sometimes only to get an update, not to
 10 see -- because no matter, even if they try to disregard
 11 us on a domestic, we still have to respond.
 12 Q Right. You're still going. If I
 13 understood it correctly, though, you haven't received
 14 training on that or have been instructed that that's an
 15 option for you to have someone call the house and ask is
 16 this a violent situation or not?
 17 A Have I been instructed?
 18 Q Yes.
 19 A I've done that. I don't know that I
 20 was instructed. I can't say. I mean, just to get an
 21 update to see if the violence has escalated or not.
 22 Q Would that have been something you
 23 think you just picked up from other officers on the job?

1 Q Did you access the shotgun before
 2 leaving or upon getting out of the car at the scene or
 3 near the scene?
 4 A Before leaving.
 5 Q Before leaving the hotel?
 6 A No. I waited till I arrived on the
 7 scene.
 8 Q Just out of curiosity, is there a
 9 reason you chose to take the shotgun and not rely on the
 10 Glock 35?
 11 A I took the shotgun because it's another
 12 tool that we have issued.
 13 Q From the time you arrived at the scene,
 14 did you hear any gunshots or discharge of firearms in the
 15 area?
 16 A No.
 17 Q At anytime until after Mr. Webb was
 18 hit, did he discharge that weapon or any weapon that you
 19 know of?
 20 A Can you say that again?
 21 Q From the time you arrived until
 22 Mr. Webb was shot, do you know or can you say that he
 23 discharged a firearm at all?

1 A No. I did not hear a round go off.
 2 Q As you were walking down Cabell
 3 Heights, was the house on your right or on your left?
 4 A On the right.
 5 Q And how did you first attempt to gain
 6 access to the house?
 7 A Through the gate, the fence gate.
 8 Q Would that be the one out on Cabell
 9 Heights or on Primrose?
 10 A The fence facing Cabell Heights.
 11 Q And were you able to get in that gate?
 12 A No.
 13 Q Do you recall why?
 14 A There was a lock, like a padlock
 15 through the hole where the hasp closes.
 16 Q Were you able to observe anyone outside
 17 the home from that location from the front gate?
 18 A I don't recall from that location, from
 19 the gate.
 20 Q At that point when you're standing at
 21 the gate, were you aware of the intersection of Primrose?
 22 Could you see it at that point?
 23 A I believe so. Could see the

1 that we were going to get between him and his residence.
 2 And that's why we were going to go through the gate and
 3 split off and go around each side of the house and where
 4 he was on past us.
 5 Q Did you consider going over the chain
 6 link fence at that point or was it just a matter that
 7 it's easier to walk up Primrose Lane?
 8 A I did but I chose not to do that.
 9 Q Why is that?
 10 A Because it would have made too much
 11 noise.
 12 Q So then if I recall correctly, you
 13 would have continued walking on a slight downhill grade
 14 to reach the intersection of Primrose?
 15 A I'm not sure if it leveled out there or
 16 not. I can't recall at that point if it was downhill or
 17 not.
 18 Q And how much were you able to observe
 19 Mr. Webb from the time you left the front gate as you
 20 then made the right-hand turn and began walking down
 21 Primrose?
 22 A If I recall correctly, I couldn't
 23 really observe him from my point because there was a

1 intersection of the road?
 2 Q Yes.
 3 A I believe so.
 4 Q When you were standing at that front
 5 gate, were you able to determine if there was anyone
 6 outside the house at all?
 7 A I determined before we got to the gate.
 8 Before coming down the road at the edge of the property,
 9 at the boundary, you could see someone going in and out
 10 of the tree line.
 11 Q Okay. And was the music still on at
 12 that point?
 13 A When we got to the gate?
 14 Q Yes.
 15 A It had stopped right there in that
 16 general time frame when we were at the gate.
 17 Q Did you have any discussion with Deputy
 18 Hajash at that point about how you were going to approach
 19 the person that you just previously observed?
 20 A While we were at the gate?
 21 Q Yes.
 22 A If I remember correctly, my intentions
 23 were since I understood that he was firing at his house.

