IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON and BENNY HUTCHINSON, on behalf of themselves and the Estate of ISAIAH HUTCHINSON,	§	
Plaintiffs,	§	
v.	§	**Cause No.** 1:21-cv-00021
	§	
THE CITY OF AUSTIN, and DEANDRE WRIGHT and DANE O'NEILL and ZACHARY WOODS and THOMAS BERNARD NELSON, III,	§	
Defendants.	§	

PLAINTIFFS' COMPLAINT AND REQUEST FOR JURY TRIAL

COMES NOW, Plaintiffs Benny Hutchinson and Christine Springs, on behalf of themselves and the Estate of Isaiah Hutchinson ("Plaintiffs"), who file their Complaint complaining of The City of Austin, and Deandre Wright, and Dane O'Neill and Zachary Woods, and Thomas Bernard Nelson, III ("Defendants"), and for cause of action would respectfully show the Court as follows:

I. Parties

1.01. Plaintiffs Christine Springs-Hutchinson and Benny Hutchinson are individuals who reside in Dallas County, Texas.

1.02. Defendant The City of Austin is a Texas Municipal Corporation located in the

Western District of Texas. Brian Manley is Austin's policy maker regarding policing matters.

1.03. Defendant's Deandre Wright, and Dane O'Neill and Zachary Woods, and Thomas Bernard Nelson, III, are police officers employed, trained and supervised by the Police Department of the City of Austin.

II. Jurisdiction

2.01. This Court has federal question subject matter jurisdiction over this 42 U.S.C. § 1983 lawsuit under 28 U.S.C. § 1331.

2.02. This Court has general personal jurisdiction over defendants Wright, O'Neill, Woods and Nelson because they live and work in Texas. The City of Austin is subject to general personal jurisdiction because it is a Texas municipality.

III. Venue

3.01. Venue is proper in the Western District of Texas, Austin Division, pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to this claim occurred in this district. The incident giving rise to Plaintiffs' claims involves Christine Springs-Hutchinson and Benny Hutchinson's son, Isaiah, who was gunned down without warning or cause by the defendant police officers; this occurred in The City of Austin, Texas, which is within this district.

IV. Factual Background of Isaiah's Killing by Austin Police

4.01. Early in the morning of March 17, 2019, Isaiah Hutchinson was a passenger in a black, Masertati SUV which was rear-ended by a Monte Carlo while traveling on 7th Street near the intersection with Neches, in Austin, Texas.

4.02. After being rear-ended, the driver of the Maserati, a friend of Isaiah's named Demarious Davis, stopped at the next stoplight and exited his vehicle along with another unidentified person to obtain identity and insurance information from the driver of the Monte Carlo. According to witness statements, Isaiah, who was riding in the back seat, opened the rear passenger door but did not completely exit the vehicle.

4.03. Upon approaching the driver's window at the Monte Carlo, a conflict ensued and gunshots were fired at Davis and his acquaintance from inside the Monte Carlo.

4.04. At the same time, officers with the City of Austin Police Department were working on foot nearby as crowd control for the South by Southwest music festival. A number of officers heard the gunshots, and responded rapidly on foot to the scene, where video evidence shows numerous officers shooting Isaiah at near point-blank range, as he attempted to enter the Maserati; some officers who were firing weapons appear to be dressed in street clothes. At no time did the police officers identify themselves or order Isaiah to drop the firearm which he was holding up in his hand, which he had used to defend himself from the shooters in the Monte

Carlo.

4.05. Video evidence shows that both the Maserati and the Monte Carlo left the scene as the police began shooting.

4.06. The Maserati was found abandoned later that afternoon; Isaiah's body was discovered in the back seat, dead from apparent gunshot wounds. Isaiah Hutchinson was a Black man.

V. Factual Background of the Overly-Aggressive and Racist Atmosphere Propagated by The City of Austin and Austin Police Department

5.01. In 2016, the Center for Policing Equity found that Austin police officers used more violence in the neighborhoods where Black and Hispanic Austinites live than in predominantly white neighborhoods. The study adjusted for crime and poverty variables and found that Austin police officers' use of force in those communities was disproportionate and unjustified. Austin police were more likely to use severe force against Black people and other people of color. Austin police were disproportionately more likely to shoot rather than use their hand-to-hand training or deploy pepper spray when the person subjected to force was Black.

5.02. The Austin City Council criticized the Austin Police Department's patterns of racist behavior and outcomes in December 2019, less than six months after the defendant officers killed Isaiah Hutchinson, a Black man from Texas:

> APD's state-mandated racial profiling reports consistently show that Black and Latino drivers are more than twice as likely to be searched

as their white counterparts during traffic stops despite similar "hit rates," including in 2018 where 6% of traffic stops of white drivers resulted in a police searches compared to 14% for Latino drivers and 17% for Black drivers.

APD data provided per Council Resolution No. 20180614-073 (one of the Freedom City Resolutions) showed that in 2017 APO [sic] police officers made discretionary arrests of African Americans at more than twice the rate of either White or Latino residents.

That same 2017 data also showed Black and Latino residents accounted for nearly 75% of those discretionary arrests for driving with an invalid license, although the two groups combine to make up less than 45% of Austin's population.

That same 2017 data also showed that one out of every three discretionary arrests for misdemeanor marijuana possession involved a Black resident even though less than one in ten Austinites is Black, while usage rates of marijuana are similar across racial groups.

Per the quarterly report for Council Resolution No. 20180614-073, issued by APD on May 3, 2019, African Americans comprised 32% of persons arrested by APD for offenses eligible for citation, which, proportionally, amounts to more than three times Austin's Black population.

An anonymous whistle-blower recently accused an Assistant Chief of the Austin Police Department of using racist epithets and derogatory terms, including "nigger", to refer to specific Black elected officials and sworn officers of the Austin Police Department.

Patterns and specific incidents of discrimination and bigotry in the Austin Police Department erode the public trust, which is necessary to effectively enforce the law, solve crimes, and maintain public safety, and so the Council finds it imperative to understand the full extent of bigotry and systemic racism and discrimination within APD, and consider reforms to APD's policies, protocols, and training curriculum.

5.03. The Austin Office of Police Oversight, Office of Innovation, and Equity Office

published a joint report in January 2020 (*less than 10 months after the defendant officers killed Isaiah Hutchinson*) critical of the Austin Police Department's policing practices based on race during motor vehicle stops:

> Data reveals racial disparities in motor vehicle stops in 2018, with Black/African Americans as the most overrepresented of all racial/ethnic groups in Austin. In 2018, Black/ African Americans made up 8% of the Austin population, 15% of the motor vehicle stops, and 25% of the arrests.
>
> Black/African Americans and Hispanic/Latinos are increasingly overrepresented in motor vehicle stops from 2015-2018. White/Caucasians are increasingly underrepresented during the same time period.
>
> Data from 2018 shows that Black/African Americans are disproportionately overrepresented in cases when their race is known by officers before the stop compared to cases when their race is not known before the stop.
>
> APD classifies motor vehicle stops based on whether the race of the person stopped was known to the officer prior to the stop. In 2018, Black/ African Americans are overrepresented in both Race Not Known and Race Known categories. In the Race Not Known category, Black/African Americans make up 14% of stops (this is a 6% overrepresentation compared to their share of the Austin population). Black/African Americans are further overrepresented when their race is known before the stop, making up 17% of stops in the Race Known category and indicating a 9%overrepresentation when compared to their share of the population.

5.04. On April 16, 2020, a little over one year after the defendant officers killed Isaiah Hutchinson, the City of Austin released a third-party investigative report regarding persistent racist behavior that permeated the Austin Police Department

and the almost certain retaliation that employees who dared to speak out must be prepared to endure:

> By several accounts, [Assistant Chief] Newsom's use of racist language was well known throughout the Department as was the use of such language by other officers who were known to be close friends with AC Newsom and used such language openly and often.
>
> Reports came to us, from different ranks, races and genders, advising of the fact that the racist and sexist name calling and use of derogatory terms associated with race and sex persists. Anecdotal history indicated that even members of the executive staff over the years had been known to use racist and sexist language, particularly when around the lower ranks or other subordinates.
>
> We listened to many anecdotes illustrating inappropriate comments over the years through which APD personnel expressed concern about racist behavior, but also sexist behavior, and dissimilar treatment in the handling of officer discipline and those who may be served by APD chaplain services with the denial of marital services to same sex couples. There are some real cultural issues that are in need of attention.
>
> Tatum Law was able to establish that [Austin Police] Chief Manley had reason to inquire as to [Assistant Chief] Newsom's conduct ... The October 7, 2019, email received by Chief Manley alleging similar facts to those later alleged in the October 30, 2019 complaint about AC Newsom's use of the derogatory term "nigger" in text messages to refer to African Americans provided sufficient information... Chief Manley did not send these allegations for review or investigation.
>
> Whether it is about a grievance or misconduct there is an overwhelming sentiment among officers, at or previously involved with the Austin Police Department, and regardless of rank, that an officer, or even civilian staff member, who wishes to right a wrong, complain about improper conduct, or participate in an investigation such as this one, must be prepared in the present climate and culture to face almost certain retaliation, and not necessarily from Chief Manley, directly or

solely.

5.05. The Austin City Council made additional, equally unequivocal findings on June 11, 2020 (less than 15 months after the defendant officers killed Isaiah Hutchinson) regarding the City's anemic and unsuccessful efforts to fix its racist and violent policing culture:

> The elected members of City Council have no confidence that current Austin Police Department leadership intends to implement the policy and culture changes required to end the disproportionate impact of police violence on Black Americans, Latinx Americans, other nonwhite ethnic communities.
>
> The measures that current Austin Police Department leadership have been willing to implement are inadequate, and resemble the same flawed police training and command expectations that have existed in the past. [emphasis added].

5.06. These recent findings by Austin's City Council, Office of Police Oversight, Office of Innovation, and Equity Office are binding evidentiary admissions by the City that its policing policies have led to disproportionate and unconstitutional police violence against members of the Black and Hispanic communities in Austin. Isaiah Hutchinson-a Black man and native Texan-suffered a tragic death that is a direct result of the racism that has permeated policing in Austin. It is that much more heartbreaking that he was killed in the same year that City leaders began to admit to-and grapple with-these ingrained problems. Isaiah's unjustified killing by Officers DeAndre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard

Nelson, III, emphasizes the urgency of the problem Austin faces.

VI. Claims

6.01. Officers DeAndre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, violated Isaiah Hutchinson's Fourth and Fourteenth Amendment rights when they shot and killed Isaiah without justification.

6.02. Plaintiffs incorporate sections I through VI above into their excessive force claim brought under 42 U.S.C. § 1983.

6.03. Officers DeAndre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, were acting under color of law when they shot Isaiah Hutchinson as Isaiah attempted to depart the scene where he had just been shot at by persons unknown from the Monte Carlo and other persons who never identified themselves as police officers. Officers DeAndre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, shot Isaiah even though Isaiah did not pose an imminent threat of serious injury or death to anyone that would have justified the defendant officers' lethal force. The use of lethal force by Officers DeAndre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, under these circumstances and considering clearly established law was excessive and objectively unreasonable.

6.04. The use of unlawful and unconstitutional deadly force by Officers DeAndre

Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, violated Isaiah's civil rights, is the direct cause of Isaiah's death, and caused Plaintiffs' heartbreak and damages.

6.05. Austin's policies cause its police to violate the civil rights of Black and Hispanic people including Isaiah Hutchinson.

6.06. Plaintiffs incorporate sections I through VI above into their *Monell* claim brought under 42 U.S.C. § 1983.

6.07. Austin had these policies, practices, and customs on March 17, 2019:

a. Disproportionate use of excessive force against people of color;

b. Condoning such disproportionate use of excessive force against people of color;

c. Choosing not to adequately train officers regarding civil rights protected by the United States Constitution;

d. Choosing not to adequately supervise officers regarding the use of force against people of color;

e. Choosing not to intervene to stop excessive force and civil rights violations by its officers;

f. Choosing not to investigate excessive violence and civil rights violations by its officers; and

g. Making the deliberate choice not to discipline officers for-and deter officers

from-using excessive force and violating civil rights.

6.08. The City and Brian Manley knew about these policies and required Austin police to comply with them.

6.09. The City and Brian Manley developed and issued these policing policies with deliberate indifference to Isaiah Hutchinson's and other Black and Hispanic Austinites' civil rights.

6.10. The City and Brian Manley were aware of the obvious consequences of these policies. Implementation of these policies made it predictable that Isaiah's civil rights would be violated in the manner they were, and the City and Brian Manley knew that was likely to occur.

6.11. These policies were the moving force behind the violation of Isaiah's civil rights by Officers DeAndre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, and thus, proximately caused Isaiah's death and Plaintiffs' damages.

VII. Damages

7.01. Plaintiffs incorporate sections I through VI above into this section on damages.

7.02. Plaintiffs seeks recovery under the Texas survivorship statute for the damages that Isaiah would have been entitled to if he had lived including damages for Isaiah's physical pain and mental anguish and his economic loss.

7.03. Plaintiffs also seeks recovery under the Texas wrongful death statute for their own mental anguish and injuries including damages for the loss of their relationship with Isaiah, their loss of the love, support, and services that Isaiah would have given to them, economic loss, and funeral and burial expenses.

VIII. Request for Jury Trial

8.01. Plaintiffs request a jury trial.

IX. Prayer

9.01. For all these reasons, Plaintiffs request that the City of Austin and Officers DeAndre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, be summoned to appear and answer their allegations. After a jury trial regarding their claims, Plaintiffs seeks to recover the damages listed above in an amount to be determined by the jury and any other relief to which she is entitled including her attorney's fees and expenses under 42 U.S.C. §1988(b), court costs, and pre- and post-judgment interest.

Respectfully submitted,

/s/ Scott Ogle
Scott Ogle
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Attorney for Plaintiffs

JS 44 (Rev. 10/20)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Christine Spring-Hutchinson and Benny Hutchinson, on behalf of themselves and the Estate of Isaiah Hutchinson

(b) County of Residence of First Listed Plaintiff Dallas
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Scott Ogle, Law Office of Scott Ogle, 2028 W. Ben White Blvd., Austin, TX 78704; 512 442 8833

DEFENDANTS

The City of Austin, and Deandre Wright and Dane O'Neill and Zachary Wood and Thomas Bernard Nelson, III

County of Residence of First Listed Defendant Travis
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 422 Appeal 28 USC 158	☐ 375 False Claims Act
☐ 120 Marine	☐ 310 Airplane	☐ 365 Personal Injury - Product Liability	☐ 690 Other	☐ 423 Withdrawal 28 USC 157	☐ 376 Qui Tam (31 USC 3729(a))
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability		PROPERTY RIGHTS	☐ 400 State Reapportionment
☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability		☐ 820 Copyrights	☐ 410 Antitrust
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY	LABOR	☐ 830 Patent	☐ 430 Banks and Banking
☐ 151 Medicare Act	☐ 340 Marine	☐ 370 Other Fraud	☐ 710 Fair Labor Standards Act	☐ 835 Patent - Abbreviated New Drug Application	☐ 450 Commerce
☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 720 Labor/Management Relations	☐ 840 Trademark	☐ 460 Deportation
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 740 Railway Labor Act	☐ 880 Defend Trade Secrets Act of 2016	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	☐ 751 Family and Medical Leave Act	SOCIAL SECURITY	☐ 480 Consumer Credit (15 USC 1681 or 1692)
☐ 190 Other Contract	☐ 360 Other Personal Injury		☐ 790 Other Labor Litigation	☐ 861 HIA (1395ff)	☐ 485 Telephone Consumer Protection Act
☐ 195 Contract Product Liability	☐ 362 Personal Injury - Medical Malpractice		☐ 791 Employee Retirement Income Security Act	☐ 862 Black Lung (923)	☐ 490 Cable/Sat TV
☐ 196 Franchise				☐ 863 DIWC/DIWW (405(g))	☐ 850 Securities/Commodities/ Exchange
				☐ 864 SSID Title XVI	☐ 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		☐ 865 RSI (405(g))	☐ 891 Agricultural Acts
☐ 210 Land Condemnation	☒ 440 Other Civil Rights	Habeas Corpus:			☐ 893 Environmental Matters
☐ 220 Foreclosure	☐ 441 Voting	☐ 463 Alien Detainee		FEDERAL TAX SUITS	☐ 895 Freedom of Information Act
☐ 230 Rent Lease & Ejectment	☐ 442 Employment	☐ 510 Motions to Vacate Sentence		☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 896 Arbitration
☐ 240 Torts to Land	☐ 443 Housing/ Accommodations	☐ 530 General		☐ 871 IRS—Third Party 26 USC 7609	☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment	☐ 535 Death Penalty	IMMIGRATION		☐ 950 Constitutionality of State Statutes
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other	Other:	☐ 462 Naturalization Application		
	☐ 448 Education	☐ 540 Mandamus & Other	☐ 465 Other Immigration Actions		
		☐ 550 Civil Rights			
		☐ 555 Prison Condition			
		☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
42 U.S.C 1983

Brief description of cause:
Excessive force, violation of civil rights, racism, and wrongful death

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
March 9, 2021

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.)**

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. Origin. Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON AND BENNY HUTCHINSON, ON BEHALF OF THEMSELVES AND THE ESTATE OF ISAIAH HUTCHINSON	§	**CIVIL ACTION NO. 1:21-CV-00221-LY**
Plaintiffs	§	
v.	§	
THE CITY OF AUSTIN AND DEANDRE WRIGHT AND DANE O'NEILL AND ZACHARY WOODS AND THOMAS BERNARD NELSON, III,	§	
Defendants	§	

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants City of Austin, Deandre Wright, Dane O'Neill, Zachary Woods and Thomas Bernard Nelson, III file this Answer and Affirmative Defenses to Plaintiffs' Original Complaint (Doc. No. 1). Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendants respectfully show the Court the following:

ORIGINAL ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), Defendants respond to each of the specific averments in Plaintiffs' Complaint as set forth below. To the extent that Defendants do not address a specific averment made by Plaintiff, Defendants expressly deny that averment. [1]

Defendants deny the allegations contained in the first unnumbered paragraph in Plaintiff's Original Complaint.

[1] Paragraph numbers in Defendants' Answer correspond to the paragraphs in Plaintiffs' Original Complaint.

PARTIES

1.01 Upon information and belief, Defendants admit the allegations contained in Paragraph 1.01.

1.02 Defendants admit the allegations contained in the first sentence of Paragraph 1.02 of the Complaint. Defendants admit that on the date of the incident which is the subject of this lawsuit, Brian Manley was the policymaker for policing matters for the City of Austin.

1.03 Defendants admit the allegations contained in Paragraph 1.03.

JURISDICTION

2.01 Defendants admit the allegations contained in Paragraph 2.01.

2.02 Defendants admit the allegations contained in Paragraph 2.02.

VENUE

3.01 Defendants admit that venue is proper in the Western District of Texas, Austin Division. Defendants deny the remaining allegations contained in Paragraph 3.01.

FACTUAL BACKGROUND

4.01 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 4.01 of the Original Complaint and therefore deny same.

4.02 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 4.02 of the Original Complaint and therefore deny same.

4.03 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 4.03 of the Original Complaint and therefore deny same.

4.04 Defendants admit the allegations contained in the first sentence of Paragraph 4.04 of the Original Complaint. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 4.04 of the Original Complaint and therefore deny same.

4.05 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 4.05 of the Original Complaint and therefore deny same.

4.06. Upon information and belief, Defendants admit the allegations contained in Paragraph 4.06 of the Original Complaint.

5.01 Defendants deny the allegations contained in Paragraph 5.01.

5.02 Defendants deny the allegations contained in Paragraph 5.02.

5.03 Defendants deny the allegations contained in Paragraph 5.03.

5.04. Defendants deny the allegations contained in Paragraph 5.04.

5.05 Defendants deny the allegations contained in Paragraph 5.05.

5.06 Defendants deny the allegations contained in Paragraph 5.06.

CLAIMS

6.01 Defendants deny the allegations contained in Paragraph 6.01.

6.02 Defendants incorporate and adopt their responses to the previous paragraphs of the Complaint.

6.03 Defendants deny the allegations contained in Paragraph 6.03.

6.04 Defendants deny the allegations contained in Paragraph 6.04.

6.05 Defendants deny the allegations contained in Paragraph 6.05.

6.06. Defendants incorporate and adopt their responses to the previous paragraphs of the Complaint.

6.07 Defendants deny the allegations contained in Paragraph 6.07.

6.08 Defendants deny the allegations contained in Paragraph 6.08.

6.09 Defendants deny the allegations contained in Paragraph 6.09.

6.10 Defendants deny the allegations contained in Paragraph 6.10.

6.11 Defendants deny the allegations contained in Paragraph 6.11.

DAMAGES

7.01 Defendants incorporate and adopt their responses to the previous paragraphs of the Complaint.

7.02 Defendants deny the allegations contained in Paragraph 7.02.

7.03 Defendants deny the allegations contained in Paragraph 7.03.

8.01 Paragraph 8.01 merely contains the Plaintiffs' request for jury trial and therefore no response is required of the Defendants.

9.01 Defendants deny the allegations contained in Paragraph 9.01 and specifically deny that the Plaintiffs are entitled to any relief whatsoever of and from the Defendants.

AFFIRMATIVE DEFENSES

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.

2. Defendant City of Austin asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.

3. Defendants Wright, O'Neill, Woods and Nelson assert the affirmative defense of qualified/official immunity for actions taken in the course and scope of their employment.

4. Defendants assert the affirmative defense that Plaintiffs failed to mitigate damages, if any, and asserts this failure to mitigate as both an affirmative defense and as a reduction in the damage amount, if any, due Plaintiffs.

5. Defendants assert the affirmative defense of contributory negligence. Plaintiffs' claims are

barred in whole or in part by the contributory negligence of Isaiah Hutchinson. Hutchinson, by his actions, failed to exercise ordinary care for his safety. His actions contributed at least fifty-one percent to the alleged injuries and the damages asserted in this case.

6. Defendants affirmatively plead that the Plaintiff's claims are barred in whole or in part since Isaiah Hutchinson's intentional acts were the proximate cause, or a proximate contributing cause, of the alleged injuries and damages asserted in this case.

