

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WISCONSIN

IAN CUYPERS,

Plaintiff,

Case No: 24-CV-743

v.

SUPERIOR POLICE DEPARTMENT
OFFICERS JUSTIN TAYLOR, TAYLOR
GAARD, SGT. MATTHEW BROWN and
CITY OF SUPERIOR,

Defendants.

**DEFENDANTS' MOTION TO ADJOURN
TRIAL PENDING APPEAL**

Defendants Superior Police Department Officers Justin Taylor, Taylor Gaard, Sergeant Matthew Brown, and the City of Superior, by their attorneys, Crivello, Nichols & Hall, S.C. respectfully move the Court, the Honorable James D. Peterson presiding, for an Order adjourning trial in this matter pending appeal, pursuant to Fed. R. Civ. P. 62(b)(4) and 60(b)(6).

On February 9, 2026, this Court granted plaintiff's motion for partial summary judgment as for plaintiff's Fourth Amendment excessive force claim against defendant Gaard for deploying her taser on Cuypers's lower back and legs and denied defendants' motion for summary judgment on the remaining claims. (ECF No. 56).

Defendants filed a notice of appeal on February 26, 2026, appealing the Court's Order denying qualified immunity on Plaintiff's claim of excessive force claim against

defendant Gaard for deploying her taser; defendants Taylor and Brown's failure to intervene to prevent Gaard from deploying her taser; defendants Taylor and Gaard's use of excessive force against Cuypers in pointing their firearm at him; and defendant Gaard's failure to intervene to prevent Taylor from pointing his firearm at Cuypers. Defendants also appeal the order denying them immunity from suit under Wis. Stat. § 893.80(4) on Plaintiff's claim that defendants Gaard, Taylor, and Brown violated Wisconsin law by initiating a malicious prosecution against him for obstructing officers.

Generally speaking, once a notice of appeal is filed, a district court is divested of jurisdiction over aspects of the case involved in the appeal. *S&S Sales Corp. v. Marvin Lumber & Cedar Co.*, 457 F. Supp.2d 903, 905 (E.D. Wis. 2006) (citing *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982)). Regarding appeals of denials of qualified immunity specifically, the Seventh Circuit has held that “[i]n the absence of the district court’s reasoned findings of frivolousness or forfeiture, . . . the trial is automatically put off.” *Apostol v. Gallion*, 870 F.2d 1335, 1339 (7th Cir. 1989). This serves to avoid confusion and duplication of effort. *Apostol*, 870 F.2d at 1337. It is a judge-made doctrine designed to avoid the confusion and waste of time that might flow from putting the same issues before two courts at the same time. *Amalgamated Meat Cutters & Butcher Workmen of N. Am. v. Thompsen Farms Co.*, 642 F.2d 1065, 1074 (7th Cir. 1981).

Therefore, this Court has been divested of jurisdiction over aspects of the case involved in the appeal by the Defendant’s timely filing of a notice of appeal. Due to

the pending appeal, and the lack of jurisdiction in this Court on the issue of the application of qualified immunity and immunity under Wis. Stat. § 893.80(4), the Defendant respectfully requests that the balance of this lawsuit and the upcoming trial be adjourned pending the outcome of the appeal. This request is made so that when the matter ultimately goes to a jury after resolution of the appeal, a full and proper presentation of the Plaintiff's claims to the jury can occur, thereby satisfying the orderly presentation of this case and judicial economy.

Dated this 26th day of February, 2026.

CRIVELLO, NICHOLS & HALL, S.C.
Attorneys for Defendants Superior Police
Department Officers Justin Taylor, Taylor
Gaard, Sgt. Matthew Brown and City of
Superior

By: /s/ Kiley B. Zellner

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