1 large shrub in front of us.
 2 Q Was the music still playing at that
 3 point?
 4 A No. After it initially stopped, no.
 5 Q As you made the turn and began walking
 6 down Primrose, did you come to a stop or were you in
 7 constant motion until reaching him?
 8 A That I don't recall.
 9 Q Do you have any recollection of finding
 10 a vantage point between the hedges where you could
 11 observe him visually?
 12 A Before coming down the street in front
 13 of the house?
 14 Q Yes. At this point, I'm at the point
 15 where you and Deputy Hajash were walking down Primrose.
 16 Do you recall finding a vantage point where you could see
 17 him between the hedges?
 18 A No. Where I observed him between
 19 anything was on Cabell Heights before we got to Primrose.
 20 Q I know I'm probably getting pretty
 21 technical here but when you left the front gate and you
 22 walked to the intersection of Primrose and Cabell
 23 Heights, were you able to see him in between Primrose and

1 Q I'm going to ask you to draw us a
 2 diagram if you would.
 3 A Well, a diagram of?
 4 Q How about starting with just drawing an
 5 intersection of Cabell Heights and Primrose and then
 6 we'll put the house in after that and then we can kind of
 7 draw the driveway in and then put the people last.
 8 A (Witness complies) Okay. The
 9 intersection and then -- what do you want next?
 10 Q The location of the Webb house in
 11 relation to the intersection.
 12 A (Witness complies)
 13 Q Okay. And then the driveway where
 14 Mr. Webb was located.
 15 A (Witness complies)
 16 Q Okay. If you would, just however you
 17 want to draw it but put in something to indicate where
 18 the shrubs that we've been referring to. Where are they
 19 located as they were obstructing your view?
 20 A To the best of my memory.
 21 Q Okay. Would you put an "S" or "Sh" or
 22 something there by that?
 23 A (Witness complies)

1 Hajash.
 2 A He was off to my right.
 3 MR. WILLIAMS: And when you say he.
 4 you're talking about Hajash?
 5 THE WITNESS: I'm sorry. Yes, Deputy
 6 Hajash.
 7 BY MR. OLIVIO:
 8 Q Would you please put an "H" to identify
 9 Hajash and "K".
 10 A (Witness complies)
 11 Q Thank you. Okay. Let me mark that as
 12 Exhibit I and later, I'm going to ask you to do one more
 13 drawing but we'll put them both on the same --
 14 (WHEREUPON, Kade Deposition
 15 Exhibit No. 1 was marked for
 16 identification purposes)
 17 MR. WILLIAMS: And, again, my only --
 18 not really an objection but just clarification
 19 that he's drawing that strictly from memory not
 20 having been to or reviewed any layout or map of
 21 that area in quite sometime and it's obviously
 22 as we've discussed not to any reasonable scale.
 23 THE WITNESS: My memory is pretty good

1 Q Okay. The scale on this is probably
 2 going to get a little small but can you draw in relation
 3 to the best of your memory your location, the location of
 4 Mr. Webb and the location of Mr. Hajash at the time that
 5 you announced your presence as law enforcement?
 6 A Yeah. That is going to be kind of
 7 small, isn't it?
 8 Q Yeah. Feel free to expand this
 9 driveway over. We're not holding this to scale. However
 10 you want to draw it.
 11 A Okay. The location of myself, Hajash
 12 and Webb?
 13 Q Yes.
 14 A Somewhere, you know, in the driveway --
 15 we'll just use this as the pickup. You know, like I
 16 said, I don't have exact --
 17 Q I know. We're not holding you to scale
 18 or measurements there.
 19 A Okay. And this would be the opening of
 20 the truck and he was standing approximately somewhere
 21 here and I had stepped out and something like this. You
 22 know, I can't guess where he was but --
 23 Q Somewhere to your right was Deputy