7. Defendants reserve the right to assert additional affirmative defenses throughout the development of the case.

DEFENDANTS' PRAYER

Defendants City of Austin, Deandre Wright, Dane O'Neill, Zachary Woods and Thomas Bernard Nelson III pray that all relief requested by Plaintiffs be denied, that the Court dismiss this case with prejudice, and that the Court award Defendants costs and attorney's fees, and any additional relief to which they are entitled under law or equity.

RESPECTFULLY SUBMITTED,
ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF, LITIGATION
/s/ H. Gray Laird
H. GRAY LAIRD III
State Bar No. 24087054
gray.laird@austintexas.gov
City of Austin
P. O. Box 1546
Austin, Texas 78767-1546
Telephone (512) 974-1342
Facsimile (512) 974-1311

ATTORNEYS FOR DEFENDANTS CITY OF AUSTIN, DEANDRE WRIGHT, DANE O'NEILL, ZACHARY WOODS AND THOMAS BERNARD NELSON III

CERTIFICATE OF SERVICE

I certify that on the 6th day of May, 2021, I served a copy of *Defendants' Answer and Affirmative Defenses to Plaintiffs' Original Complaint* on all parties, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

Scott Ogle
TBN: 00797170
2028 Ben White Blvd.
Austin, Texas 78704
Phone: 512-442-8833
Fax: 512-442-3256
soglelaw@peoplepc.com

ATTORNEY FOR PLAINTIFFS

/s/ H. Gray Laird
H. GRAY LAIRD

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON and BENNY HUTCHINSON, on behalf of themselves and the Estate of ISAIAH HUTCHINSON, Plaintiffs,	§	
v.	§	**Cause No. 1:21-CV-00221-LY**
THE CITY OF AUSTIN, and DEANDRE WRIGHT and DANE O'NEILL and ZACHARY WOODS and THOMAS BERNARD NELSON, III, Defendants.	§	

PLAINTIFFS' UNOPPOSED MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

COMES NOW, Plaintiffs Benny Hutchinson and Christine Springs, whoon behalf of themselves and the Estate of Isaiah Hutchinson ("Plaintiffs"), who file their Unopposed Motion for Leave to File Amended Complaint pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure and Local Rule CV-7(b), and in support would show unto this Court as follows:

A. Introduction

1. Plaintiffs are Christine Springs-Hutchinson and Benny Hutchinson, Defendants are The City of Austin, Deandre Wright, Dane O'Neill Zachary Woods, and Thomas Bernard Nelson, III.

2. Plaintiffs filed a Complaint on March 9, 2021. Defendants served an Answer on May 6, 2021. Plaintiffs now seek to amend their complaint because more than 21 days have passed since Defendants served their Answer, and Defendants will not consent to the amendment. Plaintiff files this motion pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure. Pursuant to Local Rule CV-7(b), Plaintiffs have attached their proposed Amended Complaint as an exhibit to this Motion.

3. After further review of available materials, Plaintiffs seek to amend their complaint by deleting the language asserting that Isaiah Hutchinson was in possession of a firearm at the time of his death.

4. Counsel for Defendants has indicated that he is not opposed to the granting of the relief requested in this Motion.

B. Argument

1. The Court should allow the filing of Plaintiffs' Amended Complaint because it is appropriate and necessary. *See Gamma-10 Plastics, Inc. v. Am. President Lines,* Ltd., 32 F.3d 1244, 1255-56 (8th Cir. 1994).

C. Prayer

1. For all these reasons, Plaintiffs request that the Court grant this Motion in all respects and direct the Clerk to file Plaintiffs Amended Complaint attached hereto as an exhibit. Plaintiffs further pray for any such additional relief to which they may show themselves entitled.

Respectfully submitted,

/s/ Scott Ogle
Scott Ogle
TBN: 00797170
2028 Ben White Blvd.
Austin, TX 78704
Phone: (512) 442-8833
Fax: (512) 442-3256
soglelaw@peoplepc.com
Attorney for Plaintiffs

CERTIFICATE OF CONFERENCE

I hereby certify that a conference was held with counsel for the Defendants, Gray Laird, who indicated that he is not opposed to the granting of the relief requested in this motion.

/s/ Scott Ogle
Scott Ogle

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2021, I filed the foregoing pleading with the U.S. District Clerk for the Western District of Texas, San Antonio Division, by means of electronic filing ECF. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of the document by electronic means.

/s/ Scott Ogle
Scott Ogle

H. Gray Laird, III
City of Austin
P.O. Box 1546
Austin, TX 78767
gray.laird@austintexas.gov
Counsel for Defendants
via efiling

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
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PLAINTIFFS' AMENDED COMPLAINT AND REQUEST FOR JURY TRIAL

COMES NOW, Plaintiffs Benny Hutchinson and Christine Springs, on behalf of themselves and the Estate of Isaiah Hutchinson ("Plaintiffs"), who file their Amended Complaint complaining of The City of Austin, and Deandre Wright, and Dane O'Neill and Zachary Woods, and Thomas Bernard Nelson, III ("Defendants"), and for cause of action would respectfully show the Court as follows:

I. Parties

1.01. Plaintiffs Christine Springs-Hutchinson and Benny Hutchinson are individuals who reside in Dallas County, Texas.

1.02. Defendant The City of Austin is a Texas Municipal Corporation located in the

Western District of Texas. Brian Manley is Austin's policy maker regarding policing matters.

1.03. Defendant's Deandre Wright, and Dane O'Neill and Zachary Woods, and Thomas Bernard Nelson, III, are police officers employed, trained and supervised by the Police Department of the City of Austin.

1.04 All Defendant's have appeared by filing an Answer.

II. Jurisdiction

2.01. This Court has federal question subject matter jurisdiction over this 42 U.S.C. § 1983 lawsuit under 28 U.S.C. § 1331.

2.02. This Court has general personal jurisdiction over defendants Wright, O'Neill, Woods and Nelson because they live and work in Texas. The City of Austin is subject to general personal jurisdiction because it is a Texas municipality.

III. Venue

3.01. Venue is proper in the Western District of Texas, Austin Division, pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to this claim occurred in this district. The incident giving rise to Plaintiffs' claims involves Christine Springs-Hutchinson and Benny Hutchinson's son, Isaiah, who was gunned down without warning or cause by the defendant police officers; this occurred in The City of Austin, Texas, which is within this district.

IV. Factual Background of Isaiah's Killing by Austin Police

4.01. Early in the morning of March 17, 2019, Isaiah Hutchinson was a passenger in a black, Masertati SUV which was rear-ended by a Monte Carlo while traveling on 7th Street near the intersection with Neches, in Austin, Texas.

4.02. After being rear-ended, the driver of the Maserati, a friend of Isaiah's named Demarious Davis, stopped at the next stoplight and exited his vehicle along with another unidentified person to obtain identity and insurance information from the driver of the Monte Carlo. According to witness statements, Isaiah, who was riding in the back seat, opened the rear passenger door but did not completely exit the vehicle.

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scene as the police began shooting.

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5.01. In 2016, the Center for Policing Equity found that Austin police officers used more violence in the neighborhoods where Black and Hispanic Austinites live than in predominantly white neighborhoods. The study adjusted for crime and poverty variables and found that Austin police officers' use of force in those communities was disproportionate and unjustified. Austin police were more likely to use severe force against Black people and other people of color. Austin police were disproportionately more likely to shoot rather than use their hand-to-hand training or deploy pepper spray when the person subjected to force was Black.

5.02. The Austin City Council criticized the Austin Police Department's patterns of racist behavior and outcomes in December 2019, less than six months after the defendant officers killed Isaiah Hutchinson, a Black man from Texas:

> APD's state-mandated racial profiling reports consistently show that Black and Latino drivers are more than twice as likely to be searched as their white counterparts during traffic stops despite similar "hit rates," including in 2018 where 6% of traffic stops of white drivers resulted in a police searches compared to 14% for Latino drivers and 17% for Black drivers.

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> That same 2017 data also showed Black and Latino residents accounted for nearly 75% of those discretionary arrests for driving with an invalid license, although the two groups combine to make up less than 45% of Austin's population.
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> That same 2017 data also showed that one out of every three discretionary arrests for misdemeanor marijuana possession involved a Black resident even though less than one in ten Austinites is Black, while usage rates of marijuana are similar across racial groups.
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> Patterns and specific incidents of discrimination and bigotry in the Austin Police Department erode the public trust, which is necessary to effectively enforce the law, solve crimes, and maintain public safety, and so the Council finds it imperative to understand the full extent of bigotry and systemic racism and discrimination within APD, and consider reforms to APD's policies, protocols, and training curriculum.

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based on race during motor vehicle stops:

> Data reveals racial disparities in motor vehicle stops in 2018, with Black/African Americans as the most overrepresented of all racial/ethnic groups in Austin. In 2018, Black/ African Americans made up 8% of the Austin population, 15% of the motor vehicle stops, and 25% of the arrests.
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5.04. On April 16, 2020, a little over one year after the defendant officers killed Isaiah Hutchinson, the City of Austin released a third-party investigative report regarding persistent racist behavior that permeated the Austin Police Department and the almost certain retaliation that employees who dared to speak out must be prepared to endure:

> By several accounts, [Assistant Chief] Newsom's use of racist language was well known throughout the Department as was the use of such language by other officers who were known to be close friends with AC Newsom and used such language openly and often.
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> Reports came to us, from different ranks, races and genders, advising of the fact that the racist and sexist name calling and use of derogatory terms associated with race and sex persists. Anecdotal history indicated that even members of the executive staff over the years had been known to use racist and sexist language, particularly when around the lower ranks or other subordinates.
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> We listened to many anecdotes illustrating inappropriate comments over the years through which APD personnel expressed concern about racist behavior, but also sexist behavior, and dissimilar treatment in the handling of officer discipline and those who may be served by APD chaplain services with the denial of marital services to same sex couples. There are some real cultural issues that are in need of attention.
>
> Tatum Law was able to establish that [Austin Police] Chief Manley had reason to inquire as to [Assistant Chief] Newsom's conduct ... The October 7, 2019, email received by Chief Manley alleging similar facts to those later alleged in the October 30, 2019 complaint about AC Newsom's use of the derogatory term "nigger" in text messages to refer to African Americans provided sufficient information... Chief Manley did not send these allegations for review or investigation.
>
> Whether it is about a grievance or misconduct there is an overwhelming sentiment among officers, at or previously involved with the Austin Police Department, and regardless of rank, that an officer, or even civilian staff member, who wishes to right a wrong, complain about improper conduct, or participate in an investigation such as this one, must be prepared in the present climate and culture to face almost certain retaliation, and not necessarily from Chief Manley, directly or solely.

5.05. The Austin City Council made additional, equally unequivocal findings on

June 11, 2020 (less than 15 months after the defendant officers killed Isaiah Hutchinson) regarding the City's anemic and unsuccessful efforts to fix its racist and violent policing culture:

> The elected members of City Council have no confidence that current Austin Police Department leadership intends to implement the policy and culture changes required to end the disproportionate impact of police violence on Black Americans, Latinx Americans, other nonwhite ethnic communities.
>
> The measures that current Austin Police Department leadership have been willing to implement are inadequate, and resemble the same flawed police training and command expectations that have existed in the past. [emphasis added].

5.06. These recent findings by Austin's City Council, Office of Police Oversight, Office of Innovation, and Equity Office are binding evidentiary admissions by the City that its policing policies have led to disproportionate and unconstitutional police violence against members of the Black and Hispanic communities in Austin. Isaiah Hutchinson-a Black man and native Texan-suffered a tragic death that is a direct result of the racism that has permeated policing in Austin. It is that much more heartbreaking that he was killed in the same year that City leaders began to admit to-and grapple with-these ingrained problems. Isaiah's unjustified killing by Officers DeAndre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, emphasizes the urgency of the problem Austin faces.

VI. Claims

6.01. Officers DeAndre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, violated Isaiah Hutchinson's Fourth and Fourteenth Amendment rights when they shot and killed Isaiah without justification.

6.02. Plaintiffs incorporate sections I through VI above into their excessive force claim brought under 42 U.S.C. § 1983.

6.03. Officers DeAndre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, were acting under color of law when they shot Isaiah Hutchinson as Isaiah attempted to depart the scene where he had just been shot at by persons unknown from the Monte Carlo and other persons who never identified themselves as police officers. Officers DeAndre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, shot Isaiah even though Isaiah did not pose an imminent threat of serious injury or death to anyone that would have justified the defendant officers' lethal force. The use of lethal force by Officers DeAndre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, under these circumstances and considering clearly established law was excessive and objectively unreasonable.

6.04. The use of unlawful and unconstitutional deadly force by Officers DeAndre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III,

violated Isaiah's civil rights, is the direct cause of Isaiah's death, and caused Plaintiffs' heartbreak and damages.

6.05. Austin's policies cause its police to violate the civil rights of Black and Hispanic people including Isaiah Hutchinson.

6.06. Plaintiffs incorporate sections I through VI above into their *Monell* claim brought under 42 U.S.C. § 1983.

6.07. Austin had these policies, practices, and customs on March 17, 2019:

a. Disproportionate use of excessive force against people of color;

b. Condoning such disproportionate use of excessive force against people of color;

c. Choosing not to adequately train officers regarding civil rights protected by the United States Constitution;

d. Choosing not to adequately supervise officers regarding the use of force against people of color;

e. Choosing not to intervene to stop excessive force and civil rights violations by its officers;

f. Choosing not to investigate excessive violence and civil rights violations by its officers; and

g. Making the deliberate choice not to discipline officers for-and deter officers from-using excessive force and violating civil rights.

6.08. The City and Brian Manley knew about these policies and required Austin police to comply with them.

6.09. The City and Brian Manley developed and issued these policing policies with deliberate indifference to Isaiah Hutchinson's and other Black and Hispanic Austinites' civil rights.

6.10. The City and Brian Manley were aware of the obvious consequences of these policies. Implementation of these policies made it predictable that Isaiah's civil rights would be violated in the manner they were, and the City and Brian Manley knew that was likely to occur.

6.11. These policies were the moving force behind the violation of Isaiah's civil rights by Officers DeAndre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, and thus, proximately caused Isaiah's death and Plaintiffs' damages.

VII. Damages

7.01. Plaintiffs incorporate sections I through VI above into this section on damages.

7.02. Plaintiffs seeks recovery under the Texas survivorship statute for the damages that Isaiah would have been entitled to if he had lived including damages for Isaiah's physical pain and mental anguish and his economic loss.

7.03. Plaintiffs also seeks recovery under the Texas wrongful death statute for their

own mental anguish and injuries including damages for the loss of their relationship with Isaiah, their loss of the love, support, and services that Isaiah would have given to them, economic loss, and funeral and burial expenses.

VIII. Request for Jury Trial

8.01. Plaintiffs request a jury trial.

IX. Prayer

9.01. For all these reasons, Plaintiffs request that the City of Austin and Officers DeAndre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, be summoned to appear and answer their allegations. After a jury trial regarding their claims, Plaintiffs seeks to recover the damages listed above in an amount to be determined by the jury and any other relief to which she is entitled including her attorney's fees and expenses under 42 U.S.C. §1988(b), court costs, and pre- and post-judgment interest.

Respectfully submitted,

/s/ Scott Ogle
Scott Ogle
TBN: 00797170
2028 Ben White Blvd.
Austin, TX 78704
Phone: (512) 442-8833
Fax: (512) 442-3256
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Attorney for Plaintiffs

CERTIFICATE OF SERVICE

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/s/ Scott Ogle
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
2021 AUG -3 AM 9:51
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY

CHRISTINE SPRINGS-HUTCHINSON AND BENNY HUTCHINSON, ON BEHALF OF THEMSELVES AND THE ESTATE OF ISAIAH HUTCHINSON,	§	
PLAINTIFFS,	§	
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DEFENDANTS.	§	

ORDER

Before the court is Plaintiffs' Unopposed Motion for Leave to File First Amended Complaint. (Doc. 8). Plaintiffs' First Amended Complaint is attached as an exhibit to the motion. Defendants do not oppose the motion.

IT IS THEREFORE ORDERED that Plaintiffs' motion for leave is **GRANTED**. The clerk is instructed to file Plaintiffs' First Amended Complaint, attached to Plaintiffs' motion for leave, in the record in this cause.

SIGNED this 3rd day of August, 2021.

LEE YEAKEL
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
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> We listened to many anecdotes illustrating inappropriate comments over the years through which APD personnel expressed concern about racist behavior, but also sexist behavior, and dissimilar treatment in the handling of officer discipline and those who may be served by APD chaplain services with the denial of marital services to same sex couples. There are some real cultural issues that are in need of attention.
>
> Tatum Law was able to establish that [Austin Police] Chief Manley had reason to inquire as to [Assistant Chief] Newsom's conduct ... The October 7, 2019, email received by Chief Manley alleging similar facts to those later alleged in the October 30, 2019 complaint about AC Newsom's use of the derogatory term "nigger" in text messages to refer to African Americans provided sufficient information... Chief Manley did not send these allegations for review or investigation.
>
> Whether it is about a grievance or misconduct there is an overwhelming sentiment among officers, at or previously involved with the Austin Police Department, and regardless of rank, that an officer, or even civilian staff member, who wishes to right a wrong, complain about improper conduct, or participate in an investigation such as this one, must be prepared in the present climate and culture to face almost certain retaliation, and not necessarily from Chief Manley, directly or solely.

5.05. The Austin City Council made additional, equally unequivocal findings on

June 11, 2020 (less than 15 months after the defendant officers killed Isaiah Hutchinson) regarding the City's anemic and unsuccessful efforts to fix its racist and violent policing culture:

> The elected members of City Council have no confidence that current Austin Police Department leadership intends to implement the policy and culture changes required to end the disproportionate impact of police violence on Black Americans, Latinx Americans, other nonwhite ethnic communities.
>
> The measures that current Austin Police Department leadership have been willing to implement are inadequate, and resemble the same flawed police training and command expectations that have existed in the past. [emphasis added].

5.06. These recent findings by Austin's City Council, Office of Police Oversight, Office of Innovation, and Equity Office are binding evidentiary admissions by the City that its policing policies have led to disproportionate and unconstitutional police violence against members of the Black and Hispanic communities in Austin. Isaiah Hutchinson-a Black man and native Texan-suffered a tragic death that is a direct result of the racism that has permeated policing in Austin. It is that much more heartbreaking that he was killed in the same year that City leaders began to admit to-and grapple with-these ingrained problems. Isaiah's unjustified killing by Officers DeAndre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, emphasizes the urgency of the problem Austin faces.

VI. Claims

6.01. Officers DeAndre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, violated Isaiah Hutchinson's Fourth and Fourteenth Amendment rights when they shot and killed Isaiah without justification.

6.02. Plaintiffs incorporate sections I through VI above into their excessive force claim brought under 42 U.S.C. § 1983.

6.03. Officers DeAndre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, were acting under color of law when they shot Isaiah Hutchinson as Isaiah attempted to depart the scene where he had just been shot at by persons unknown from the Monte Carlo and other persons who never identified themselves as police officers. Officers DeAndre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, shot Isaiah even though Isaiah did not pose an imminent threat of serious injury or death to anyone that would have justified the defendant officers' lethal force. The use of lethal force by Officers DeAndre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, under these circumstances and considering clearly established law was excessive and objectively unreasonable.

6.04. The use of unlawful and unconstitutional deadly force by Officers DeAndre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III,

violated Isaiah's civil rights, is the direct cause of Isaiah's death, and caused Plaintiffs' heartbreak and damages.

6.05. Austin's policies cause its police to violate the civil rights of Black and Hispanic people including Isaiah Hutchinson.

6.06. Plaintiffs incorporate sections I through VI above into their *Monell* claim brought under 42 U.S.C. § 1983.

6.07. Austin had these policies, practices, and customs on March 17, 2019:

a. Disproportionate use of excessive force against people of color;

b. Condoning such disproportionate use of excessive force against people of color;

c. Choosing not to adequately train officers regarding civil rights protected by the United States Constitution;

d. Choosing not to adequately supervise officers regarding the use of force against people of color;

e. Choosing not to intervene to stop excessive force and civil rights violations by its officers;

f. Choosing not to investigate excessive violence and civil rights violations by its officers; and

g. Making the deliberate choice not to discipline officers for-and deter officers from-using excessive force and violating civil rights.

6.08. The City and Brian Manley knew about these policies and required Austin police to comply with them.

6.09. The City and Brian Manley developed and issued these policing policies with deliberate indifference to Isaiah Hutchinson's and other Black and Hispanic Austinites' civil rights.

6.10. The City and Brian Manley were aware of the obvious consequences of these policies. Implementation of these policies made it predictable that Isaiah's civil rights would be violated in the manner they were, and the City and Brian Manley knew that was likely to occur.

6.11. These policies were the moving force behind the violation of Isaiah's civil rights by Officers DeAndre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, and thus, proximately caused Isaiah's death and Plaintiffs' damages.

VII. Damages

7.01. Plaintiffs incorporate sections I through VI above into this section on damages.

7.02. Plaintiffs seeks recovery under the Texas survivorship statute for the damages that Isaiah would have been entitled to if he had lived including damages for Isaiah's physical pain and mental anguish and his economic loss.

7.03. Plaintiffs also seeks recovery under the Texas wrongful death statute for their

own mental anguish and injuries including damages for the loss of their relationship with Isaiah, their loss of the love, support, and services that Isaiah would have given to them, economic loss, and funeral and burial expenses.

VIII. Request for Jury Trial

8.01. Plaintiffs request a jury trial.

IX. Prayer

9.01. For all these reasons, Plaintiffs request that the City of Austin and Officers DeAndre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, be summoned to appear and answer their allegations. After a jury trial regarding their claims, Plaintiffs seeks to recover the damages listed above in an amount to be determined by the jury and any other relief to which she is entitled including her attorney's fees and expenses under 42 U.S.C. §1988(b), court costs, and pre- and post-judgment interest.

Respectfully submitted,

/s/ Scott Ogle
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CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2021, I filed the foregoing pleading with the U.S. District Clerk for the Western District of Texas, San Antonio Division, by means of electronic filing ECF. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of the document by electronic means.

