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APPELLANT'S OPENING BRIEF

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Statutes:



# APPELLANT'S OPENING BRIEF

## Statement of the Case

### I. Nature of the Case

#### A. Basis for Subject Matter Jurisdiction in the District Court

D. The Notice of Appeal Was Timely Filed

II. Introduction and Summary of Issues



### III. Proceedings and Disposition in the District Court

### IV. Statement of Facts

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## B. The Elements of a § 1983 Claim

1. Serious or Permanent Injuries are not an Element

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## 2. Vehicular Offenses

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## C. Argument







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A. The Severity of the Intrusion on the Individual's Fourth Amendment Rights by Evaluating the Type and Amount of Force Inflicted and Risk of Harm

2. Whether Dr. FOX Posed an Immediate Threat to the Safety of the Officers or Others is in Dispute

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3. Whether Proper Warnings Were Given

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4. The Availability of Less Intrusive Alternatives to the Force Employed

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C. The Balance Between the Gravity of the Intrusion on the Individual and the Government's Need for That Intrusion

IV. The Law was either "Clearly Established" or "Obvious" and Genuine Disputes of Material Fact Existed



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B. It is Clearly Established That Where There Is No Need for Force, Any Force Used Is Unreasonable.

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C. It is Clearly Established that the Way Handcuffs are Applied can Constitute Excessive Force

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D. It is Clearly Established that Pulling Dr. FOX to the Ground is Actionable

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V. The State Civil Arrest and Battery Claims Should be Decided on the Same Grounds as the Federal Claims, But Are Not Subject to a Qualified Immunity Defense

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A. The State Claim Under Civ. Code § 52.1 Is Viable

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## Conclusion

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CERTIFICATE OF COMPLIANCE

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10,964

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CERTIFICATION OF RELATED CASES

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CERTIFICATE OF SERVICE

APPELLANT'S OPENING BRIEF

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