1 of the location and everything as I remember.
 2 BY MR. OLIVIO:
 3 Q Okay. As Mr. Webb is standing at the
 4 truck, just so I'm clear, was he facing inside the
 5 vehicle?
 6 A That's correct.
 7 Q And in relation to his direction, you
 8 would have been to his right primarily?
 9 A In relation to?
 10 Q To his point of view. As he's reaching
 11 inside his vehicle, you would have been behind the
 12 vehicle so basically to his right?
 13 A Somewhat, yes.
 14 Q Okay. What do you specifically recall
 15 announcing to let him know that you were there?
 16 A Police, let us or let me see your
 17 hands.
 18 Q Is that a standard line that you use?
 19 A Somewhat. Because when you're in a
 20 stressful, dangerous situation, the more you have to
 21 blurt out, like, Sheriff's Department and Deputy Sheriff,
 22 so, police, let me see your hands.
 23 Q At what volume level would you do this?

1 A Very good. I mean a high volume level.
 2 Q If someone were within 20-25 yards,
 3 would it be at a sufficient volume that they would hear
 4 it clearly?
 5 A Yes.
 6 Q How did Mr. Webb respond when you
 7 announced your presence?
 8 A That is when he stepped away from, out
 9 from leaning in the vehicle and presented a firearm.
 10 Q Okay. And I'm going to slow this down
 11 and take small questions and small steps here. First,
 12 did he appear startled or surprised that you were there?
 13 A Probably surprised.
 14 Q Did he make any movements with his body
 15 either forward, backward or to the side to change his
 16 physical location from where he was when you announced?
 17 A Possibly, a step or two and a turn.
 18 Q When you say a step or two, can you
 19 describe for me --
 20 A Like, stepping back.
 21 Q Stepped back away from the vehicle?
 22 A Yes. Or out of the pocket per se.
 23 Q The door pocket where the door was

1 That's not your recollection of your perspective of where
 2 you were standing?
 3 A Of me, not him. Correct?
 4 Q Of you?
 5 A Of Deputy Hajash?
 6 Q Of you?
 7 A Yes. I stepped out and I was able to
 8 see him clearly.
 9 Q Okay. When you were able to see him
 10 clearly, can you describe for me where his weapon was
 11 when you first saw it?
 12 A When I first saw it, it was in his
 13 hands.
 14 Q In both hands?
 15 A Yes.
 16 Q At what level of his body?
 17 A It was a motion of coming up.
 18 Q So as your recollection is, did he have
 19 both hands on the weapon so they were positioned as they
 20 would be if he were to raise the gun and fire?
 21 A Yes.
 22 Q He didn't have to move his hands from a
 23 more carrying position to a firing position?

1 open.
 2 A (Witness nods head yes)
 3 Q As you are viewing and you indicated he
 4 turned, did he turn clockwise to his right or counter-
 5 clockwise to his left?
 6 A He turned to his right towards us.
 7 Q So you're to my right and you're
 8 indicating my right arm here. He turned this way into
 9 you and not turning so that his back was to you?
 10 A That's correct. Turned in to us.
 11 Q That would be in a clockwise fashion.
 12 A Towards his right.
 13 Q Did you have an unobstructed view of
 14 his body from where you were standing, a head-to-toe
 15 view?
 16 A At first, I had perceived that I could
 17 only see, like, from the waist up but I seen him falling
 18 and I was able to see a whole view. So I think in my
 19 memory I had a complete view and I don't know if that's
 20 because I was sidestepping or what.
 21 Q Deputy Hajash testified this morning
 22 that he only had a partial view because the truck was
 23 obstructing part of his field of vision of Mr. Webb.