/s/ Scott Ogle
Scott Ogle

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Counsel for Defendants
via efiling

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON AND BENNY HUTCHINSON, ON BEHALF OF THEMSELVES AND THE ESTATE OF ISAIAH HUTCHINSON	§	**CIVIL ACTION NO. 1:21-CV-00221-LY**
Plaintiffs	§	
v.	§	
THE CITY OF AUSTIN AND DEANDRE WRIGHT AND DANE O'NEILL AND ZACHARY WOODS AND THOMAS BERNARD NELSON, III,	§	
Defendants	§	

DEFENDANTS' AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants City of Austin, Deandre Wright, Dane O'Neill, Zachary Woods and Thomas Bernard Nelson, III file this Answer and Affirmative Defenses to Plaintiffs' Amended Complaint (Doc. No. 11). Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendants respectfully show the Court the following:

ANSWER TO AMENDED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 8(b), Defendants respond to each of the specific averments in Plaintiffs' Amended Complaint [Doc 11] as set forth below. To the extent that Defendants do not address a specific averment made by Plaintiff, Defendants expressly deny that averment. [1]

[1] Paragraph numbers in Defendants' Answer correspond to the paragraphs in Plaintiffs' Original Complaint.

Defendants deny the allegations contained in the first unnumbered paragraph in Plaintiff's Amended Complaint.

I. PARTIES

1.01 Upon information and belief, Defendants admit the allegations contained in Paragraph 1.01.

1.02 Defendants admit the allegations contained in the first sentence of Paragraph 1.02 of the Amended Complaint. Defendants admit that on the date of the incident, which is the subject of this lawsuit, Brian Manley was the policymaker for policing matters for the City of Austin.

1.03 Defendants admit the allegations contained in Paragraph 1.03.

1.04 Defendants admit the allegations contained in Paragraph 1.04.

II. JURISDICTION

2.01 Defendants admit the allegations contained in Paragraph 2.01.

2.02 Defendants admit the allegations contained in Paragraph 2.02.

III. VENUE

3.01 Defendants admit that venue is proper in the Western District of Texas, Austin Division. Defendants deny the remaining allegations contained in Paragraph 3.01.

IV. FACTUAL BACKGROUND OF ISAIAH'S KILLING BY AUSTIN POLICE

The allegations, if any, contained within the foregoing subtitle "IV." about the death of the Plaintiffs' decedent, identified as Isaiah Hutchinson, are denied.

4.01 Upon information and belief, Defendants admit the allegations contained in Paragraph 4.01 of the Amended Complaint.

4.02 Upon information and belief, Defendants admit that the Maserati stopped at a stoplight. Defendants are without sufficient knowledge to form a belief as to the truth of the

remaining allegations contained in Paragraph 4.02 of the Amended Complaint and therefore deny same.

4.03 Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 4.03 of the Amended Complaint and therefore deny same.

4.04 Defendants admit the allegations contained in the first sentence of Paragraph 4.04 of the Amended Complaint. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 4.04 of the Amended Complaint and therefore deny same, subject to change as more information is discovered.

4.05 Defendants are without sufficient knowledge to form a belief as to the truth of the sequence of allegations contained in Paragraph 4.05 of the Amended Complaint and therefore deny same. However, Defendants admit that both the Maserati and the Monte Carlo left the scene.

4.06. Upon information and belief, Defendants admit the allegations contained in Paragraph 4.06 of the Amended Complaint.

V. Factual Background of the Overly-Aggressive and Racist Atmosphere Propagated by The City of Austin and Austin Police Department

The allegations, if any, contained within the foregoing subtitle "V." are denied.

5.01 Defendants deny the allegations contained in Paragraph 5.01.

5.02 The allegations and assertions contained within subparagraph 5.02 are conclusory statements of law or fact beyond the scope of this lawsuit which require no response at this time. Defendants deny the allegations contained in Paragraph 5.02.

5.03 The allegations and assertions contained within subparagraph 5.03 are conclusory statements of law or fact beyond the scope of this lawsuit which require no response at this time. Defendants deny the allegations contained in Paragraph 5.03.

5.04. The allegations and assertions contained within subparagraph 5.04 are conclusory statements of law or fact beyond the scope of this lawsuit which require no response at this time. Defendants deny the allegations contained in Paragraph 5.04.

5.05 The allegations and assertions contained within subparagraph 5.05 are conclusory statements of law or fact beyond the scope of this lawsuit which require no response at this time. Defendants deny the allegations contained in Paragraph 5.05.

5.06 The allegations and assertions contained within subparagraph 5.06 are conclusory statements of law or fact beyond the scope of this lawsuit which require no response at this time. Defendants deny the allegations contained in Paragraph 5.06.

VI. CLAIMS

6.01 Defendants deny the allegations contained in Paragraph 6.01.

6.02 Defendants incorporate and adopt their responses to the previous paragraphs of the Complaint. The allegations and assertions are conclusory statements of law or fact beyond the scope of this lawsuit which require no response at this time. Defendants deny the allegations.

6.03 The allegations and assertions contained within subparagraph 6.03 are conclusory statements of law or fact which require no response at this time. Defendants deny the allegations contained in Paragraph 6.03.

6.04 Defendants deny the allegations contained in Paragraph 6.04.

6.05 Defendants deny the allegations contained in Paragraph 6.05.

6.06. Defendants incorporate and adopt their responses to the previous paragraphs of the Complaint.

6.07 Defendants deny the allegations contained in Paragraph 6.07, including subparts a. through g.

6.08 Defendants deny the allegations contained in Paragraph 6.08.

6.09 Defendants deny the allegations contained in Paragraph 6.09.

6.10 Defendants deny the allegations contained in Paragraph 6.10.

6.11 Defendants deny the allegations contained in Paragraph 6.11.

VII. DAMAGES

7.01 Defendants incorporate and adopt their responses to the previous paragraphs of the Complaint.

7.02 Defendants deny the allegations contained in Paragraph 7.02.

7.03 Defendants deny the allegations contained in Paragraph 7.03.

VIII. Request for Jury Trial

8.01 Paragraph 8.01 merely contains the Plaintiffs' request for jury trial and therefore no response is required of the Defendants.

IX. Prayer

9.01 Defendants deny the allegations contained in Paragraph 9.01 and specifically deny that the Plaintiffs are entitled to any relief whatsoever of and from the Defendants.

AFFIRMATIVE DEFENSES

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.

2. Defendant City of Austin asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.

3. Defendants Wright, O'Neill, Woods and Nelson assert the affirmative defense of qualified/official immunity for actions taken in the course and scope of their employment.

4. Defendants assert the affirmative defense that Plaintiffs and their decedent failed to mitigate damages, if any, and assert this failure to mitigate as both an affirmative defense and as a reduction in the damage amount, if any, due Plaintiffs.

5. Defendants assert the affirmative defense of contributory negligence. Plaintiffs' claims are barred in whole or in part by the contributory negligence of Isaiah Hutchinson. Hutchinson, by his actions, failed to exercise ordinary care for his safety. His actions contributed at least fifty-one percent to the alleged injuries and the damages asserted in this case.

6. Defendants affirmatively plead that the Plaintiff's claims are barred in whole or in part since Isaiah Hutchinson's intentional acts were the proximate cause, or a proximate contributing cause, of the alleged injuries and damages asserted in this case.

7. Defendants reserve the right to assert additional affirmative defenses throughout the development of the case.

8. The incident in question and the resulting harm to Decedent were caused or contributed to by Decedent's own illegal conduct.

9. Pleading further and in the alternative, Plaintiffs' injuries and damages were caused in whole or in part by the conduct of other persons or entities for whom these defendants are not responsible or liable and who are not currently parties to this lawsuit.

10. Pleading further, alternatively, and by way of affirmative defense, Defendant would show that at the time and on the occasion in question, Decedent failed to use care or caution that a person of ordinary prudence would have used under the same or similar circumstances, and that such failure was a producing cause or the sole proximate cause of the incident and alleged damages that arise therefrom. If applicable and subject to withdrawal, Defendant invokes the comparative responsibility provision of the Texas Civil Practice & Remedies Code.

11. Defendant further pleads any fault to be reduced by the percentage of the causation found to have resulted from the acts or omissions of other persons.

12. Defendant asserts the limitations and protections of Chapters 41 & 101 of the Texas Civil Practice & Remedies code, and the due process clause of the United States Constitution.

13. To the extent Defendant did not address a specific averment made by Plaintiffs in the Complaint, Defendant expressly denies all such averments.

DEFENDANTS' PRAYER

Defendants City of Austin, Deandre Wright, Dane O'Neill, Zachary Woods and Thomas Bernard Nelson III pray that all relief requested by Plaintiffs be denied, that the Court dismiss this case with prejudice, and that the Court award Defendants costs and attorney's fees, and any additional relief to which they are entitled under law or equity.

RESPECTFULLY SUBMITTED,
ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF, LITIGATION

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ATTORNEYS FOR DEFENDANTS CITY OF AUSTIN, DEANDRE WRIGHT, DANE O'NEILL, ZACHARY WOODS AND THOMAS BERNARD NELSON III

CERTIFICATE OF SERVICE

I certify that on the 17th day of August, 2021, I served a copy of *Defendants' Answer to the Amended Complaint and Affirmative Defenses* on all parties, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

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/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON AND BENNY HUTCHINSON, ON BEHALF OF THEMSELVES AND THE ESTATE OF ISAIAH HUTCHINSON	§	**CIVIL ACTION NO. 1:21-CV-00221-LY**
Plaintiffs	§	
v.	§	
THE CITY OF AUSTIN AND DEANDRE WRIGHT AND DANE O'NEILL AND ZACHARY WOODS AND THOMAS BERNARD NELSON, III,	§	
Defendants	§	

DEFENDANT CITY OF AUSTIN'S MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE LEE YEAKEL, UNITED STATES DISTRICT JUDGE:

Defendant City of Austin, Texas files this Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure as follows:

I. INTRODUCTION

Plaintiffs bring a §1983 claim for excessive force against Officers Deandre Wright, Dane O'Neill, Zachary Woods and Thomas Bernard Nelson, III, and a §1983 *Monell* claim against the City of Austin. Plaintiffs' decedent, Isaiah Hutchinson, died as a result of the injuries he received in an officer-involved shooting on March 17, 2019. As clearly recorded and shown by the City of Austin HALO video camera, Hutchinson was shot by the officers at approximately 2:50 AM after he first pointed a gun and shot at them. These officers were stationed at the Gulf Gas Station on the southwest corner of the intersection of East 7th Street and the southbound service road of Interstate Highway (IH) 35, in Austin, Texas.

Plaintiffs bring a *Monell* claim against the City of Austin alleging that the City has inadequate policies regarding hiring, retention and training. The City denies Plaintiffs' claims and maintains that Plaintiffs cannot meet their considerable evidentiary burden to establish liability against the City under 42 U.S.C. §1983.

It is undisputed that the City provides extensive training to its officers (which far exceeds state minimums) and specific training—both in practical application and in the law—on the use of force. With respect to Plaintiffs' claim that the City failed to supervise the officers, the undisputed evidence shows that the City has comprehensive policies and procedures in place to ensure that all uses of force are investigated, that officers are disciplined when appropriate and that the Austin Police Department followed these policies and procedures. Moreover, Plaintiffs cannot show that any failure to train, discipline, or supervise was the "moving force" behind Plaintiffs' injury and the death of the decedent. Additionally, Plaintiffs' claim that the City violated the decedent's constitutional rights fails because the evidence shows that the City subjected the involved officers to a vigorous pre-hiring review which did not turn up any evidence that they posed a significant risk of engaging in excessive force.

II. SUMMARY JUDGMENT EVIDENCE

Exhibit 1	Deposition of Deandre Wright,
Exhibit 2	Deposition of Dane O'Neill,
Exhibit 3	Deposition of Thomas Bernard Nelson, III,
Exhibit 4	Deposition of Zachary Woods,
Exhibit 5	Declaration of Joseph Chacon,
Exhibit 6	Declaration of Wade Lyons,
Exhibit 7	HALO Video for time frame: 2:49:40 - 2:50:26,
Exhibit 8	13 Combined Screen Shots from HALO Video:
	01 - Time - 2:50:06
	02 - Time - 2:50:07

03 - Time - 2:50:08
04 - Time - 2:50:09
05 - Time - 2:50:11
06 - Time - 2:50:12
07 - Time - 2:50:15
08 - Time - 2:50:15
09 - Time - 2:50:17
10 - Time - 2:50:18
11 - Time - 2:50:23
12 - Time - 2:50:25
13 - Time - 2:50:27

III. FACTS

This lawsuit arises out of an officer-involved shooting which occurred during the South by Southwest Conference and Festival (SXSW) on March 17, 2019. The incident happened at approximately 2:50 AM, in the middle of the street at the intersection of East 7th Street and the southbound service road of Interstate Highway (IH) 35, in Austin, Texas. As clearly recorded and shown by the City of Austin HALO video camera, Hutchinson was shot by the officers after he first pointed a gun and shot at them. These officers were stationed at the Gulf Gas Station on the southwest corner of the intersection of East 7th Street and the southbound service road of Interstate Highway (IH) 35.

On March 17, 2019, APD Officers Nelson, O'Neill, Woods, Wright and McDonald were all working downtown Austin on foot patrol assigned to the Special Response Team (SRT). At this time, each officer was wearing their clearly marked class B uniform which identified them as Austin Police Officers. (Deposition of Officer Deandre Wright, Exhibit 1, Page 71, Line 5-11; Deposition of Officer Dane O'Neill, Exhibit 2, Page 15, Line 15; Deposition of Officer Thomas Bernard Nelson, III, Exhibit 3, Page 10, Lines 10-18; Deposition of Officer Zachary Woods,

Exhibit 4, Page 32, Line 9) The officers were on duty and working as part of the security for the South by Southwest events taking place in the downtown area.

At approximately 2:50 AM, these officers heard shots fired in the 700 block of East 7th and ran towards the sound of the gunfire. (Deposition of Officer Wright, Exhibit 1, Page 13, Lines 18-19; Deposition of Officer O'Neill, Exhibit 2, Page 14, Lines 22-24; Deposition of Officer Nelson, Exhibit 3, Page 12, Lines 21-23; Deposition of Officer Woods, Exhibit 4, Page 22, Lines 15-17)

When the officers got to the street, they observed Mr. Isaiah Hutchinson wearing a white hooded sweatshirt with a gun in his right hand. Mr. Hutchinson was coming around the front of a dark colored Maserati sport utility vehicle ("SUV") from the direction of the driver's side towards the right rear passenger door. The HALO video captured the events leading up to and including Mr. Hutchinson firing shots in the direction of the responding officers as he moved around the front of the SUV.

The following is a timeline of the events captured by the High Activity Location Observation ("HALO") camera:

2:50:06, Mr. Hutchinson and the SUV driver walked towards a black or dark colored Monte Carlo automobile and stand at the driver's side window.

2:50:07, The SUV driver appears to punch the driver of the Monte Carlo twice through the open car window.

2:50:09, The Monte Carlo driver responded by discharging a firearm at the SUV driver and Mr. Hutchinson.

2:50:11 - 2:50:12, Mr. Hutchinson ran alongside the driver's side of the SUV and around the front end of the vehicle.

2:50:15 - 2:50:27, Mr. Hutchinson discharges his firearm and shoots at the police officers who are running toward the SUV from the Gulf Gas Station. The officers return fire, discharging their respective firearms, and the SUV flees with Mr. Hutchinson inside. (Exhibit 7, Exhibit 8; *See also* Ex. 1, pages 13-14; Ex. 2, page 15; Ex. 3, page 12; Ex. 4, pages 22-23)

As clearly recorded and shown by the City of Austin HALO video camera, Hutchinson first pointed a gun at the Defendant Officers and shot at them. In response, the officers fired their firearms at Hutchinson, who got into the backseat of the SUV and fled the scene. The vehicle was discovered several hours later, abandoned, with Mr. Hutchinson's body still in the backseat, deceased from apparent gunshot wounds. (Amended Complaint; para. 4.06)

On August 3, 2021, the Travis County Grand Jury, after inquiring carefully, failed to find a bill of indictment and "no billed" each of the Defendant Officers, Woods, Wright, O'Neill and Nelson for their involvement in the shooting death of Isaiah Hutchinson.

The City of Austin's Police Department (APD) maintains extensive and detailed policies and procedures regarding the use of force (including deadly force), forbidding the use of excessive force, and requiring close investigation of all incidents involving police officer use of force. (Exhibit 5, Declaration of Chief Joseph Chacon, ¶¶ 7-11, Attachment 1). APD's highest level of scrutiny applies whenever an officer discharges his firearm at a suspect. *Id.* APD also disciplines officers determined to have used excessive force, and regularly reviews whether officers show a pattern of using force that calls for closer scrutiny. *Id.* at ¶¶ 13-15; 20. These policies and procedures were followed in this incident.

In addition, APD has rigorous hiring standards and carefully screens its potential employees to determine that they do not pose any unusual risk of using excessive force. *Id.* at ¶ 4. APD also trains all of its cadets and officers on all facets of police work, including the use of force,

proper search and seizure, and mental health. (Ex. 6; Declaration of Wade Lyons). APD's training requirements far exceed the minimum standards required by the state. *Id.*

All of APD's policies and procedures were followed with respect to the hiring, screening, and training of Officers Wright, O'Neill, Woods and Nelson. (Ex. 5, Declaration of Chacon; Ex. 6, Declaration of Lyons). Moreover, APD closely investigated this incident, and that investigation revealed that the officers did not violate any APD policies or criminal laws. (Ex. 5 at ¶¶ 18-19)

A. Use of Force Policies and Investigation

At all times relevant to this incident, APD had extensive and detailed policies in place regarding the use of force, forbidding the use of excessive force, and outlining the procedures for investigating all incidents in which an officer used force on a citizen. (Ex. 5, Declaration of Chacon, ¶¶ 7-11, Attachment 1) APD officers are required to report any use of force to a supervisor. APD investigates every reported use of force by one of its officers. *Id.* at ¶ 9.

APD initially tailors investigations for use of force incidents depending on the level of force used. APD applies its highest level of scrutiny for any incident categorized as Level 1 (which includes use of a firearm). *Id.* at ¶¶ 9-11. For any Level 1 use of force, the APD's special investigations unit (SIU) conducts a complete criminal investigation of the incident, secures and gathers evidence, and works with prosecutors to present the evidence to a grand jury. *Id.* at ¶ 11. SIU has all of APD's resources at its disposal—including crime scene personnel, DNA testing, drug testing, and firearms testing. *Id.* At the conclusion of its investigation, SIU turns its investigative materials over to the Travis County District Attorney who makes the determination whether to present cases involving an APD police officer's use of a firearm to a grand jury to consider whether to indict. *Id.*

Concurrent with the SIU criminal investigation, APD's Internal Affairs Division (IAD) conducts its own review to determine whether the officer violated any APD policies (regarding the use of force or other policies). *Id.* at ¶ 12. IAD has complete access to the evidence gathered by SIU. *Id.* IAD investigators may also compel officers to give statements regarding their actions. *Id.* IAD may also take its own investigatory steps. *Id.* Ultimately, IAD presents its evidence to the involved officer's chain-of-command, including the chief of police. *Id.* at ¶ 13. The Chief of Police makes the final decision whether to discipline the officer. *Id.* According to APD's Discipline Matrix, any officer who uses deadly force in violation of APD policy will be terminated from his employment. *Id.* at ¶ 14, Attachment 4. APD has terminated officers who violated APD policies regarding use of force in officer-involved shootings. *Id.* at ¶ 14.

In this case, APD SIU and IAD conducted investigations into the incident. *See* Exhibit 5, ¶¶ 18-19. On August 3, 2021, the Travis County Grand Jury "no billed" APD Officers Wright, O'Neill, Nelson and Woods, and the Travis County District Attorney made the decision not to prosecute criminal charges. The Chief of Police found that Officers Wright, O'Neill, Nelson and Woods did not violate any APD policies. *Id.*

B. APD Hiring

APD has a rigorous and thorough hiring process to ensure that its cadets and potential police officers are honest, professional, and possess the appropriate temperament to be APD police officers. In particular, all successful applicants to APD's police academy must fill out a detailed application, undergo a comprehensive background check, pass a cognitive exam, pass an oral interview, pass a polygraph test, undergo a psychological examination, pass a physical, and pass a physical fitness test. *See* Exhibit 5, ¶ 4. APD will not hire any applicants whose background or

psychological evaluation indicates that they pose a higher than normal risk of using excessive force, or that they are otherwise unfit for law enforcement work. *Id.*

C. APD Training

APD has policies and procedures in place requiring all officers to be appropriately and robustly trained for their positions. In particular, every APD officer must be licensed by the Texas Commission on Law Enforcement (TCOLE). (Ex. 6; Declaration of Lyons) Furthermore, before becoming an officer, every APD cadet receives considerably more than the minimum amount of training required by TCOLE. *Id.* Before becoming full-time officers, every APD officer must successfully complete an eight-month course of instruction at the APD training academy. *Id.* In addition to a wide range of other policing topics, APD cadets receive both practical and classroom instruction on use of force. *Id.* APD cadets receive considerably more training in use of force than the 24 hours required by TCOLE. *Id.* This classroom training includes instruction on the standards for use of force espoused by the Supreme Court in *Graham v. Connor*, and *Tennessee v. Garner*. *Id.* Additionally, APD command staff critically reviews each incident involving an officer-involved shooting for issues related to training, policies and tactics and evaluates the need for any changes in training, policies and tactics. *Id.*

APD officers and cadets also receive considerable training on interacting with the public. In general, APD cadets and officers are instructed and trained on how to communicate effectively and professionally with the public and receive considerable mental health training. (Ex. 6, Declaration of Lyons)

Officers Wright, O'Neill, Nelson and Woods successfully completed the course of instruction at the APD training academy before becoming full time APD officers. (Ex. 6, Declaration of Lyons) At the academy, they received instruction in use of force, search and

seizure, communicating effectively with the public, and the entire range of other core police skills. *Id.* They received many hours of instruction in excess of the TCOLE minimum requirements. *Id.* They have been licensed as peace officers for their entire career as full-time APD police officers. *Id.* They have also fulfilled the continuing education requirements called for by TCOLE. *Id.*

D. APD Officer Discipline

APD has numerous policies and procedures to ensure that officers accused of wrongdoing are properly investigated and, if appropriate, disciplined. (Ex. 5, Declaration of Chacon, ¶ 7) APD has a set of policies that all officers must obey. *Id.* Officers are provided with a copy of APD policies. APD policies govern all forms of officer conduct, from appropriate arrest procedures to appropriate use of force. *Id.* The APD Chief of Police is responsible for making policy within APD and for disciplining officers. *Id.* at ¶ 3.

As described above, every APD officer involved in a use of force incident must report it to his or her supervisors. *Id.* at ¶ 9, Attachment 1. APD supervisors, internal affairs, or the APD's Special Investigations Unit conducts a review of every reported use of force. *Id.* at ¶ 9.

In cases involving an officer's use of a firearm, the Chief of Police will closely review the results of the internal investigation and make a decision whether the officer violated policy. *Id.* at ¶ 13. If the chief believes that an officer has violated APD general orders, he may discipline that officer with an oral reprimand, written reprimand, unpaid suspension, or terminate the officer's employment. *Id.* at ¶ 14. At the time of this incident, APD general orders included a disciplinary matrix. Under the matrix, if the chief finds that an officer used excessive or unreasonable deadly force, the officer will be terminated. *Id.* at Attachment 4.

APD also proactively screens its officers to identify those that may, among other things, pose a higher than normal risk of using excessive force. Specifically, it uses algorithms that will

notify an officer's supervisors if the officer is the subject of a high number of citizen complaints or has more frequent than expected uses of force. Supervisors must re-review each use of force or complaint to determine if the officer poses any unusual risk. *Id.* at ¶ 20.

APD's disciplinary process also has substantial citizen oversight. In February 2002, the City of Austin created the Citizens Review Panel and the Office of the Police Monitor to exercise independent, citizen oversight of APD internal affairs investigations. At the time of this incident, the Office of the Police Monitor (now known as the Office of Police Oversight (OPO)), and the Citizens' Review Panel (now known as the Community Police Review Commission (CPRC)), received citizen complaints, reviewed internal affairs files, reviewed APD policies and procedures, and made recommendations to the Chief of Police regarding discipline, policies, and procedures. The Office of the Police Monitor staff were also permitted to sit in on Internal Affairs interviews.

IV. STANDARD OF REVIEW

Summary judgment is proper against a party who bears the ultimate burden of proof and fails to establish the existence of an element essential to its case by raising an issue of material fact. FED. R. CIV. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323. The moving party satisfies its burden by "pointing out to the district court . . . that there is an absence of evidence to support the non-moving party's case." *Id.* at 326. The plaintiff may not rest on allegations in pleadings, but must produce competent, tangible evidence to survive summary judgment. *Id.* at 325. Moreover, "conclusory allegations, speculation, and unsubstantiated assertions are inadequate to satisfy the non-movant's burden." *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1429 (5th Cir. 1996).

V. ARGUMENT & AUTHORITIES

A. Claims against Municipalities under 42 U.S.C. §1983

The general contours of municipal liability for the conduct of its employees under 42 U.S.C. §1983 are well-defined in the Fifth Circuit. A city may not be held liable if the court finds that the plaintiff's constitutional rights were not violated. *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986); *Mace v. City of Palestine*, 333 F.3d 621, 625 (5th Cir. 2003). Even if a city employee or police officer violated a plaintiff's constitutional rights, a city may not be found liable under §1983 under a theory of *respondeat superior*. *Monell v. Dept. of Social Services*, 436 U.S. 658, 694 (1978); *Johnson v. Deep East Texas Regional Narcotics Trafficking Task Force*, 379 F.3d 293, 308 (5th Cir. 2004). Cities are almost never liable under §1983 for the isolated actions of their employees, and they can only be held liable for acts that are directly attributable to it "through some official action or imprimatur." *Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001).

To establish municipal liability under §1983, a plaintiff must show: (1) an official policy (2) promulgated by the municipal policy maker (3) which was the moving force behind the violation of a constitutional right. *Id.* A policy or custom is official only "when it results from the decision or acquiescence of the municipal officer or body with final policymaking authority over the subject of the offending policy." *Jett v. Dallas Independent School Dist.*, 491 U.S. 701, 737 (1989); *Peterson v. City of Fort Worth, Texas*, 588 F.3d 838, 847 (5th Cir. 2009). To establish the "moving force" element, a plaintiff must show a direct causal link between the policy and the constitutional violation. *Piotrowski*, 237 F.3d at 580; *Peterson*, 588 F.3d at 848.

Where a plaintiff alleges that his injury resulted from the lack of an appropriate policy, instead of from a facially unconstitutional policy, a plaintiff must establish municipal liability by

showing that the city's failure to adopt a policy needed to circumvent predictable violations of federal law amounted to deliberate indifference. *James v. Harris County*, 577 F.3d 612, 617 (5th Cir. 2009); *see also City of Canton v. Harris*, 489 U.S. 378, 389-90 (1989) (discussing city liability for lack of training); *Piotrowski*, 237 F.3d at 579-80 (municipal liability for lack of supervision). To show "moving force" causation based on a municipality's alleged failure to train, supervise, investigate, or otherwise adopt appropriate hiring or retention policies, a plaintiff must show that the decision not to adopt appropriate policies or procedures amounts to deliberate indifference. *Valle v. City of Houston*, 613 F.3d 536, 542 (5th Cir. 2010). In other words, "the plaintiff must demonstrate that a municipal decision reflects deliberate indifference to the risk that a violation of a particular constitutional or statutory right will follow the decision. Deliberate indifference is a high standard—a showing of simple or even heightened negligence will not suffice." *Id.* (internal quotes and citations omitted).

The Fifth Circuit has emphasized the need for *Monell* plaintiffs to establish both the causal link ("moving force") and a city's degree of culpability ("deliberate indifference" to federally protected rights.) *Snyder v. Trepagnier,* 142 F.3d 791, 796 (5th Cir. 1998); *Piotrowski,* 237 F.3d at 580. "These requirements must not be diluted, for "[w]here a court fails to adhere to rigorous requirements of culpability and causation, municipal liability collapses into respondeat superior liability." *Snyder,* 142 F.3d at 796.

B. Plaintiffs' §1983 claim against the City should be dismissed.

Plaintiffs contend that the City is liable because its "policies cause its police to violate the civil rights of . . . Isaiah Hutchinson." (Doc. 11, ¶ 6.02) The bulk of the Plaintiffs' claims against the City involves the failure to properly train officers. *Id.* at ¶ 6.07. Plaintiffs allege that the City's training and policy failures were the proximate cause of his injuries. *Id.*

Plaintiffs have not produced sufficient evidence to raise an issue of material fact to demonstrate that: (1) the City is liable for failing to train APD officers or (2) the City is liable for failing to adequately supervise or discipline APD officers.

1. The Plaintiffs' Inadequate Training Claims should be Dismissed.

"A municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train." *Connick v. Thompson*, __ U.S. __, 131 S. Ct. 1350, 1359 (2011). For a plaintiff to prevail on a failure to train claim, he must allege with specificity how a city's training program is inadequate. *Roberts v. City of Shreveport*, 397 F.3d 287, 293 (5th Cir. 2005). A plaintiff seeking to recover on a theory of failure to train must prove that: "(1) [the city's] training policy or procedures were inadequate, (2) [the city] was deliberately indifferent in adopting its training policy, and (3) the inadequate training policy directly caused [the plaintiff's injury]." *Sanders-Burns v. City of Plano*, 594 F.3d 366, 381 (5th Cir. 2010).

To show deliberate indifference in the context of a failure to train allegation, a plaintiff may pursue two paths. *Kitchen v. Dallas Cty., Tex.*, 759 F.3d 468, 484 (5th Cir. 2014). The first, and more common path, involves proving that the city had notice of a pattern of prior violations which involved events similar to what transpired when the plaintiff's rights were allegedly violated. *Id.*, *citing Sanders-Burns*, 594 F.3d at 381. Alternatively, a plaintiff can show, based on a single-incident alone, that "in light of the duties assigned to specific officers or employees, the need for more or different training is obvious, and the inadequacy so likely to result in violations of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need." *Sanders-Burns*, 594 F.3d at 381, *quoting Estate of Davis ex rel. McCully v. City of North Richland Hills*, 406 F.3d 375, 386 (5th Cir. 2005). This "single-incident" path is "difficult, although not impossible," for plaintiffs to successfully follow. *Id.* This

is because it is not sufficient for a plaintiff to show that additional training may have avoided the injury, but a plaintiff (following either path) must show that the training was so inadequate that it would pose a "patently obvious risk of recurring constitutional violations." *Kitchen*, 759 F.3d at 485.

As part of their failure to train claim, Plaintiffs contend that the City failed to properly train its officers in the proper use of force and failed to properly train its officers regarding civil rights. (Doc. 11, ¶6.07) Plaintiffs provide no specific factual details as to how they claim the City's training of its officers is constitutionally inadequate.

In this case, Plaintiffs have no evidence to support an inadequate training claim. APD provides comprehensive training to its cadets and police officers. (Ex. 6, Declaration of Lyons) In fact, APD provides training that actually exceeds what is required by TCOLE. (Ex. 6, Declaration of Lyons); *see Zarnow v. City of Wichita Falls, Tex.*, 614 F.3d 161, 171 (5th Cir. 2010) (finding that compliance with state training minimums "counsels against" finding a failure to train). In particular, APD provides vastly more training on police use of force than what is required by the state. (Ex. 6, Declaration of Lyons) This training includes hours of classroom instruction and numerous practical exercises. (Ex. 6, Declaration of Lyons) Accordingly, Plaintiffs cannot show that the City was deliberately indifferent to the need for more or different training.

The weakness of the Plaintiffs' training claim is demonstrated by the fact that they fail to identify any specific training deficiencies on the part of the City other than bare allegations that the City failed to provide adequate training on the use of force and communication. (Doc. 11, ¶6.07) Plaintiffs identified no specific failure of the City's training policies. Plaintiffs also have not produced evidence why different training procedures should have been obvious to the City. At its essence, Plaintiffs' training claim against the City is little more than bare assertions,

unsupported by the type of detailed allegations and evidence that are mandated by cases like *Monell* and *Connick*. Accordingly, Plaintiffs' failure to train claim should be dismissed.

2. Plaintiffs Have Not Established a Policy or Practice of Inadequate Supervision, Discipline, and Investigation.

Plaintiffs cannot establish that the City has a policy or practice of failing to supervise and discipline its officers or failing to adequately investigate the use of force by its officers. These claims are analyzed under virtually the same stringent, deliberate indifference standard as the failure to train claim. *See Porter v. Epps*, 659 F.3d 440, 446-47 (5th Cir. 2011) (requiring a plaintiff to prove deliberate indifference for failure to promulgate policy, train, and supervise claims); *Gros v. City of Grand Prairie, Texas*, 34 Fed. Appx. 150 *6 (5th Cir. 2002) (per curiam) (requiring a plaintiff to prove deliberate indifference for hiring, training, and supervision claims); and *Barrios-Barrios v. Clipps*, 825 F.Supp.2d 730, 744 (E.D. La. 2011) (citing *Bd. of Cnty. Comm'rs v. Brown*, 520 U.S. 397, 410-11 (1997) (analyzing hiring, training, and supervision claims under a deliberate indifference standard). A showing of even heightened negligence does not suffice to demonstrate deliberate indifference. *Brown*, 520 U.S. at 407.

To prove deliberate indifference in the context of hiring or retention claims, a plaintiff must show that the policymaker hired or retained an individual knowing that the person posed an obvious risk of committing constitutionally unlawful excessive force. *Brown*, 420 U.S. at 412; *see also Estate of Davis*, 406 F.3d at 382-85 (holding that there was no deliberate indifference even though the city knew that the officer had inappropriately fired a weapon, had a propensity for violence, and received several citizen complaints about the officer); *Snyder v. Trepagnier*, 142 F.3d 791, 198 (5th Cir. 1998) (finding no deliberate indifference even though the plaintiff introduced evidence showing that the officer was stressed, had a quick temper, and had exhibited aggressive behavior).

To prove deliberate indifference in the context of a claim that a city failed to supervise or discipline a police officer accused of excessive force, a plaintiff must identify the individual supervisor who failed to supervise or discipline and demonstrate that the supervisor had subjective knowledge that the police officer posed a serious risk to cause harm by using excessive force. *James v. Harris Cty.*, 508 F.Supp.2d 535, 551-52 (S.D. Tex. 2011). In essence, for all of these types of claims, a plaintiff must prove (usually through demonstrating a pattern of prior similar violations) that the risk of the officer using excessive force was obvious to policymakers. *Id.*

In this case, Plaintiffs again only make a bare allegation that the City did not properly discipline, supervise or take other reasonable steps to supervise officers on the use of force against people of color. (Doc. 11, ¶ 6.07) Simply put, Plaintiffs have produced no evidence that Officers Wright, O'Neill, Nelson and Woods were inadequately supervised on the date of this incident and that any alleged failure to supervise was done so with deliberate indifference to the risk of a constitutional violation. The fact that an Internal Affairs investigation of this incident resulted in a finding of no policy violations by the officers does not alone constitute evidence of inadequate disciplinary policies of the police department.

Similarly, Plaintiffs cannot point to any evidence to show that the City had any indication before the date of this incident that these officers posed an obvious risk of using excessive force or unreasonable deadly force. It is undisputed that the officers passed an extensive background check prior to hiring, and successfully completed the training academy. Moreover, the undisputed evidence shows that APD had a program in place to screen officers based on uses of force, citizen complaints, and other criteria. (Ex. 5, Declaration of Chacon). Simply put, there is no evidence that these officers posed any unusual risk of using excessive force. As a result, Plaintiffs' inadequate supervision and discipline claims are without merit and should be dismissed.

3. Plaintiffs have not established a policy or practice of using excessive deadly force.

Plaintiffs allege that the City of Austin had an inadequate policy for preventing use of force violations by its police officers. (Doc. 11, ¶ 6.05, 6.07) This allegation is not supported by the evidence. It is undisputed that APD had policies in place forbidding excessive force. These policies, in considerable detail, discussed the standards for the application of both lethal and non-lethal force. (Ex. 5, Declaration of Chacon, ¶¶ 8-11, Attachment 1) Plaintiffs do not make any specific allegations about how APD's use of force policies are deficient. To prove their claim, Plaintiffs must establish that there is some pattern in the use of excessive force that demonstrates that the City had an unwritten policy permissive of excessive force. *Peterson*, 588 F.3d at 850. Simply put, Plaintiffs have produced no evidence to support these allegations.

Plaintiffs also have not established any pattern that could constitute official policy. A pattern amounts to an official policy "when it is so common and well-settled as to constitute a custom that fairly represents municipal policy." *Peterson*, 588 F.3d at 850 (internal quotes and citations omitted). To establish that prior incidents constitute a pattern, a plaintiff must show that the incidents have occurred for so long or with such frequency that policymakers must know that the improper conduct is the ordinary and accepted practice of the municipal employees. *Id.* A pattern will not be established based on isolated incidents. Instead, the pattern must be composed of incidents that are numerous and similar to the specific violation alleged. *Id.* at 850-851. To meet these criteria, a plaintiff must place the prior incidents in context. For instance, the mere existence of 27 complaints of excessive force over a four-year period does not show a pattern of allowing excessive force when the city has a large police force that makes thousands of arrests per year. *Id.* at 851. Here, Plaintiffs have produced no evidence of any prior similar incidents in which deadly force was used sufficient to constitute any policy or practice.

The undisputed evidence is that APD has enforced its policies. APD policy requires the reporting and investigation of every use of force. (Ex. 5, Declaration of Chacon) Deadly force incidents receive APD's closest scrutiny. *Id.* The punishment for using inappropriate deadly force is termination. *Id.* Plaintiffs have no evidence that this investigation does not occur or that officers are not disciplined for violating the policies. *See Peterson*, 588 F.3d at 852 (finding that the city investigated every excessive force complaint cuts against the allegation that the city condoned excessive force).

In sum, Plaintiffs have no evidence to demonstrate a pattern of prior incidents that are sufficiently numerous and similar to this incident to show that the City tolerates the use of excessive force by its officers or that it has a practice of employing excessive force. Furthermore, because APD investigates and routinely disciplines officers who use excessive force, Plaintiffs cannot prove that any alleged policy permissive of excessive force was the moving force behind the alleged violations in this case. *See James v. Harris Cty.*, 577 F.3d 612, 618-19 (finding that alleged policies of lax investigation and discipline in officer-involved shootings could not have been the moving force behind the violations because the officer did not have any knowledge of such policies).

Plaintiffs have produced no evidence that the officers' use of force was based on a policy or practice of APD. Instead, the evidence reveals that the officers made the decision to use force on Plaintiffs' decedent based only on the imminent threat of serious bodily injury or death presented by the decedent's actions. Accordingly, Plaintiffs' §1983 claim against the City should be dismissed.

VI. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Defendant City of Austin respectfully requests that the Court grant its Motion for Summary Judgment and dismiss the Plaintiffs' claims against it with prejudice with all costs assessed to the Plaintiffs. Defendant further requests that it recover any additional relief to which it may be entitled.

RESPECTFULLY SUBMITTED,

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ATTORNEYS FOR DEFENDANTS CITY OF AUSTIN, DEANDRE WRIGHT, DANE O'NEILL, ZACHARY WOODS AND THOMAS BERNARD NELSON III

CERTIFICATE OF SERVICE

I certify that on the 14th day of October, 2022, I served a copy of *Defendant City of Austin's Motion for Summary Judgment* on all parties, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

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/s/ Monte L. Barton Jr.
MONTE L. BARTON JR.

Exhibit 1

Transcript of the Testimony of
Deandre Wright

August 3, 2022

Christine Springs-Hutchinson, et al. v. The City of Austin, et al.

Givens Court Reporting
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON AND BENNY HUTCHINSON, ON BEHALF OF THEMSELVES AND THE ESTATE OF ISAIAH HUTCHINSON,	§	
Plaintiffs,	§	
	§	CIVIL ACTION NO.
v.	§	
	§	1:21-CV-00221-LY
THE CITY OF AUSTIN AND DEANDRE WRIGHT AND DANE O'NEILL AND ZACHARY WOODS AND THOMAS BERNARD NELSON III,	§	
Defendants.	§	

* * * * * * * * * * * * * * * * * * *

THE ORAL DEPOSITION OF
DETECTIVE DEANDRE WRIGHT,
August 3, 2022

* * * * * * * * * * * * * * * * * * *

ORAL DEPOSITION OF DETECTIVE DEANDRE WRIGHT, produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above styled and numbered cause on the 3rd day of August 2022, from 1:03 p.m. to 4:20 p.m., before Sandra S. Givens, CSR, in and for the State of Texas, reported by machine shorthand method at Austin City Hall, 301 W. 2nd Street, 4th floor, Austin, Texas 78701, pursuant to the Federal Rules of Civil Procedure.

A P P E A R A N C E S

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I N D E X

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E X H I B I T S

NO. DESCRIPTION PAGE
Exhibit 5 - 16
7th Street and Neches Native Format Halo Video, COA 5047

DETECTIVE DEANDRE WRIGHT,
having been first duly sworn, testified as follows:

EXAMINATION

BY MR. OGLE:

Q Could you state your name for the record, please?

A Sure. My name is Deandre Wright.

Q Okay. And where did you grow up?

A I grew up in the state of Michigan.

Q Did you attend college?

A I did.

Q Where, when, and what degree?

A Sure. I attended Michigan State University.

Q Okay.

A I started in 2003, graduated in 2009 with a degree in, bachelor's degree in public, public policy, public administration and public policy.

Q Okay. Did you serve any time in the military?

A I did not.

Q How long have you been a police officer?

A I've been a sworn police officer just over 10 years. That 10 years, just over 10 years does not include my academy time with the police department.

Q How long was the academy?

A It was 32 weeks long.
Q Is there a certain profile that they -- that law enforcement chooses to have as a police officer? Ken Casaday refers to them as warriors. Is there kind of a warrior-type mentality among the police force?
MR. BARTON: Object to the form.
Q (By Mr. Ogle) Go ahead. You can go ahead and answer.
A I think that the police department or police agencies in general have a desire to have people that have a certain temperament, have a certain intellectual ability to process people, process information, to read people, to be able to study the law, know the law, apply the law, and also in the way that they interact with people. I think that the prototype for the police, for a police officer, is large and varied. What specifically the Austin Police Department requires versus any other agency could be different.
Q In terms of the character of a law enforcement officer, you are describing someone of a particular temperament. What -- would you consider many of the officers that are attracted to law enforcement have an alpha dog type of personality?
MR. BARTON: Object to the form.
A Can you describe what alpha dog means?

Q (By Mr. Ogle) Dominant, someone that is -- that likes to give orders, take charge of things, someone that is battle tested, I guess.
A So with that definition can you restate your question?
Q Are there officers that are -- are the officers that are recruited by law enforcement, do many of them possess an alpha dog type of personality?
MR. BARTON: Same objection.
A I don't know that I can adequately answer that question.
Q (By Mr. Ogle) Okay. Have you worked for any other police forces besides Austin?
A Yes, I have.
Q Which ones?
A Two different police agencies prior to Austin.
Q Okay.
A Both -- in neither of the two prior agencies did I serve as a sworn officer. I worked for the East Lansing, Michigan police department and the Michigan State University police department.
Q Okay. Why did you leave each of them? Was there a -- well, why did you leave each of them?
A I graduated college and decided to move on.

Q Okay. Were there any reprimands that you were given while working for those other two police agencies?
A I believe with the East Lancing Police Department there was a reprimand for showing up to work late.
Q Okay. I do that.
A What's that?
Q I said I do that. That's okay. Any use of firearms that you had -- any incidents in which you used -- you had the use of firearms during the two previous police agencies?
A No.
Q How about Austin Police Department? You were involved in the incident involving Isaiah Hutchinson that happened back in March of 2019, correct?
A That's correct.
Q Did you fire your weapon during that incident?
A I did.
Q Were there any other incidents in which you used your firearm while employed at Austin Police Department?
A Yes, there are.
Q Okay. Could you tell me what those are?