1 A No.
 2 Q Okay. And you say he was raising the
 3 weapon, did you observe the butt of the weapon against
 4 his shoulder or was it down, completely down and he was
 5 raising the entire weapon?
 6 A From what I remember, it was up. It
 7 was just up, coming up. Now, whether the butt was in the
 8 toe of this pocket, the pocket of the shoulder, I know
 9 the weapon was coming up.
 10 Q Did you get a good observation of the
 11 weapon after everything was over?
 12 A No.
 13 Q Did you look at the weapon after he was
 14 on the ground?
 15 A I did not walk up on him to see him or
 16 the weapon. I was able to identify the weapon when he
 17 had it. I mean, I could see it on the ground from where
 18 I was at.
 19 Q Was the weapon equipped with a sling?
 20 A I don't recall.
 21 Q At anytime, did you observe a sling or
 22 any other mechanism holding the weapon onto Mr. Webb's
 23 person other than his hands?

1 A At anytime before the shot was fired --

2 Q Yes.

3 A -- did I observe him -- can you ask
4 that again?

5 Q I'm trying to make sure that the weapon
6 wasn't suspended like a tactical harness or something.

7 A No.

8 Q It was in his hands?

9 A It was in his hands.

10 Q And you don't recall him having to
11 reposition the hands to put the weapon into a firing
12 position?

13 A No.

14 Q Okay. How did he raise the weapon as
15 you recall to present it in a threatening manner?

16 A With both hands on the weapon.

17 Q Did he do this as he was turning or did
18 he complete his turn and then begin to raise the weapon?

19 A I'm not sure. If I remember correctly,
20 he may have turned with it and then raised it. I don't
21 recall whether it was simultaneous or whether it was
22 after.

23 Q Did he ever get the weapon all the way

1 or he turned and raised it up.

2 Q Okay. Do you know specifically if you
3 fired first or if Deputy Hajash fired first?

4 A If it wasn't close to being simul-
5 taneous, then it was just very little delay between both.

6 Q What model of shotgun did you carry?

7 A A Remington 870.

8 Q A pump or an autofeeder?

9 A A pump.

10 Q Do you know what kind of rounds you had
11 in it?

12 A I think Remington Express 2 3/4 00
13 buckshot.

14 Q Could you tell from the reaction if the
15 shot from the shotgun hit Mr. Webb?

16 A Yes.

17 Q You believe it hit him?

18 A Yes.

19 Q Do you have any knowledge if whether
20 Deputy Hajash hit Mr. Webb with any of his shots?

21 A Yes.

22 Q Do you know how many shots Deputy
23 Hajash fired?

1 up to the right shoulder pocket and level?

2 A From what I recall, yes. Yes.

3 Q So you perceived the weapon was
4 shouldered and aimed at you or Deputy Hajash?

5 A I perceived it aimed in our direction,
6 aimed at me because there wasn't a whole lot of room
7 between us.

8 Q You believe he had the weapon leveled
9 at the time you fired or did you fire before he got it
10 all the way up?

11 A From what I remember, he was bringing
12 it up. I can't say if it was up up or if it was just
13 slightly before being in a position of what you're
14 calling up.

15 Q So your recollection of this is
16 Mr. Webb takes a step backwards and turns to his right
17 while raising -- well, perhaps completing the turn and
18 perhaps simultaneous raising the weapon to his right
19 shoulder while turn to his right?

20 A Are you saying that he turned to his
21 right and raised the weapon?

22 Q Yes.

23 A He either raised it up at the same time

1 A I believe it to be three.

2 Q And you were here when he gave us the
3 description of two initial shots and then a third shot.
4 Do you agree with that?

5 A I perceived them as being in succession
6 of boom, boom, boom. I don't recall a boom, boom and a
7 boom.

8 Q Okay. Were you able to observe
9 Mr. Webb fall to the ground?

10 A Yes.

11 Q Did he go down immediately from the
12 impact of the shotgun, when the shot hit him?

13 A I perceived that he fell down
14 immediately.

15 Q Do you recall his body rolling over as
16 Deputy Hajash described this morning?

17 A Yeah, he did roll.

18 Q Did he roll towards you or away from
19 you if you recall?

20 A I think towards us.

21 Q At anytime after he hit the ground, did
22 you observe the weapon still in his hand?

23 A No, no.