A Outside of the training capacity I did have a use of force involving a firearm in February of 2018.
Q Okay. What was that about?
A It was related to a barricaded, a barricaded-person call who had been involved in a armed carjacking and a vehicle pursuit with the police department. Barricaded himself inside a vehicle and pointed a firearm at officers.
Q Okay. And did you shoot him?
A I did.
Q And was that a fatal incident?
A It was a fatal encounter.
Q When was that again?
A February 2018.
Q Did that go through internal review?
A Both internal and external.
Q Did it go to the district attorney's office? In other words, let me strike that, did it go to the grand jury?
A That was I received a declination letter that was not reviewed by the grand jury.
THE REPORTER: A what letter?
THE WITNESS: A declination letter from the Travis County District Attorney's Office.
Q Dec- declined, declination. Okay.

At that time were all police fatal incidents sent to the grand jury? You may not know, but the declination letter, did it come from the grand jury or from the police department?

A The declination letter came from the Travis County District Attorney's Office, Office of Civil Rights.

Q Okay. And what did it decline?

A It declined to prosecute me after finding that there was no evidence or no probable cause to believe that there was any criminal wrongdoing.

Q Were there any factors that were in question during that incident even though it was ultimately declined in terms of any charges? Were there any allegations of any wrongdoing?

A No.

Q Were there any questions of your use of force that they reviewed?

A Other than the standard questions that are, that are posed during a typical use of force, both criminal and internal investigations, I don't believe so.

Q Was it indeed determined that the suspect had a gun?

A Both had a gun and fired.

Q Was he running away or trying to flee at the time that you struck him?

A No. He was barricaded inside of a vehicle.

Q Okay. Would it be different if he was running, if he was fleeing the scene after he pointed a gun at the officers?

MR. BARTON: Object to the form.

Q (By Mr. Ogle) In other words, would you still have had -- based on the training that you received from the Austin Police Department academy, once a suspect points a gun at you are you entitled to shoot him as he's fleeing the scene?

MR. BARTON: Object to the form.

Q (By Mr. Ogle) If he still has a gun but he's running, can you shoot him in the back?

A I don't believe that I can answer that question without a whole lot more information. The decision on whether or not an officer is going to discharge their weapon at a point in time, there's a lot of information that's being evaluated at that time. And so just the limited information that you're providing me in your scenario is not something that I can, I can answer I believe adequately.

Q Well, let me give you a couple more details. Or let me give you some examples of what some of the

other police officers have described. I think it was, I could be mistaken, either Woods, Nelson or O'Neill, but I believe it was Officer Nelson that said he heard shots and he saw Isaiah with a gun.

And so in the incident that you were involved in you're aware of the details of that incident, correct?

A Now, we're talking about two different incidents. I want to clarify which one you're referring to.

Q I'm talking about the incident having to do with Isaiah Hutchinson.

A Okay. And then could you restate your question?

Q In regard to the incident of Isaiah Hutchinson, do you agree with Officer -- one of the officers, I believe it was Officer Nelson, that said that he was justified in shooting at Hutchinson because of two factors: One, that he was -- that he heard gunfire, and the other was that he saw Isaiah with a gun.

Do those two factors in the incident that you were involved in, do you agree with Officer Nelson that those two elements justify use of lethal force?

MR. BARTON: Let me interject an objection to the form. It calls for one witness's hearsay testimony to be interpreted by another. But with that objection stated, you may go ahead and answer the best you can.

A I don't know that I can answer that question, because I believe it is missing a lot of information.

Q (By Mr. Ogle) What information would you need?

A A lot more than what you provided.

Q Well, according to -- do you disagree with Officer Nelson's assessment that hearing gunshots and seeing someone with a gun justify lethal force?

A Well, again, I think it's difficult for me to know that, because I believe that Officer, uh --

Q Nelson.

A -- Nelson, Detective Nelson, excuse me, that Detective Nelson probably would have articulated it with more information than what you're providing. So I don't think that I would be able to answer that question with the information that you're giving me.

Q Were you one of the officers that was shooting at Isaiah as the Maserati was fleeing down 6th Street?

MR. BARTON: Object to the form.

A Would you like for me to continue?
Q (By Mr. Ogle) Yes.
A I was involved in a use of my firearm on that evening. Yes.
Q Tell me more about it. Tell me about, about where you were at at the time that Isaiah was near the Maserati.
A At the time that Mr. Hutchinson was near the Maserati -- I assume that this is after he's retreated from the Monte Carlo? Is that where you'd --
Q Right.
A -- like for me to start? Okay.
He is -- myself and some of the other officers are in the parking lot of the Gulf gas station --
Q Mm-hm.
A -- responding to that area based on the -- or hearing the shots being fired as we're approaching the area Mr. Hutchinson is. He's moving, so he's in a couple different locations as we're making our approach, and so he at one point was on the driver's side, at one point he was on the front of the vehicle, at another point he was on the passenger side of the vehicle. Again, all this is happening at a really compressed amount of time as myself and the other

officers are making our approach from where we had been stationed prior to this encounter to the point of our engagement with Mr. Hutchinson.
Q Okay. And so you're one of the four -- have you seen the video of this incident?
A I have.
Q And were you one of the four officers that came up to near the side of the road and were firing?
A I am one of the four. Yes.
Q Okay. Did -- how many shots did you fire?
A I fired one shot.
Q One shot.
A Yes, sir.
Q And did you strike him?
A I believe that I did.
Q Do you think that he was killed as a result of your firing him -- firing at him?
A I believe that he was.
Q The report says that he was seriously injured as a result -- that was one report. One officer's recollection, I think it was Dane O'Neill, reported that he was -- that the suspect was seriously injured, in his opinion. Do you agree with Dane O'Neill's assessment?
MR. BARTON: Object to the form

mainly because it's a hearsay statement of another witness's sworn testimony, and I'm not sure you got it right. I think there's some mischaracterization there, but you may go ahead and answer as best you can.
Q (By Mr. Ogle) Whenever he says objection, form, still answer the question unless he tells you not to.
A Can you restate your question?
MR. OGLE: Could you read me back my question?
(The referenced portion at page 14, lines 19 to 24, was read back by the court reporter.)
A My assessment is that after our engagement Mr. Hutchinson was deceased.
Q Did you write that in your report?
A I did not write a report.
Q Were you interviewed?
A I was.
Q Did you in your interview that was recorded, or I think reproduced, did you state that as your opinion at the time?
A I don't believe that I was asked that question the way that you asked it.
MR. OGLE: At this time I'd like to show the video. I'm going to begin with the, the

police -- I'm sorry, the collision itself.
MR. BARTON: And so just for the record, where you've asked for video to be shown from Exhibit No. 5.
MR. OGLE: Thank you.
(Video Played)
MR. OGLE: Okay. If you'll stop right there.
Q How would you describe the traffic in terms of congestion at that time during South by Southwest?
A Heavily congested.
Q Okay. And it appears as though cars are disregarding the red light. There's another video that we've got that shows the light, but for now --
MS. SMITH: Oh, I'm sorry. Hold on (readjusting video perspective).
MR. OGLE: Thank you.
Q But what color is the light right now?
A At this point in time the light is red.
MR. OGLE: Okay. And could you back up a bit to show the other traffic?
MS. SMITH: Okay.
Q Okay. Right now you see cars going, and they're all running the red light, aren't they?
A They're already in the red light.

Q What?
A Can you restate your question?
Q They are, they are all running the red light.
A Running the red light?
Q Running. Yes. Disobeying, disregarding the stoplight. Would you agree with those other vehicles?
A Well, I think the cars that are in the intersection, I don't know that we can actually tell whether or not they ran the red light or if they're just occupying that space, the box within the intersection.
Q Okay. Well, that's the beauty of video. We can back it up and watch again.
MR. OGLE: If you don't mind.
(Video Played)
MR. OGLE: Okay. If you'll stop it right here.
Q Okay. At this point the entire intersection is congested, correct?
A That's correct.
Q Okay. And these three cars in front of our vehicle have actually blocked the intersection, haven't they?
A When you say "our vehicle," which one is "our vehicle"?

Q When I say "our vehicle," before -- our vehicle is behind here, and so these are the vehicles that are ahead of the cars when the incident occurred.
A Okay.
Q And so does it appear as though there's a lot of cars running the red light?
A No.
Q No? Why not?
A Because we don't know at what point the light turned red and at what point they entered the intersection.
Q We can if we just look at the intersection lights.
A We can look and see that the light is red. We cannot see when they entered the intersection.
Q Why not? It's on --
A Because the video doesn't exist. This video starts when the light is already red.
Q Yeah. And while the light is red we see all of these cars.
A Stopped in the intersection.
Q Right. And so wouldn't it be reasonable for someone -- even though he's got the green light over here, wouldn't it be reasonable to expect him to wait until the traffic is cleared before he turns into

someone's lane?
A Well, there are three lanes that are in this -- we're looking at 7th Street, the 500 block of 7th Street right at the intersection of Neches. There are three lanes that are here. Two of the lanes, which from left to right we refer to as lane 1, lane 2, lane 3 from left to right, two of the lanes are heavily congested all the away back through the western edge of that intersection.
Q Uh-huh.
A That number 1 lane is still somewhat open where at least one vehicle could turn into it.
Q Okay. So what's that got to do with people running red lights?
A Nobody -- there's nothing to show that anybody ran a red light.
Q All three of these cars broke the law, correct, in one way or the other?
A I believe that's --
MR. BARTON: Object to the form.
A I apologize. I believe that your assessment is wrong.
Q (By Mr. Ogle) My assessment is wrong?
A That's correct.
Q Okay.

MR. OGLE: Could you continue playing it?
(Video Played)
Q The light's red, and these cars you're saying are not doing anything illegal? Right here the light is still red. Do you see these cars going -- look at this truck. Is that truck --
MR. OGLE: Just stop it right there.
Q That truck, did it run the red light?
A I don't know.
MR. OGLE: Let's run it back.
Q Are you being intentionally disagreeable?
A No. I've explained to you my position. I can explain it to you again if you'd like.
Q No. I don't want you to be argumentative with me. What I'd like you to do is simply watch the video --
A Mm-hm.
Q -- make sure you're close enough, so that you can confirm whether or not this truck ran the red light. And you're saying you don't know.
MR. BARTON: And I'm going to object to the form, Scott, because if anyone's being argumentative, it's you.

MR. OGLE: Yeah. Well --
MR. BARTON: You've asked the question, he's answered it, and just because you don't like the answer doesn't mean he's wrong. Okay? He gets to say what he believes.
MR. OGLE: Okay.
(Video Played)
Q And so do you see the truck running the red light at this point?
A No.
Q Why not?
A What I see is the truck stopped in the intersection while the light is red. That does not indicate at what point he entered the intersection. For example --
Q Sure it does. We can run it back and we can watch it again.
A May I finish answering the question?
Q Yeah.
A Okay. For example, he could have entered the intersection while the light was yellow and because of the density of traffic had not had an opportunity to exit the intersection before the light turned red.
Q I got stopped for running a yellow light. Is that against the law?

MR. BARTON: Object to the form.
Q (By Mr. Ogle) Does it matter who you are?
A Running a yellow light is not a violation of the law.
Q Interesting. Okay. And do you see this truck right here? That is already in the crosswalk, but he is stopped and he proceeds with the red light. So you're saying what you don't know is when he came to the intersection?
A That's correct.
Q Okay. If we run it back for you, would you then be able to see that?
A I believe the video starts when he's already in the intersection.
MR. OGLE: Can you run it back?
MS. SMITH: This is, this is already before it started. This is the moment that it starts. See? That's the beginning.
Q So you're saying that there's a possibility that he was not breaking the law?
A There's a possibility that he did not run the red light.
MR. OGLE: Okay. All right. Let's continue on.
(Video Played)

Q Is it safe for people to turn left with that kind of congestion coming off Neches? Right there do you see the Monte Carlo? With all these cars running the red light do you place fault solely on the Maserati or also on the Monte Carlo driver?
MR. BARTON: Object to the form.
A I believe that the far -- you're asking by placing fault I believe that you're referring to the fault of the collision; is that correct?
Q (By Mr. Ogle) Yes.
A Okay.
Q Yeah. This right here is the collision.
A All right. So in the moment that we're looking at right now it is clear that the Maserati ran the red light.
Q Mm-hm.
A He failed to yield prior to entering that intersection running the red light.
Q Would you place a factor on the Monte Carlo driver?
A I think that it could be a possibility. Certainly.
Q Could be a possibility.
A Yeah.
Q Thank you.

MR. OGLE: Okay. Could we go on? Well, go ahead and re- or go forward with the rest of this.
(Video Played)
Q Okay. At this point do you see the Monte Carlo driver -- now, in that instant is it reasonable for someone to get out to ask for insurance information?
A No.
Q It's not reasonable?
A Not in that instance. No.
Q Why not?
A Several factors. They're still occupying a lane of traffic. They're in the number 2 lane of traffic --
Q Well, yeah. I'm not saying stopping right there, but is it -- just stop somewhere and exchange rather than driving off.
A Now, that question is different than what you actually asked me.
Q Well, okay. In terms of it being reasonable to stop after that incident, do you agree with, with the suggestion that they should stop at some point where it's safe to do so?
A Certainly. It's also required by law.

Q Thank you. And so do you see anything outwardly aggressive that you -- that the Maserati did towards the Monte Carlo driver at this point?

A No.

Q Okay.

MR. OGLE: All right. If you'll go, if you'll continue.

(Video Played)

MR. OGLE: I don't think there's anything of significance on this. If we can go now to the second one. Okay.

(Video Played)

Q Now, here they've moved up closer to the Gulf station at this point on 7th Street, and here's the Maserati and here is the Monte Carlo driver.

MR. OGLE: If you'll stop it right there.

Q When you see -- what's your understanding as to who was in the wrong when it comes to the Monte Carlo driver and either one of the people from the Maserati?

MR. BARTON: Object to the form. What timeframe are you talking about, Scott, or what incident? Are you talking about the collision or --

MR. OGLE: No. I'm talking

about -- well, go ahead and continue it. We'll see the incident and then we can talk about it.

(Video Played)

MR. OGLE: This is my client's son. Okay. If you'll stop there.

Q According to Demarios, when he approached the Monte Carlo driver the Monte Carlo driver pulled a gun on him from the inside of the car. Given that factor, if someone pulled a gun at you as you approached their front -- their car, do you think it's reasonable for Demarios to have struck the man that was pointing a gun at him?

MR. BARTON: Object to the form.

A My assessment of what I'm seeing here is different than, than what you're saying.

Q (By Mr. Ogle) Why's that?

A And of course --

Q And that happens to be the same assessment that the police, the police department has, right?

A Okay.

Q Is that right?

A I don't know.

Q Okay. Well, is your assessment consistent with Austin Police Department's position on this?

A I can tell you my assessment and then --

Q Okay.

A -- if you like, you can make that determination. When both Mr. Hutchinson -- and then I'm assuming the driver is Demarios; is that correct?

Q Right.

A Okay. When Mr. Hutchinson and Demarios exit their vehicle there's several things that I notice that stand out as preparatory behavior that I would register as suspicious, especially as a police officer or if I was the driver of the Monte Carlo.

One, the lane of traffic where they stopped in, they stopped in the number 2 lane of traffic very first car in that intersection. To me that looks like they're planning an easy avenue of egress. Also, when Mr. Hutchinson exits the vehicle he approaches the Monte Carlo, puts his hood up, looks over his shoulder a little behind him to see potentially who's in the area, and then reaches for his waistband. And so --

Q You see --

A One second. Those are things that I can see in the video. I cannot see in the video whether or not the driver of the Monte Carlo has a firearm.

Q Would that make a difference?

A Would it make a difference if --

Q If you're --

A -- he had a firearm?

Q Uh-huh.

A It depends.

Q What does it depend on?

A I mean, again, it depends on whether or not all the other factors are in place. If he still stays in the lane of traffic, he does not make any attempt to pull over to settle the business of the collision. He's, again, still in that number 2 lane of traffic with an easy egress, exits the vehicle, puts his hood up, potentially to disguise his identity. Those are things that I can see and that I can recognize behavior based on my training and experience --

Q To gaslight him.

A -- particularly --

Q Uh-huh.

A -- working in Organized Crime for the past five years --

Q Mm-hm.

A -- monitoring similar behavior. So it's hard for me to answer that question.

Q What you're saying is that, is that their behavior justified the shooting?

MR. BARTON: Object to the form.

A No. That's not what I'm saying.
Q (By Mr. Ogle) There was a car right next to the Maserati, may have been this car, may have been this car. One of these two there's a witness by the name of Amanda Estrada that overheard, she says, Demarios politely asking for his insurance information. Now, does that -- would that make a difference in your assessment?
MR. BARTON: Object to the form.
Q (By Mr. Ogle) If he politely -- you're, you're coming up with these predatory opinions that make the Monte Carlo driver the victim, correct? That's basically your overall assessment is that they were the predators and he was the victim?
MR. BARTON: Object to the form.
A What was your specific question?
Q (By Mr. Ogle) Is that correct? Are you describing the Monte Carlo driver as the victim?
A I did not use that term. No.
Q You, you, you described these two as being -- having predatory actions, correct?
A I also did not use that term. No.
Q You, you didn't use -- you didn't say predatory? What was the term you used?
A Well, I'm not sure, because I did not use the

term predatory.
Q How would you describe, based on their actions, how they were perceived by Gildardo -- Gilberto [sic] Vasquez, the Monte Carlo driver?
MR. BARTON: Object to the form. This calls for speculation.
A The term that I used is preparatory.
Q (By Mr. Ogle) Preparatory. I'm sorry. I thought it was -- so preparatory meaning up un- what they were doing before they got to the door?
A Preparatory in the sense that I'm using it refers to behavior that shows a person is preparing to engage in a specific type of behavior.
Q Okay. And that behavior you're describing them as being aggressive, correct?
A I did not use the term aggressive.
Q Okay. Then you didn't. Give me a word other than aggressive that then correctly described your assessment.
A Would you like one word or multiple words? Because I don't think one word can adequately capture my assessment of their behavior.
Q Yeah. Multiple words is fine.
A Okay. I believe, again, based on the positioning of the vehicle, his avenue of egress from

that specific location, him exiting the vehicle, putting his hood up to cover his face, looking over his shoulder, approaching the vehicle, putting his hands in his waistband, immediately followed by Demarios punching the driver of the Monte Carlo, all of that -- and, and actually let me just back up to prior to punching. So all of that behavior prior to the punching was preparatory, aggressive behavior that something was about to occur, which is actually what occurred when Demarios started punching the driver of the Monte Carlo.
Q Now, you're completely discounting Demarios had the gun pointed at him, correct?
MR. BARTON: Object to the form.
A I don't know that Demarios had a gun pointed at him.
Q (By Mr. Ogle) I know. And so as a result of that you're completely excluding that as a factor in your assessment, correct?
A That's correct.
Q Thank you. And in regard to Amanda Estrada's description of their behavior that they politely, that Demarios politely asked for the insurance, that also is completely contrary to your assessment of their aggression, correct?

MR. BARTON: Object to the form.
A I don't know that that's how she described it.
Q (By Mr. Ogle) You don't know. I'm -- she -- assume, just take -- please accept as fact that Amanda has testified, has already spoken to law enforcement, and in fact I believe it was written up in the Austin American Statesman quoting her, I could be wrong, that Demarios politely approached the Monte Carlo driver and asked him for his insurance. All I'm asking you to agree on, since we're not going to agree, is that that is completely contrary, that kind of behavior in politely asking for insurance goes against your description of their aggressive behavior, correct?
MR. BARTON: Object to the form.
A My assessment seems to be --
Q (By Mr. Ogle) Yes or no.
A My assessment --
Q No. You --
A -- seems to be contrary to --
Q I'm going to ask you to say yes or no, and then you can use as many words as you want to describing anything after the yes or no.
A Okay.
Q But can you answer yes or no to my question?

A No, I can't.
Q Why not?
A Because I don't believe that either of those answers adequately expresses my, my response to your question.
Q So if Amanda was sitting right here and she says, I heard him ask politely for the insurance, would you believe her?
MR. BARTON: Object to the form, calls for hypothetical, hearsay.
Q (By Mr. Ogle) Yes or no. Would you believe her?
A Well, I think my belief in a person's statement is predicated on a lot of different things.
Q Okay. And so as result of all the other things involved, if Amanda says that she was there and she overheard Demarios politely ask for insurance from Vasquez, would you consider that -- would you factor that into your opinion and would that change your opinion if you believed her?
A I don't know that it would necessarily change my opinion, but it would certainly factor into my assessment.
Q Okay. Would it possibly change your assessment as to who was the victim?

MR. BARTON: Object to the form.
A One of the issues --
Q (By Mr. Ogle) Yes or no?
A One of the issues with --
Q Would you answer my question first?
A Okay. Again, I don't know that a yes or no answer for me in regards to that specific question would be adequate.
Q Okay. Is it fair to say that you're not in your opinion accounting for Amanda's description of, of Demarios asking for insurance, correct?
A Of course not. I didn't talk to her.
Q Okay. If you read it and that's what she said, would you take it for what it's worth?
A Not necessarily.
Q Why not?
A Because in traumatic situations sometimes people misremember things.
Q Okay. Are you biased, by any chance, in favor of the police?
MR. BARTON: Object to the form.
Q (By Mr. Ogle) We're all biased.
A Certainly.
Q Is it fair to say that you're biased in favor of the police in this situation?

A I would say that I'm in favor of the truth.
Q Okay. Speaking of -- okay. All right. But are you biased in your opinions --
MR. BARTON: Object to the form.
Q -- to support the law, to support your fellow officers, your brothers?
MR. BARTON: Object to the form.
A So I --
Q (By Mr. Ogle) Yes or no, are you biased or not?
A Well, you asked me a question (crosstalk) --
Q I'm asking you whether you are biased or not.
MR. BARTON: Object to the form, Scott, and you know, if he can answer yes or no, that's fine, but if he can't, and he's explained that he can't numerous times, you can only take the witness's responses as he's able to give them, right? So I interpose an objection on your --
MR. OGLE: Fair enough.
MR. BARTON: -- demand for a yes or no answer.
Q (By Mr. Ogle) Are you able to answer with a yes or no question whether you're biased?
A As you said, most people -- all people are biased.

Q Okay. What about you?
A I have biases.
Q All right. And are you biased in regard to your testimony today?
A Of course.
Q Okay. And why is it you're biased in regard to your testimony?
A I believe that my testimony is probably not going to be something that is favorable to your position, and so it is important for me to make sure that my statements reflect the truth and my perceptions of the truth on that evening.
Q I'm asking about your inherent bias to testify in favor of law enforcement's.
A At the beginning of this deposition I made an oath to tell the truth, and so yes, people do have biases, but because people have biases, both explicit and implicit biases, it does not mean that they cannot be mitigated. When I swore at the beginning of this deposition to tell the truth, that was without regard to whatever biases that I have. Okay? So as you ask me questions I will answer them truthfully to the best of my ability.
Q Now, I've been doing this for 25 years, and I've interviewed a lot of -- I've deposed a lot of

police officers, and I've had police officers on the stand who "testilie."
A Who what now?
Q "Testilie." Have you ever heard the term "testilie"?
A Test a lie or --
Q "Testilie," testify and lie at the same time, "testilie." Have you ever heard of a police officer lying on the stand?
A Yes.
Q Okay. Are you aware of police officers that will sometimes embellish an accusation and lie about it as a result of that?
MR. BARTON: Object to the form.
Q (By Mr. Ogle) Embellish or, or mitigate or marginalize depending on their bias.
A Repeat the question once more.
Q Are you aware of police officers that "testilie," that lie under oath?
A Are you asking if I personally know police officers that lie under oath?
Q Yeah.
A I don't personally know police officers that lie under oath.
Q Okay. In regard to the sanctity of your oath

you say you have sworn to tell the truth, and that includes the whole truth, right?
A Yes.
Q Okay. Are you willing to swear to God that your answers are truthful?
A Am I willing to swear to God?
Q To God.
A I believe --
MR. BARTON: Object to the form.
A I believe that I've fulfilled my legal requirement to swear to tell the truth.
Q (By Mr. Ogle) Okay. Are you willing to swear to God that you're telling the truth, yes or no?
A I don't think that my religious affiliations are any of the business of this Court or you personally.
Q Well, if you, if you swear to God to tell the truth, is that a -- is it -- wouldn't it be reasonable to have someone explain whether they believe in God and to test whether or not -- to test the sanctity of their oath?
MR. BARTON: Object to the form. Scott, I don't think this is within the parameters of proper deposition procedure. He is under oath by the court reporter. He's totally under oath in accordance

with the rules of procedure and the law.
MR. OGLE: I didn't overhear what the court reporter said, whether she asked him to swear to God, and since she probably didn't --
Q And some people have an issue with swearing to God because of, of scripture. But swearing as God is your witness, is that something you're willing to do today, to your answers?
A I'm willing and have already fulfilled what I believe is my legal obligation to tell the truth --
Q Do you --
A -- under oath.
Q -- think that you have any obligation to swear as God is your witness --
A I believe --
Q -- or would you rather leave God out of this?
A I believe if I did, that question would have been presented at the beginning of this.
Q I'm asking you this question under oath. Do you believe in God?
MR. BARTON: Scott, I'm going to object, and I just --
MR. OGLE: Okay.
MR. BARTON: -- don't think he has to answer that. I think it's --

MR. OGLE: He can --
MR. BARTON: -- an improper question.
MR. OGLE: He can, he can --
MR. BARTON: He can tell you whatever he wants.
MR. OGLE: Right.
MR. BARTON: But I'm telling you I think you're spending a lot of time on an issue that is 100 percent irrelevant and outside the scope of the --
MR. OGLE: Okay.
MR. BARTON: -- Rules of Civil Procedure.
Q (By Mr. Ogle) Okay. So are you willing to swear that your answers are truthful today as God is your witness, yes or no?
A No.
MR. BARTON: Object to the form.
Q (By Mr. Ogle) No. Okay. You don't think God should be included in determining your sanctity to tell the truth, yes or no?
MR. BARTON: Object to the form. Scott, I maintain my objection to all the religious aspects.
Q (By Mr. Ogle) It's a big deal with me, but

go ahead and answer.

A It is also a big deal with me that my religious affiliations is none of your business or the Court's business, and I've maintained that I'm not going to answer that question.

Q (By Mr. Ogle) You're aware that people have sworn to God in their oaths for a hundred years, correct?

MR. BARTON: Object to the form, Scott, and before we continue on this, because it seems like you're getting argumentative and making this a bigger issue than it should be, are you saying that the oath given by the court reporter is inadequate?

MR. OGLE: Sometimes the court reporters will say "Do you swear to God," other times the court reporters will say, "Do you swear." I'm just asking follow-up questions, because I believe she only asked him to swear to tell the truth.

MR. BARTON: Do you think -- because this goes to a procedural point on whether the deposition has been started properly, and so all objections as to the form of the oath, all objections as to the taking of the testimony, stenography, videography, whatever, are all supposed to be made at the beginning of the deposition or they're waived. And

so are you saying that you think the oath given by the court reporter in this case was improper?

MR. OGLE: No. I don't think it was improper. However, I think I have the right to delve into the, the scale of sanctity that he has to tell the truth by whether or not he's willing to -- if he believes -- if he doesn't believe in God, then it doesn't matter. If he does believe in God, I think it's fair to ask a deponent whether he's willing to swear as God is his witness, and that's been -- I know there's a difference between swearing to God, because -- when people have a problem with that.

But a, a learned hand, a learned judge actually distinguished swearing as God is your witness. And so if someone that does, that does believe in God that doesn't -- that refuses to testify as God is his witness, then that becomes a, a question of for the jury as to whether or not they will believe his answers if he's not -- if he believes in God but won't swear as God is his witness.

MR. BARTON: Well, I think, since you're not making an objection to the court reporter's oath --

MR. OGLE: Yeah.

MR. BARTON: -- on a technical

basis, then I think this is a totally irrelevant line of questioning that you have preserved. You've asked the questions --

MR. OGLE: Yeah.

MR. BARTON: -- and he's given his responses. It's preserved in the court testimony. If you want to raise this as a credibility testimony issue at a later time, that'll be your right to do so, but unless you have other questions regarding this, I'm going to instruct him not to answer.

MR. OGLE: I think we've established his unwillingness to testify.

MR. BARTON: I object to that characterization, but we'll --

MR. OGLE: As God is his witness.

MR. BARTON: -- go forward with additional questions.

MR. OGLE: Okay. Okay. At this point we're at the, at the scene. Can you back it up a little bit so we can -- I think this is -- yeah. Okay. All right. If you'll start there.

(Video Played)

Q Okay. You see them walking back. There's a strike, and here's shots.

MR. OGLE: Stop right there.

Q Did you see the Monte Carlo driver shooting shots out toward Isaiah?

A I saw a muzzle flash emitting from the driver's window of the Monte Carlo.

Q Just one muzzle flash or several?

A I believe there were two at least.

Q Could there have been four or five?

A Could there have been? I saw --

Q A set of flashes?

A -- what I saw on the video.

Q I'm sorry. What?

A I said I saw what I saw in the video.

Q Okay. And that was a muzzle flash?

A I believe there were at least two.

Q Okay. So at this point Isaiah is the victim when it comes to the Monte Carlo driver, correct?

MR. BARTON: Object to the form.

A I wouldn't --

Q (By Mr. Ogle) Without even talking about you guys over here and coming up while he's fleeing the scene, but -- he's in a precarious situation, but I wanted to ask you, since you've already described them as being aggressors, once Vasquez starts shooting at him was it reasonable for Isaiah to run away from him?

MR. BARTON: Object to the form.

A I did not describe them as being aggressors. I described what I believe was a preparatory behavior, but I did not specifically describe them as being aggressive.

Q (By Mr. Ogle) I think you said aggressive behavior, right? Aggressive -- so maybe not aggressors, but did they exhibit aggressive behavior? Since we're parsing words, correct?

A I suppose if you wanted to --

Q I'm asking you whether in your opinion you, you have the opinion that they were aggressive towards the Monte Carlo driver, yes or no?

A To your original question, I don't believe that they're victims. No.

Q Was it reasonable for Isaiah to run away from that Monte Carlo driver after he was being shot at?

MR. BARTON: Object to the form.

A I don't believe it's unreasonable.

Q (By Mr. Ogle) So you don't -- you can't even agree with that, correct, that it's reasonable to run away from someone that's shooting at you? You've got to think about that?

MR. BARTON: Object to the form, argumentative.

A I believe that my -- every word that I state

is important --

Q (By Mr. Ogle) What would you do if someone was shooting a gun at you?

A Can I finish answering your first question?

Q Sure.

A Thank you. I believe that every word that I state is important, and so yes. I will take a pause before each response to make sure that I adequately answer your question and that I take into consideration each word that you're saying to me as -- that you're asking me.

Q And you think about it and you repeat the negative. My question was whether you thought -- I was asking you to repeat what you'd already said about aggressive behavior. You deny them -- calling them aggressors, and I still can't get you to agree that you described them as being aggressive.

MR. BARTON: Object to --

Q (By Mr. Ogle) You say, Well I can't say they were -- were they aggressive in your opinion?

A So my concern is that you're putting words in my mouth.

Q My concern is you say two different things. Are you saying that they were or were not aggressive towards the Monte Carlo driver?

MR. BARTON: Object to the form, argumentative.

Q (By Mr. Ogle) Yes or no? I want you to answer with a yes or a no first, and then you can continue.

Did you describe Isaiah, my client, as being aggressive towards the Monte Carlo driver, yes or no?

THE WITNESS: Counsel, would it be possible if we could refer back to the testimony to see if I used that term?

MR. BARTON: Yeah. I think so. Why don't we take a little break if -- Sandy, I don't know how you would find that, but --

THE REPORTER: I'll take a look if we can take a break.

MR. BARTON: Okay.

(At 1:58 p.m. the proceedings recessed, during which time the court reporter began searching through and reading portions of testimony. At 2:02 p.m. the deposition continued after Mr. Ogle chose to continue the deposition without the reporter finishing her search.)

Q (By Mr. Ogle) We're back on the record, and I'm showing you the incident with the occupants of the

Maserati with the Monte Carlo driver. We're about to see, I'm guessing, you and three other officers come to the scene. And you've seen this video before, correct?

A I have seen this video before.

Q Okay.

MS. SMITH: Ready to go?

MR. OGLE: Yes.

(Video Played)

Q How many shots -- okay. Do you see --

MR. OGLE: Okay. Right there if you'll stop. Right -- right there is fine.

Q Could you identify yourself in this photo shot?

A I'm standing next to another officer in the far -- or the southernmost lane, so right there where the cursor on the screen is. So that's going to be what I would call lane number 4.

Q Okay. Before we start, you saw Isaiah take a shot, correct?

A Did I see Isaiah take a shot? At what point are you referring to?

Q In the video.

A In the video, yes, I can see muzzle flashes coming from Mr. Hutchinson's hand as he has his hand extended towards the approaching officers.

Q Okay. So you saw one muzzle flash for the Monte Carlo driver, correct, or at least one?
A Well, I've said twice now at least two, two or --
Q At least two.
A -- more. Yes.
Q Okay. But you saw multiple flash- multiple gunshots from Isaiah?
A No, no, no. Are you --
Q You said muzzle flashes.
A That's correct.
Q So I'm assuming -- are you assuming -- are you indicating that he made more than one shot?
A Yes.
Q How many shots do you think he fired?
A Based on watching this video, at --
Q Mm-hm.
A -- the time of the incident, or based on watching -- based on my entire knowledge of this investigation? Based on my entire knowledge of this investigation I believe that he fired at least three shots.
Q What besides this video are you basing that opinion on, this particular video? What else? Did you see him firing at the time of the incident?

A At the time of the incident I saw muzzle flashes coming from his person.
Q Okay. What else, based on the entirety of your opinion, have you seen to come up with your opinion, or read?
A There is another video.
Q Okay.
A It is a Facebook video that starts from the perspective of a person sitting inside of a vehicle, and you can actually hear gunfire. Based on the timing of events, I believe that those three shots, gunshots that you hear in that video, are from Mr. Hutchinson.
Q Now, are any of the shots that came from the Monte Carlo accounted for, or are they all, all the shots, all the sounds, attributed to Isaiah?
A Now, I assume that we're talking about the Facebook view that I just referenced; is that correct?
Q I'm talking about the entirety of what we know, which were at least two shots that came from Vasquez, correct? So when you hear shots are you hearing shots from, from Vasquez that you're attributing to Isaiah?
A No.
Q No? Not at all? Okay. I've never heard any shots attributed to the Monte Carlo. Have you in any

of your reports heard -- have you seen any reports that attribute the sounds of the shots to Vasquez?
A No.
Q So the sounds of the shots are all attributed to Isaiah, correct?
A The sounds of some of the shots are attributed to Mr. Hutchinson.
Q Okay. What are the sounds from the other shots attributed? Where are the other shots attributed to that you're -- that did not come from Isaiah?
A So as a reminder, I was on scene the night that this incident occurred.
Q Mm-hm.
A The initial volley of shots I saw a muzzle flash coming from the area of the Monte Carlo, and that is what triggered both myself and the other officers that were in that area to respond to conduct the investigation.
Q Stop right there. So those shots that you heard to -- that initiated this came from the Monte Carlo?
A That is my belief.
Q And how many shots do you recall hearing?
A I don't have a number.
Q Multiple shots, right?

A I would say that.
Q More than two?
A I don't recall.
Q Well, you've said at one point that it was -- you, you counted the number of shots before and you said at least two shots --
A That's not --
Q -- right?
A No, sir. That's not what I said.
Q Well, you corrected me. I, I thought it was one shot, you said, "No. I said at least two" --
A Well, I want you to --
Q -- right?
A -- understand that there is a difference between a shot --
Q Please educate me.
A Yes, I will. I want you to understand that there is a difference between a shot and a muzzle flash. We both used the term --
Q What, what do you, what do you hear? Do you hear flashes, or do you hear shots?
A We both used --
Q I want to be very clear with you.
A Yes, sir. We both used the term muzzle flash.

Q Okay.
A Initially when we were talking you said --
Q That's when we're seeing things.
A That's correct.
Q Yeah. We see flashes.
A That's correct.
Q We don't hear flashes, do we? So we don't need to parse that, do we? I'm talking about what you hear, and you heard how many shots?
A At least multiple shots.
Q Multiple shots. And so from the Monte Carlo, correct?
A From the area of the Monte Carlo. That's correct.
Q Okay. So multiple shots from the Monte Carlo is different than "at least two."
A We're talking about two different things.
Q No, we're not. How many shots did you testify to that you heard from the Monte Carlo when they -- initially?
MR. BARTON: Object to the form. Scott, I do think you've interposed a different question. One y'all were watching it, and you said, "How many muzzle flashes did you see?" Now you're asking about what did he hear. I'm not (crosstalk) --

Q (By Mr. Ogle) How many shots came from Vasquez to begin with? You were -- we were discussing that, and you said at least two; is that right?
A When we were watching the video you asked me how many muzzle flashes did I see, and --
Q Oh, okay. Well, let me clarify then. I'm just talking about what you heard. How many muzzle -- I'm sorry. How many gunshots did you hear coming from the Monte Carlo? Multiple?
A So on March 17th of 2019 --
Q That's what we're talking about.
A Yes, sir.
Q Yeah.
A At that time I heard, I recall hearing multiple shots.
Q Multiple shots. Okay. How is that different from "at least two"? Are you talking about something else, or are you talking about muzzle flashes when you said at least two?
A I'd like to remind you that we were talking about something different.
Q We were talking about --
A Today you asked if -- how many muzzle flashes I saw on the screen today, August 3rd, 2022, versus how many times did I hear gunfire on March 17th, 2019.

Those are two different things.
Q I thought that I was pretty particular about how many shots came from Gilberto [sic]. And so just to clarify, how many shots do you think came from Gilberto [sic]?
A I'm not certain.
Q Multiple is what you heard, correct?
A Multiple.
Q My problem is that there's officers that are attributing all of the gunshots to Isaiah. Do you think that would be fair?
MR. BARTON: Object to the form and a mischaracterization of testimony.
A I don't know --
Q (By Mr. Ogle) Do you want me to repeat the question?
A Yes, please.
Q Okay. How many -- do you think it would be fair to attribute the gunshots that came from Gilberto [sic] to Isaiah?
A I don't think it would be unreasonable.
Q You don't think it would -- repeat that?
A I don't think it would be unreasonable.
Q Have you been coached as to what to answer?
A I was there on the night of that incident.

I've been a police officer for over 10 years. I have an understanding of how perspective, traumatic perspective tends to play out. So if you'd like, I can explain why I don't believe that it's unreasonable.
Q You don't think it would be unreasonable to attribute all the gunshots from Isaiah; is that correct?
A I don't think that would be unreasonable.
Q Why not?
A Because as the officers, myself included, are approaching, at that moment there's only one person who has a gun out and who is actively firing. And so it would not be unreasonable to conclude that he had just previously fired his weapon, since he has his weapon out and he's firing at the approaching police officers.
Q But is it unreasonable, now that you see the video of the muzzle flashes from the Monte Carlo driver, to attribute them to Isaiah?
A In the 20/20 hindsight that exists --
Q Uh-huh.
A -- with you watching this video, of course you can attribute some of the gunfire to the Monte Carlo.
Q Thank you. When are you allowed to use deadly force based on the training that you got?

A Sure. So that is stipulated or it's stated both in our policy, the policy of the Austin Police Department, as well as the Texas Penal Code. Generally speaking, an officer is allowed to use deadly force when they have a reasonable believe that their life or the life of another person is at imminent risk of serious bodily injury or death.

Q And other factors are taken in, right? Like how many people are surrounding the incident?

A That is not one of the -- there's not a carved-out consideration for how many other people are surrounding the incident.

Q So you're there to protect people, right?

MR. BARTON: Object to the form.

A That is --

Q (By Mr. Ogle) You're there, you're there to stop the, the, to stop the suspect, correct? You're there to enforce not protect.

MR. BARTON: Object to the form.

Q (By Mr. Ogle) Is that a fair assessment?

A No, sir. It's not.

Q No, it's not?

A No, sir.

Q Do you have a duty to protect people?

A I believe that I have a duty, an innate --

Q Do you?

A -- duty to protect people.

Q I think it's a Supreme Court ruling that says you don't have any duty to protect anybody. You could laugh at somebody that's drowning in a lake.

MR. BARTON: Objection here, Scott. You're not letting him finish, and then you --

Q (By Mr. Ogle) Go ahead. Tell me what, what you believe your duty is to protect people.

MR. BARTON: And you didn't ask him what the Supreme Court is, which of course is a different thing altogether with the published opinions than an individual officer's individual opinion. Go ahead.

Q (By Mr. Ogle) Do you disagree with the Supreme Court's opinion on your duty to protect?

A Can you give me a brief overview of the Supreme Court's opinion?

Q They said that an officer's role is to enforce and he has no duty to protect the public.

MR. BARTON: Object to the form.

Q (By Mr. Ogle) Anthony Scalia, God rest his soul.

So in regard to your perceived belief that you have a duty to protect, why would -- to

protect people in that instance where, and we're about to get to it, where you or the other officers are shooting at the vehicle as it's driving down 7th Street, is there any consideration when you're shooting a fleeing suspect about your surroundings and the danger to the public?

A I believe that consideration was given.

Q Okay.

MR. OGLE: Let's go forward, and I'm going to ask you to stop when they're stumbling over each other and shooting down the highway.

(Video Played)

MR. OGLE: Okay. Right there.

Q Now, do you think that you're still -- when the car is fleeing, based on your training do you have a right to shoot the suspect still in that situation?

A The law and our policies state that an officer has the legal authority to use deadly force on a fleeing subject --

Q On a fleeing suspect. Okay. Go ahead.

A -- when there is a belief that that -- that there's an imminent threat, when that person is engaged in conduct that caused or could have caused serious bodily injury or death and there's a belief that it could be a continuation if that person is not

immediately apprehended.

Q Plus you've got that warrior mentality. You're not going to just let him go, right?

MR. BARTON: Object to the form, argumentative.

A I disagree with that assessment.

Q (By Mr. Ogle) But you do agree that you can shoot a fleeing suspect in the back, correct?

MR. BARTON: Object to the form.

A I don't believe that your assessment accurately reflects what occurred on this evening.

Q (By Mr. Ogle) Right here they're shooting. Do you see those flashes (indicating paused video), or do you think that's a flash?

A No, sir. I believe that that is light from a pistol-mounted flashlight.

Q Oh, okay. So do you think that he was shooting or just pointing his flashlight at him?

A I believe that he did both.

Q Okay. So as he was shooting the car was fleeing, correct?

A The car --

Q Yes or no?

A Car was in motion at the time that that specific officer was shooting. Yes.

Q Okay. And was -- and so you support that, that officer's -- the shots that he was firing at the Maserati at that point in time?

A I believe he was legally justified.

Q And why is that?

A For all the reasons that I just explained.

Q You think you're still in imminent danger when someone's fleeing the scene?

A I believe in this instance when Mr. Hutchinson recklessly discharged his firearm -- which mind you, the records show that he impacted another person that was uninvolved in this incident. One of the bullets from his firearm penetrated a business and caused property damage, an occupied business, no less, that caused property damage. I believe that his recklessness necessitated him -- the threat, the public safety threat that he posed being mitigated.

Q Isaiah?

A Mr. Hutchinson. Yes, sir.

Q Now, did you -- when do you think Isaiah was killed?

A I'm sorry?

Q When do you think Mr. Hutchinson was killed?

A Where or when?

Q When and where?

A I believe that he sustained a fatal gunshot injury at the time that his vehicle was on scene there.

Q So what would be his -- why, why would there still be a danger if you think you killed him?

A Well, my belief in that he died at that moment is based on my post-engagement acquisition of knowledge.

Q Post-engagement acquisition of knowledge. That's a mouthful there. Tell me about your post-acquisition learning.

A Well, again, this happened March 17th --

Q 2019.

A Yes, sir. That's correct.

Q At about 3 o'clock in the morning.

A That's correct. There's voluminous amount of information that occurred -- or that was developed after this incident. Now --

Q But at the time you didn't think that he was killed, right?

A At the time --

Q At the time.

A At the time there was not any definitive knowledge on his, his life status.

Q Okay. So as a, as a result of that, and you

all continued to do this. This is the scary part, that if this incident occurs again after someone exhibits behavior that justifies you shooting at the, at the suspect, it's your belief that you -- that after the suspect flees you can continue shooting at him. Despite the fact that it's South by Southwest, there's cars and people everywhere, you think that the imminent danger caused by the suspect, despite the fact that he's fleeing the scene, still justifies you shooting into a crowd; is that right?

MR. BARTON: Object to the form.

A I don't believe that you can see a crowd of people in this scene here. I don't believe that an officer fired into a crowd, and so I would generally disagree with your assessment.

Q (By Mr. Ogle) Do you disagree the police officer is shooting at the fleeing vehicle?

A No, sir. I don't.

Q Okay. All right. And you justify the police officer shooting at the, at the fleeing vehicle because you didn't know whether or not Isaiah was killed or not, correct?

A I don't believe that that's the reason why he continued to shoot. I believe that the reason why deadly force was used at that point in time is because

Mr. Hutchinson, the belief was that he continued to pose imminent threat to the public in that area.

Q And so as a result of that, how far does someone -- what if they're, what if they're all the way up here under the bridge and they're still right down there? Would you still -- at what point would you find there not to be a reasonable basis to shoot a fleeing suspect?

MR. BARTON: Object to the form, calls for speculation.

A So if you would like, I'll speculate that -- it's difficult to answer that question, because if we're also, in this fantasy if we're also saying that this person --

Q (By Mr. Ogle) It's not fantasy.

A Well, this is also not reality. He was not at the other side of the intersection when the officer fired.

Q I've had other officers say that they could continue shooting him until he gets up on I-35.

A Okay.

Q I've had another officer say if he's got a gun and the officer heard shots, that's enough to shoot him. You know, we're all over the page in terms of justification, because apparently police officers are

trained to stop a suspect even when they're fleeing.

MR. BARTON: Object to the form, and those other references, Scott, are you saying those in the Spring-Hutchinson situation or some other police officers you've deposed at some other time?

MR. OGLE: The other officers. Yeah.

Q Based on the testimony of previous officers who have described justifications, I want your opinion as to the limits of when in this situation your imminent fear of danger ever goes away, or can you continue -- well, what, based on your training of what you're going to do the next time, are you going to use as a determiner as to whether to shoot a fleeing suspect?

MR. BARTON: Object to the form. It calls for some future action. It's just a hundred percent hypothetical, Scott. He can certainly answer questions about facts, and he's a fact witness.

MR. OGLE: Yeah.

MR. BARTON: And, you know, so all the facts of this incident are fair game to ask him, but these hypothetical questions about what he may or may not do in the future are objectionable. I don't think he, I don't think he can answer that, but --

MR. OGLE: Well, what he finds --

Q What you find reasonable you intend to do in the future, correct, when it comes to discharging a firearm?

A Not necessarily.

Q Okay. But tell the jury in this situation whether all of the officers were justified, despite the fact that he was -- that they were fleeing the scene, were they all justified, since he had a gun at one point, does that justify Isaiah being shot down as they're fleeing the scene?

A I believe that his behavior in recklessly shooting the firearm, again, at what point -- at which -- at one point he impacted an uninvolved person, shot at an occupied structure, I believe that all of the officers that engaged in gunfire or deadly force in this situation were justified to terminate the public safety threat that he presented.

Q Now, he was being shot at by the Monte Carlo driver, correct?

A That's what this video shows.

Q Okay. You didn't know that at the time, did you?

A He did not give us an opportunity to investigate before --

Q Well, did you --

A -- he shot at us.

Q -- give him the opportunity to identify you? Did you say -- did you, did you announce yourself as police?

A It's incredibly difficult to do that when somebody's shooting at you.

Q Yes or no, did you announce yourself?

A I don't remember if I did or not.

Q Is there a good chance you didn't?

A I don't, I don't know that I can put a number to the probability that I did or that I did not.

Q You just don't remember?

A That's correct.

Q What do you normally do in these situations? Do you normally announce yourself?

A Typically, yes.

Q Okay. In this case you may not have, right?

A I don't recall.

Q Okay. So is it fair to say there's a good -- that there's at least a 50 percent chance that you didn't say anything --

MR. BARTON: Object to the form.

Q -- before you started shooting?

A I would disagree with that number.

Q Okay. Then what -- with that number, okay? What, what chance would you put on the probability of you announcing yourself on that night getting Isaiah an opportunity to recognize you?

MR. BARTON: Object to the form.

A I would describe the probability that I identified myself as higher than average or higher than, than --

Q (By Mr. Ogle) Higher than average. Here --

A Yes.

Q -- we go. Okay. Would that be -- on a scale of 1 to a hundred what's the chance that you -- of you announcing yourself?

A So I don't know that I can put a number to it, but I can explain why --

Q Now, see, I don't know what average is. When you say higher than average, then the jury is going to be confused as to what percentage of the time they can expect you to do the same thing based on your training as a warrior, whether you're going to announce yourself before you start shooting.

MR. BARTON: Object to the form. It's argumentative and it's been asked or answered -- it's been asked and answered, Scott. I think the record will clearly show that he's already testified

that he doesn't know in this situation if he announced himself or not. So anything else beyond that is just speculation and it's just hypothetical and it's irrelevant.

Q (By Mr. Ogle) Do you see the clothes that y'all are wearing?

A Yes, sir.

Q You would agree that they're -- from a distance it's hard to identify you as a police officer?

A What distance are you referring to?

Q From the distance of where, of where Demarios and Isaiah were as opposed to you all where you're on the street corner over here.

A No, sir. I would not agree with that.

Q Don't agree with that.

A No.

Q Okay. Because you all were facing him, right?

A That's one of the reasons.

Q Okay.

A One of the considerations.

Q And so you expect him to see the badges on the side of your arms when you're -- in his situation would you expect him to have been able to identify your -- from your, from your badges on the side of your

arms?

A We don't have badges on the side of our arms.

Q You don't have -- okay. Where are your badges at on this night?

A Well, we have patches on the side of our arms.

Q Oh, did I -- oh. So you're saying it's not a badge, it's a patch?

A It's a patch.

Q Oh, give me a break.

MR. BARTON: Object to the form.

Q (By Mr. Ogle) All right. so you've got a patch on the side of your arms. The identifying things that you --

MR. BARTON: Let's take a break. Let's take a break, Scott. You're getting a little argumentative, and I think a break would do us all good.

MR. OGLE: You know, are you -- do you think that he might be parsing words and being a little bit argumentative himself?

MR. BARTON: I think he's just a witness answering your questions. Let's take a break.

MR. OGLE: 10 minutes.

MR. BARTON: Okay.

MR. OGLE: Actually, no. I'm good, I'm good. Five minutes.

(At 2:29 p.m. the proceedings recessed, continuing at 2:34 p.m.)

Q (By Mr. Ogle) So we're back on the record, and we were talking about the uniforms that you use. Are you clearly identified as a police officer from people, civilians?

A Yes.

Q You're wearing dark pants, dark blue pants and a dark shirt, correct?

A Yes.

Q They're not the two-toned type of uniforms that are regularly identifiable, correct?

A I was not wearing the two-tone uniform shirt.

Q Do you know why the two-tone uniforms have, have gone away and the, the uniforms that are more difficult to identify are being used now?

MR. BARTON: Object to the form.

A No.

Q (By Mr. Ogle) Would you agree that if you were in a two-toned uniform that it would be easier to identify you?

MR. BARTON: Object to the form.

Q (By Mr. Ogle) You can answer.

A Potentially in some cases.

Q Potentially some cases. As a general rule would you say that a traditional two-toned police shirt would be easier to, easier to identify you rather than just a, a dark blue shirt?

A I believe that even in those situations a person can misidentify a police officer.

Q Sure. Okay. Why do you think that police would try to be less conspicuous with their uniforms?

A I don't know that police are trying to be less conspicuous.

Q Okay. And I'm not asking you for the intention of the police officers, but in regard to the clothing that's standard, that are standard issue, would it be better to be more conspicuous than not to the general public of you being a police officer?

A I think the general public would like to be able to identify police officers pretty readily.

Q Even when you're just wearing solid dark blue pants and solid dark blue shirt?

A Well, that's, that's not how my uniform presents. It's not solid dark blue.

Q It starts being -- the uniform is a solid color, right?

A Well, there are patches and badges that

are --

Q Before we talk about the patches and badges, and I still don't quite know the difference, but the, the shirt itself is a monotone color that's not two-toned, correct?

A That's correct.

Q Okay. And then you've got some patches.

A And then there are patches and a name tag that's --

Q Okay. And so do you expect Isaiah to identify your patches on your sleeves?

A As in can he read the, the words that are on it?

Q As whether he can even see them to identify you as a police officer. Because for him you might look like a thug.

MR. BARTON: Object to the form.

A I think the patches are pretty clearly distinctive, as much as he could -- let me finish, especially because they have the yellow star right in the center of it.

Q (By Mr. Ogle) Where are the patches you're talking about that he should have seen?

A On the shoulders of my uniform. There's also a badge --

Q How can he see the shoulders if you're looking at him straight?

A I think his arm pointed out shooting at me might have distracted him.

Q What?

A I said I think his arm pointed out shooting in our direction might have distracted him.

Q Might have distracted him?

A That's correct.

Q That's not my question.

A Then repeat your question, please.

Q How would Isaiah have known that you were -- how could Isaiah have seen the patches on the side of your arms?

A He could have seen them by not pointing his arm out and shooting at us and actually looking at the officers that were approaching. We were wearing the distinctive uniform of the Austin Police Department, which has shoulder patches on both shoulders, an embroidered badge on our chest, a name tag over the right side of our chest --

Q Okay.

A -- and a utility belt with equipment on it easily recognizable as a police officer all across this country.

Q Everything is dark or black, though, right?

A No.

Q Okay. You've a bright star, a little star on your patch.

A Also --

Q Is that how you're describing the distinctive colors?

A We are also under highly illuminated awning for the gas station.

Q Okay. What's on the side of my arms right now?

A You have the same --

Q Can you see the side of my arm?

A I can see that it has the same pattern. I can see that if you just generally shifted your body that I could see your right arm, the right side of your arm. But of course, you shifted your left arm away from me so I couldn't see it.

Q So you're standing here telling the jury that Isaiah should have seen the patches on the side of your arms, correct?

MR. BARTON: Object to the form.

Q (By Mr. Ogle) Besides what he should not have done, I'm asking you specifically whether you're telling the jury that he should see what's on the side

of your -- we'll get to the back in a minute, but on the patches on the side of your arm, he should have seen those, correct?

A I think that he would have been able to see. Yes.

Q He would? How could he have seen there if you -- if he's facing you?

MR. BARTON: Object to the form, asked and answered. Scott, I mean, he's answered that he thinks his uniform was one that should have been seen by Isaiah, and if Isaiah had looked as opposed to shooting at the police maybe Isaiah could have seen it.

MR. OGLE: Could have seen the patch -- he's talking about something else. I'm specific -- the patches on the side of the arm, and he's --

Q The answers you've given me have done everything except for tell the truth as the fact that you can't see patches on the side of an arm of someone when you are directly facing them. Would you agree with that?

MR. BARTON: Object to the form, argumentative, asked and answered.

Q (By Mr. Ogle) Go ahead and disagree with me. Go ahead and say it depends.

A Are you directing me to give that statement? Are you directing me to give that response to your question?

Q I'm not directing you to do anything. I'm just asking you to be your typical normal self and give me a biased answer.

MR. BARTON: Object to the form. Scott, do we need to maybe have a little break? I mean, these are just argumentative questions.

MR. OGLE: He's being -- he's kind -- his answers are argumentative, and they don't answer the question.

Q But go ahead and answer the best you can.

A Okay. For my benefit can you repeat the question, please?

Q Are you expecting the jury to believe you that people -- when you, when you are facing a suspect, regardless of what else, whatever else you've got on, that he should identify the patches on the side of your arms?

A I think --

Q Yes or no?

A I'm going to give you my answer. It's not going to be a --

Q I'm going --

A -- yes or no.

Q -- to ask you to start with a yes or a no, and --

MR. BARTON: Well, Scott --

Q -- if you can't do that, say I can't answer yes or no.

MR. BARTON: The witness gets to answer as best he can.

Q (By Mr. Ogle) Okay. I didn't start with my preliminaries, but in each of the other depositions I specifically asked that they start with a yes or a no. So could you give a yes or no to that question?

A And just repeat the question, please.

Q Oh, my goodness. Are you expecting the jury to believe you that you -- that Isaiah should expect to see the patches on the side of your arm as he's looking at you directly?

A Yes. And it's qualified.

Q Okay. Okay. Describe your qualifications.

A Okay. Patches on the side of police uniforms come in different sizes, they say different things. The vast majority of them will say either "police" or "sheriff" or identify the agency. The patch on the side of the Austin Police Department uniform is actually pretty large. That combined with the other

attributes to our uniform make the uniform readily distinctive as a police officer.

Q I'm going to put a number on, on the -- I'm going to mark a number on the side of my arm here. What is the number?

A So --

MR. BARTON: Object to the form, object to this line of questioning. Go ahead.

Q (By Mr. Ogle) Can you see the side of my arm.

A I'm not looking at the side of your arm. I don't think that --

Q Look real hard at the side of my arm and tell me what you can see, what number I wrote.

A I won't be able to do it.

Q Why not?

A Because you wrote it incredibly small. You have patterned shirt, you're, you're --

Q Here, if I get her to write the number on the side of my arm --

MR. BARTON: Object to that, Scott.

Q -- would that -- and make it real big.

MR. BARTON: We're not --

Q (By Mr. Ogle) What I'm trying to get you to agree to is that people can't see the side of your arm,

so --

MR. BARTON: Objection, let me make this objection. I'm going to instruct him not to answer this question anymore, because he's answered it numerous times. He has answered it that he thinks the police uniform is distinctive and readily visible and understandable by Isaiah Hutchinson. The patches are irrelevant, so now you're just going down a path of patches, but he's told you the uniform is readily recognizable.

Q (By Mr. Ogle) Okay. You all also have "police" identified on the back of your jacket, correct, if you were wearing one?

A That's correct.

Q Were you wearing jacket?

A I was not.

Q Okay. But there are other officers that were, right?

A I believe so.

Q And so should he have, should he have seen the "police" on the back of your jacket?

A He would not --

Q Maybe that's a little bit easier.

A He would not have been in a position to see that.

Q Thank you. Thank you. But you think he would have been in a position to see the patches on the side of the arms.

A I believe that he could have been in a position to see the patches on the side of our arms.

Q He could have been. Okay. I, I think we can all agree he could have done anything, but is it more likely than not that he didn't see the patches on the side of your arms?

MR. BARTON: Object to the form.

A I believe that due to his actions, the fact that he was (crosstalk) --

Q Yes or no? Is it more likely than not that he did not see the patches on your arms as he was facing you, yes or no?

MR. BARTON: Objection. You don't have to answer that question -- you can answer it however you're able to. But Scott, you've asked him an open-ended question that calls for his opinion, and he's answering it and has explained it several times. So my suggestion to you is move on.

Q (By Mr. Ogle) Answer the question.

A I decline to answer that question.

MR. OGLE: Are you instructing him not to answer, or did you instruct him to answer as he

wants to?

MR. BARTON: Well, he can answer as he wants to, but I think I'm right at the verge of instructing --

MR. OGLE: Okay.

MR. BARTON: -- him not to answer any more questions about uniforms.

Q (By Mr. Ogle) Is your position that you're not going to answer that question?

A My position is that I end up repeating myself if I answer that question. If you'd like, I will repeat myself.

Q Go ahead.

A Okay. I believe that he could have seen the patches if he had not distracted himself by evading the encounter that he'd just been in and then also shooting at police officers.

Q That wasn't my question. My question was, is it more likely than not -- not could. Is it more likely than not that he did not see the patches on the side of your arm? More likely than not, yes or no?

MR. BARTON: Objection. That just calls for pure speculation. He's, he's answered to the best of his ability.

Q (By Mr. Ogle) Is your answer to more likely

than not to be that it could have been?

A My answer is --

Q Are you answering --

A My answer to more likely than not is I don't know.

Q Fair enough. At what point in this scene and what went on afterwards were the police officers justified in continuing to shoot at the fleeing vehicle?

A At what point in this scene?

Q In this sequence of events.

A Were they justified in shooting at the vehicle where Mr. Hutchinson is? Is that --

Q Right.

A -- what you're asking?

Q Right. How, how -- yes.

A Well, at the moment that there was a sequence of events that occurred again, what made us aware of what was happening was the initial gunfire. What honed us in on Mr. Hutchinson was when he rounded the front of that Maserati and started shooting at officers.

Q Let me stop you there. I'm asking you about when he was fleeing. I'm not talking about before and the justifications that you had. I'm saying how long are you justified in shooting at the fleeing vehicle?

A As long as there is a belief that that person poses an imminent threat of serious bodily injury or death to other persons.

Q And that belief never did stop, correct?

A That's not correct.

Q Okay. At what point did the imminent danger stop to where you would not have been justified in shooting at the fleeing vehicle that Isaiah was in?

MR. BARTON: Object to the form.

A Well, certainly when the vehicle is not on scene the -- and we don't have a means to pursue that vehicle or still be in the same area of that vehicle, that threat doesn't exist, or at least the threat as we perceive it doesn't exist. It doesn't mean that the threat doesn't exist. I mean, it can carry on for miles. If this guy is, you know, actively hanging out the window and he gets in a gun battle with this Monte Carlo, he presents a threat.

Q (By Mr. Ogle) And he continues to present a threat even though he leaves the scene?

A He could potentially. Yes.

Q Potentially. Well, you see these officers shooting at -- as he's fleeing the scene, and you've already testified that they were justified in shooting while he was driving down the road, correct?

A Well, there was one officer that's shooting in this scene right here.

Q Okay. And every officer has to account for every bullet, right?

A Officers are accountable for their rounds that they discharge.

Q Every officer is responsible for every bullet that he shoots, correct?

A Officers are accountable for --

Q Yes or no?

A -- their rounds that they discharge.

Q So you agree with me on that. Every bullet that officers shoot has to be accounted for, correct?

A Officers are held to account for the rounds that they discharge.

Q Would you just answer yes or no?

MR. BARTON: Well, Scott, he's answered your question, and --

MR. OGLE: But he -- no. He, he answers it in a different way, and I'm just asking him to commit to either yes or no to my question. These are yes or no questions, and he is trying to be litigious.

MR. BARTON: Well, I mean, that's, that's how depositions are. I mean, and so you have

adequately answers a question that you're asking me, I will respond with a yes or a no.

Q In other words yes, correct?

MR. BARTON: Objection. Scott, you're, you're being --

MR. OGLE: Well, for him to rephrase my question means that there's something about my question he does not agree with and he needs to explain in some way or the other. And I can't get this guy to agree that the sky is blue at this point. He's going to say it depends.

MR. BARTON: Well, Scott he's a witness, and --

MR. OGLE: He's a biased witness.

MR. BARTON: -- he's answering your questions.

MR. OGLE: And I'm just trying to get that out for the jury to recognize. I need to get back to my main questions here.

Q Have you been trained in terms of being a tunnel vision -- having tunnel vision?

A I understand what it is.

Q Have you been trained about tunnel vision?

A What do you mean? Like, I mean --

Q Well, I don't know. You just -- if you

asked him a question, he has answered, and I don't think you can command a yes or no answer. I mean --

MR. OGLE: I think I can.

MR. BARTON: -- you don't have the right to.

MR. OGLE: These are (crosstalk) --

MR. BARTON: And so --

MR. OGLE: -- questions.

MR. BARTON: -- he has answered your question directly.

Q (By Mr. Ogle) When I ask you a question, when appropriate if you would please first answer with a simple yes, no, or I don't know. And then if you feel the need to explain the answer, then you can take as long as you need to explain your response. Will you agree to that?

A I heard you say "when appropriate."

Q You don't, you don't have to seek your counsel's advice. Are you willing -- are you, without looking at your lawyer, are you willing to agree to -- whenever appropriate, if I ask you a question with a simple yes, no, I don't know, are you willing to agree to do that?

A I'm willing to answer your question, and in situations where it is appropriate and a yes or a no

could, based on your experience and your education, could you describe for the jury what you've learned about what tunnel vision is?

A Sure. So tunnel vision as it relates to traumatic experiences or high-stress encounters or engagements refers to the psychological effects that a person experiences where they're only able to focus on some of the external stimuli from whatever environment they're in.

Q Now, you're expecting Isaiah to be -- to have no tunnel vision in this circumstance, correct?

MR. BARTON: Object to the form.

A Am I expecting Mr. Hutchinson to not have tunnel vision? Is that your question?

Q (By Mr. Ogle) Yeah.

A I don't know his level of training, so I don't know how I can answer that question.

Q What kind of training do you have to -- do you have to be trained to have tunnel vision in circumstances? You're trained.

A You can be trained --

Q Do you have to have training to experience tunnel vision? Because I don't think Isaiah was ever trained on it.

A I didn't say that you have to have training

to experience it. I think you can have training that can mitigate the effects of tunnel vision.

Q Okay. Well, let's assume Isaiah, like the average public, member of the public, has no training on tunnel vision. But can you put yourself in the position of Isaiah? He's being shot at by a guy in the Monte Carlo. At the same time four people come up from the side, and would you agree since he's being shot at that he was -- that Isaiah more than likely was experiencing tunnel vision?

MR. BARTON: Object to the form.

A My answer would be a speculation, but I'm inclined to say probably not.

Q (By Mr. Ogle) Probably not? So he would need to be aware of his full capacities in that circumstance, because you don't think that that would attribute to tunnel vision for Isaiah?

A Well, I think one of the reasons why I can argue that he did not experience tunnel vision is that he was aware enough of the fact that four people, in this case police officers, or actually five people in this case, were approaching him. Sometimes one of the physiological effects of tunnel vision is just not seeing anything.

But he noticed that not only were -- of

his surroundings, you know, that he could get -- he was actually going back to the specific spot that he had exited from that vehicle. He was aware enough to find that place. He was aware enough to see that police officers were approaching him and then fired at the police officers.

Q Now, if he had his hands up as he got in his Maserati, was the officer still justified in shooting him in the head?

A Can we go to the point where he has his hands up on the screen?

Q I'm asking if he had his hands up --

A I don't --

Q -- would that make a difference?

A I don't believe that he had his hands up.

Q This video doesn't show that. The Facebook you got, though, that does.

A Can we look, take a look at it?

Q No. I'm going to ask -- I want you -- if he has his hands up, would that still justify shooting him?

A Potentially could. I mean, does he have a weapon in his hands still?

Q If he's got his hands up? No.

A Does he have his hands up with the weapon in

it?

Q No.

A Okay. Does he have easy access to a weapon? Is a weapon nearby? There's a lot of things --

Q Yeah, yeah. There's a weapon nearby for sure. But he's got his hands up, and he goes to your side. Would you find it to be unusual for someone that identifies you as a police officer and is targeting you to go on to your side of his Maserati to get into it?

MR. BARTON: Object to the form.

A Do I find it unusual that he went on to the side nearest to where I was standing?

Q (By Mr. Ogle) Right. To get in.

A I think he was trying to go back to the seat where he was originally -- where he had originally exited the vehicle from.

Q Right. And so if he had his hands up immediately after getting inside the Maserati, would that still justify shooting him?

MR. BARTON: Object to the form.

A Again, there are a lot of things to consider in this situation. Does he have easy access to a weapon? In this case --

Q (By Mr. Ogle) Okay. Let's take -- yeah. I mean, it was in the car, but he had his hands up as he

jumped in.

A Okay.

Q But you're saying that because if there is a gun nearby, then you're still justified in killing him?

A That's not what I said.

Q Okay. Then explain.

A Okay. Thank you. There's a number of factors that an officer would take into account, some of which could be his proximity to weapons, his demeanor, his prior actions, which sometimes give an opening to what he might be doing coming up. So in this case he had just fired at officers, had just been involved in another incident a second prior where gunshots were fired --

Q Mm-hm.

A -- and he still has easy access to a weapon. Those are things that could be taken into consideration that could potentially cause an officer to continue to deem that he is posing a threat, a deadly threat.

Q So the public and people that are not posing a danger, that really are trying to run away, they're just acceptable collateral damage to the police policies of fatal, of fatal encounters, correct?

MR. BARTON: Object to the form.

A I disagree with that assessment.

Q (By Mr. Ogle) You shot at Isaiah, correct?
A I did.
Q And when did you shoot at him? As he was fleeing or at his window?
A Before just, just right around the time that he's entering into his vehicle.
Q Did you -- as he was entering the vehicle was his back turned towards you?
A I don't believe so. I saw the front of his chest.
Q And is that where you shot, was in his chest?
A I saw his chest when I aimed my weapon at him and at the time I fired.
Q Oh. Do you think that after life that you're held accountable for the actions while you're living?
MR. BARTON: Object to the form.
Q (By Mr. Ogle) I know you've got immunity while you're here, but after life do you think that you're held accountable for how you treat people?
A So to me --
MR. BARTON: Object to the form.
A -- this bleeds over into my personal religious beliefs.
Q (By Mr. Ogle) Do you have a way of just blocking it out?

A Blocking what out?
Q Blocking out the way you treat people?
MR. BARTON: Object to the form.
Q (By Mr. Ogle) As so how, as to how that will affect your after life?
A So if your question does not have anything to do with my personal beliefs on who and how I will be held accountable after I leave this Earth --
Q Mm-hm.
A -- I can answer that question. But if the question --
Q Go ahead and refuse to answer then. Are you refusing to answer whether you're held accountable for how you treat people after life?
MR. BARTON: Object to the form.
MR. OGLE: That's fine.
MR. BARTON: And I instruct him not to answer that, I mean, unless he wants to. Because Scott, you've crossed a line there that certainly is irrelevant to the facts and circumstances of the allegations of your complaint.
Q (By Mr. Ogle) Go ahead and answer, or refuse.
MR. BARTON: Oh, well, I'll save him from the trouble. I'm instructing him not to

answer that question. It's irrelevant, it's beyond the scope of discovery, it's beyond the scope of the lawsuit.
Q (By Mr. Ogle) So are you refusing to answer?
MR. BARTON: Well, I've instructed him not to. It's an unfair question.
Q (By Mr. Ogle) I'd like for you to respond to my question.
A Following the advice of my counsel.
Q Okay. What particular training have you received regarding shooting fleeing suspects?
A Training regarding shooting fleeing suspects?
Q Mm-hm. Is there -- is that -- there much taught about that, or it's just a chapter or two?
A A chapter or two where?
Q Are there -- where do you get your training from? Are they in manuals?
A Our training comes from a variety of different places.
Q I'm sure they do, but it accounts for about six months of training, correct?
A 32 weeks is actually eight months.
Q That's more than the national minimum --
A It's also --
Q -- of 401 hours, correct?

A It's also more than the Texas standard.
Q How much time is, how much time is taken in studying about shooting fleeing suspects?
A In the training academy I don't know that there's actually curriculum specifically dedicated to the topic of shooting at fleeing vehicles.
Q Hm.
A Of course, our training does not end at the training academy. We have continuing education, we have elective training.
Q Okay. So no training on shooting fleeing suspects during the academy.
A Not that I recall.
Q Interesting. And so the only training that you receive on shooting fleeing suspects comes from outside sources? Locker rooms?
A Locker rooms?
Q Yeah.
A You're asking if I'm trained inside of a locker room?
Q In terms of the training that you had received you're saying it's not been formal education you received, correct?
A I have received thousands of hours of formal training.

Q In regard to specifically shooting at fleeing suspects I'm trying to get an idea as to what education police officers in the Austin police academy are taught. You're saying there's no education in a police academy on shooting fleeing suspects, that you learn that afterwards through continuing education. Where is that continuing education that you were taught regarding shooting fleeing suspects?

A So let me clarify, because I think you're slightly mischaracterizing. The Austin Police Department, as far as I can recall, does not have a specific training course titled or similarly titled "shooting at fleeing vehicles." We actually do have a policy that addresses shooting at fleeing vehicles.

Q But you don't learn that in the academy though.

A We do go over general orders in our academy. Yes.

Q But you don't learn about shooting fleeing suspects in the academy, correct?

A I don't know that that's true.

Q I think that's what you just got finished saying, correct?

A I think what I just got finished saying is that I don't recall a specific training module in the

Austin Police Department training academy -- I'm almost done -- in the Austin Police Department training academy that exclusively covers shooting at fleeing vehicles.

Q I asked you a general question --

A And you took (crosstalk) --

Q -- what education in the training in the academy did you, did you learn on fleeing suspects. You say there's not a specific thing. Okay? I'm not asking you what there's not. I'm asking you to answer the question as to whether you were educated at all in the academy on shooting fleeing suspects. Yes or no?

A Okay. So this --

Q Yes or no?

A This is not going to be a question where my response will be yes or no. Again, in our general orders we do have a section that refers to when an officer can or should not engage in a shooting incident with a fleeing vehicle.

Q Okay. That's different than what you got finished saying. Now you're saying it's not a specific course but there is training modules --

A (Crosstalk)

Q -- that would address you shooting at fleeing suspects. That's what I want you to tell the jury

about what you were taught.

A I would also like to finish answering the question. You keep cutting me off.

Q Yes, sir.

A Okay. Again, I don't recall the specific subtitles or subchapters in each of the individual firearm applications and firearm trainings that we went to, but a part of our firearms training was reviewing the policy, applicable policy related to the use and discharge of firearms.

Q Okay.

A Of course the discharge of firearms at a moving vehicle is applicable to a firearms training, firearms training course. So it's possible that we could have gone over that. I don't remember specifically every single module that we went over in my training academy 11 years ago.

Q In the training that you received what are the limits of when a -- or is there a limit to the imminent danger that you are in and when that imminent danger stops, if at all, as a suspect is fleeing?

A So there were a couple of pauses in your question that made it a little bit difficult for me to understand exactly what it is you're trying to ask. Can you restate your question?

Q Are there any limits to when an imminent danger stops when someone is fleeing?

A I think the obvious answer is yes, there are limits in those situations where a person is fleeing. If the person stops becoming a threat, for example, if they stop shooting, then -- or they become -- they get in an area where they're not -- the officer can't see what they're doing and they can't perceive the threat that they're immediately presenting, you're not going to blindly fire in the direction that the vehicle used to be.

Q Okay. Did you see these other officers shooting as it was fleeing the scene, as the Maserati was fleeing the scene? Did you see other officers shooting at it?

A I perceived it. I don't remember --

Q Perceived it.

A Let me finish. I don't remember --

Q What does that mean?

A I don't remember if I specifically saw other officers discharging their weapons. Again, we were all moving, most of us in line with one another, and so I was focused primarily on what was in front of me, what I perceived to be the threat at the time. So I could hear gunfire going off, and so my perception was that

other officers were discharging their firearms.
Q And the firearms that you heard going off were right there next to you, correct?
A My perception at the time was that they were definitely nearby.
Q And has that perception changed from then until now?
A No.
Q So that's your opinion, that other officers were shooting at the fleeing vehicle, correct?
A I believe --
Q Now, I don't want to hear perceptions, but that's your opinion; is that correct?
A Perception, opinion, and proven fact.
Q That the police officers were shooting at the fleeing suspect?
A That the police officers were discharging weapons.
Q Okay. Who was discharging their weapons?
A Detective Nelson --
Q Okay.
A -- Officer Woods --
Q Okay.
A -- now Detective O'Neill, or Corporal O'Neill --

Q Mm-hm.
A -- and myself.
Q Were all shooting as he was fleeing?
A That's not what I said. Had all discharged their weapons.
Q What's the difference between a discharge of a weapon and shooting?
A Well, now you're asking shooting as he was fleeing. That's not what --
Q Yeah.
A No. That's not what I'm agreeing to.
Q Okay. You were discharging your weapons at someone other than pointing it at him?
A My answer to your question is that during this incident four officers discharged their firearms.
Q Were all four officers discharging their firearms as it was fleeing the scene?
A I do not believe that.
Q Okay. Do you believe that some officers were discharging their weapons as it was fleeing the scene?
A I do.
Q And which officers -- and, and are they the same officers that you mentioned before, Woods, Nelson, and O'Neill?
A No.

Q Okay. Then who are they then? Someone different or...
A As the vehicle was leaving the scene --
Q Fleeing the scene.
A As the vehicle was leaving the scene I believe that Detective Nelson discharged his firearm.
Q What about Woods?
A I don't know.
Q What about O'Neill?
A No.
Q No?
A No.
Q You did not see Officer O'Neill discharge his weapon at the fleeing scene -- at the fleeing vehicle?
A Now, I'm answering that question with the hindsight of having seen this video and knowing what's occurring in the video and knowing what occurred that evening. Based on that knowledge I do not believe and I will assert that Officer O'Neill did not fire his weapon when that vehicle was leaving the scene.
Q Have -- are you -- do you know Officer O'Neill?
A I do.
Q And does he fit the profile of an officer that uses steroids?

MR. BARTON: Object to the form.
A Can you explain to me what is the profile of an officer that uses steroids so that I can answer your question?
Q (By Mr. Ogle) Are you aware of officers that use steroids?
A I am not.
Q How would you describe the profile of someone that does use steroids?
MR. BARTON: Object to the form.
A I would not. I don't, I don't know.
Q (By Mr. Ogle) Muscle mass, a lot of bulky muscles, is that an indication of steroid use?
A Not necessarily. I think it's an indication of somebody that works out and takes pride in their body.
Q Okay. Are you aware of, of officers using steroids?
A As I just answered, no, I'm not.
Q And you swear to that?
A I made note of that at the beginning of this. Yes.
Q Apparently the issue of steroids has gotten serious enough that, thanks to me and the Austin Justice Coalition, the police union has agreed to test

police officers for steroids in critical incidents. Are you aware of that new labor negotiation policy on testing officers for steroids?

A No, I'm not.

Q Well, you know Ken Casaday?

A I do.

Q Ken Casaday testified the other day that officers are going to be tested for steroids in some instances; I learned later critical incidents. Do you think that's a good idea?

A I can't answer that question, because I haven't done the research on it.

Q Okay. And you also don't know of any police officers that take steroids?

A I don't, because nobody's told me that they take steroids.

Q Would, would it be unfair to assume that as many as 25 percent of Austin police officers take illegal steroids?

MR. BARTON: Objection, asked and answered.

A Would I -- is it unfair to assume that? Yes. I think it's unfair. I think it's actually pretty ludicrous.

Q (By Mr. Ogle) There's a -- have you heard of

the Police Chief Magazine, a national publication?

A No.

Q They have a study of nationwide police officers, up to 25 percent nationwide are steroid abusers. Do you disagree with that national study by the Police Chief Magazine?

MR. BARTON: Object to the form.

A I'm not aware of their methodology, so I'm not sure on the --

Q (By Mr. Ogle) Do you think that steroid use should be controlled among police officers?

A I've never used steroids. I don't know much about --

Q I'm not asking you whether -- I know you're not --

MR. BARTON: Scott, let him answer. Let him answer his question -- or your question.

A I've never used -- let me finish answering.

Q (By Mr. Ogle) Okay. I've got a yes or no question.

A I don't have a yes or no response.

Q What?

A I said I don't have a yes or a no response.

Q Whether it's a good idea?

MR. BARTON: He may not have any

opinion, Scott. You can't force an opinion on somebody if they don't have one.

Q (By Mr. Ogle) Are you aware of the negative effects of anabolic steroids?

A No. I've not done the research on it.

Q Are there justifications for police officers to use steroids?

A I've not done the research on it.

Q I have. Police officers say they don't have time to lift weights and they need to keep the upper hand in aggressive encounters with, with suspects. Do you support those being justifications for police officers to purchase felony steroids in town?

A I don't believe that there's ever a justification for an officer to commit a felony offense that would jeopardize their license.

THE REPORTER: What were the last two words you said?

THE WITNESS: Jeopardize their license.

Q But if they're never regulated, then they don't jeopardize their license, do they?

A It seems like if it's a felony, they're regulated.

Q You'd be surprised. I know a man that was

arrested for delivering steroids to police officers here in town. Would you be surprised to know that he's delivering steroids to police officers?

MR. BARTON: Object to the form.

A It depends on the capacity. I've worked in undercover narcotics. I've had people deliver cocaine and crack to me before.

Q (By Mr. Ogle) So you are involved in arresting people for illegal drugs, correct?

A It's a part of my duties.

Q Yeah. And so if you believe there is probable cause that a police officer was using steroids, would you report him?

A It's a requirement.

Q I know it's a requirement, but I'm asking whether you would really do it.

A Yes.

Q And you swear to that?

A I made an oath.

Q But you didn't make an oath to God, because you don't want God to be part of this.

MR. BARTON: Object to the form. Let's not go back down that road.

Q (By Mr. Ogle) In terms of a do-over, do you think that there are things that could have been done

differently or should have been done differently regarding the actions of the police officers based on watching the video?

A No.

Q Do you support the police officers in every one of your answers today?

A Do I support the police officers in every one of my answers? What do you mean?

Q I'm saying are you -- what do I mean? I mean I'm asking you whether you disagree with your -- with any of the allegations that we're making in regard to any of the police officers of doing anything wrong.

A Can you enumerate all of your allegations?

Q No. I'm not going to enumerate them. I'm just --

A Then I can't answer --

Q -- going to ask you to answer it.

A I can't answer your question.

Q Okay. Is there anything that you can think of that the police officers did wrong?

A No.

Q So the converse of that is the question I asked to begin with. You saw the Monte Carlo driver shoot at them. Do you believe that the Monte Carlo driver was guilty of a crime?

A I didn't conduct the investigation, so I can't answer that question.

Q Well, you subscribed to the conclusion of the investigation that, that, that Isaiah was the -- was exhibiting aggressive behavior, correct? And Isaiah was the suspect, was the bad guy. The black guy was the bad guy, right?

MR. BARTON: Object to the form.

A I won't answer that question unless you rephrase it.

Q (By Mr. Ogle) You have a problem referring to him as a black guy?

A I have a problem --

THE WITNESS: Sir?

MR. BARTON: I was going to just object, Scott. I don't even understand really the question. I would think that -- the objection, from my perspective, is ask a better question. You just kind of rambled that together. What, what is the question?

Q (By Mr. Ogle) In regard to Isaiah's actions you have described him as being the -- having aggressive behavior towards the Monte Carlo driver, correct?

MR. BARTON: Object to the form. I think we went through all of that and couldn't find

that exact characterization. I think he called them suspicious.

Q (By Mr. Ogle) Why wasn't the Monte Carlo driver arrested or chased, in your opinion?

A Well, I couldn't chase him, because he was in a vehicle and I was on foot.

Q Okay. Well, there's plenty of cops out everywhere, and so do you know whether he was -- whether any police officer, based on the totality of your investigation now, ever went after the Monte Carlo driver?

A Went after the Monte Carlo driver?

Q Chased him, pursued him, even cared about going after him.

A I think the higher priority was for the person that had just shot at the police, and so I think most of the resources were dedicated towards finding the vehicle that -- or finding the vehicle that contained the actor that had just committed -- attempted to commit a capital murder.

Q So you're blaming the black guy, correct?

MR. BARTON: Object to the form.

Q (By Mr. Ogle) He's the suspect. Despite the fact that he was victimized by the Monte Carlo driver, was running, running for his life to get away from the

Monte Carlo driver, you call Isaiah the suspect, correct?

A I call the person that committed a crime the suspect. In this case --

Q Okay.

A -- it was Mr. Hutchinson.

Q A crime is, is knowingly and willingly doing something, intending to shoot the police officers, right?

A That's incorrect.

Q No? Okay. Educate me on, on what you mean.

A There's several culpable mental states that are --

Q Yeah. There are. You're right. I don't really want to get into that.

MR. BARTON: Well, Scott, let him answer the question. Don't ask the question if you don't want the answer.

A There's several culpable mental states: intentionally, knowingly, recklessly, and what's criminal negligence.

Q (By Mr. Ogle) Okay. But you're blaming Isaiah, who is running away from being fired at by the Monte Carlo driver, correct??

MR. BARTON: Objection. Blaming

him --

Q (By Mr. Ogle) And he just happens to be a black guy.

MR. BARTON: Blaming him for what, Scott?

Q (By Mr. Ogle) Well, Isaiah was not the victim, in your mind, correct? He was the aggressor, correct?

MR. BARTON: And just to clarify --

Q (By Mr. Ogle) And he deserved to be shot.

MR. BARTON: -- I object. Are you talking about the aggressor with regard to the Monte Carlo or the aggressor when he shot at the police?

Q (By Mr. Ogle) At the time -- well, your description of Isaiah was that he was exhibiting aggressive behavior and at no time was the victim, correct, when it comes to the Monte Carlo driver?

A So again, I think that the term that I used was he exhibited suspicious and preparatory behavior.

Q Thug behavior.

MR. BARTON: Object to the form.

A Now, that's the term that you used.

Q (By Mr. Ogle) That's right.

A And I think most people would find offense to that term, which is the reason why I have not used that

term.

Q "Thug" is offensive? Yeah. I agree.

A Okay. What was your question?

Q In regard to his interaction with the Monte Carlo driver you have painted him as being in the wrong, exhibiting untoward behavior towards the Monte Carlo driver, correct? You don't describe him as a victim of the Monte Carlo driver, correct?

A I don't believe that he's a victim.

Q Okay. And so what did he do wrong to justify being fired at by the Monte Carlo driver?

MR. BARTON: Object to the form, I mean, just to the word "justification." It's -- you understand that he didn't -- he's not the Monte Carlo driver.

MR. OGLE: He's the judge. He's making opinions, and he's (crosstalk) --

MR. BARTON: No, he's not. You're asking him for opinions, but he's, he's a fact witness, and he's a party to the lawsuit.

MR. OGLE: That's right. He saw --

MR. BARTON: He's certainly not the Monte Carlo driver, and he certainly didn't shoot.

Q (By Mr. Ogle) Right. Now that you've seen the video of the Monte Carlo driver shooting at Isaiah,

you still don't consider Isaiah a victim of the Monte Carlo driver, correct?

A I'd just also like to remind you that I did not conduct the investigations.

Q I want you to answer my question. You don't have to --

A I'm answering your question.

Q Okay.

A I'm answering your question.

Q Okay. Would you start with a yes or a no?

A No.

Q You agreed to my question when I asked you to answer yes or no. Now you're not willing to do that?

MR. BARTON: Objection, Scott. He never agreed specifically. He said if he can. If you ask a question that he can answer yes or no, he'll do his best and then to explain, but you're, you're --

MR. OGLE: But now he's saying he's not going to do it.

MR. BARTON: No, no. You're asking questions that apparently don't fit yes or no. I'm going to object to your questions, as I have this whole deposition.

MR. OGLE: And that's fine, that's fine, but he still has to answer the question unless

you tell -- instruct him not to.

MR. BARTON: Well, then he gets to answer it, but he can't -- you can't pigeonhole him into a yes or no. So yeah, he can answer the question.

MR. OGLE: We normally agree to that. I know you do the same thing to your deponents, is you ask for a yes or no.

MR. BARTON: If they can give it.

MR. OGLE: Right. That's right.

MR. BARTON: But if they can't, then they get to answer it (crosstalk) --

MR. OGLE: But now he's dis- he will not answer yes or no, and that's disrespectful.

Q Do you think that we both deserve mutual respect?

A I believe that I've shown you respect.

Q Do you think that -- okay. Would you answer yes or no to your, your opinion that Isaiah was not a victim when it comes to the Monte Carlo driver interaction?

A In this qualified statement I don't believe that Isaiah was a victim.

Q Okay. What would you have done differently than Isaiah had done if some -- if you were in a car accident and you came up and politely asked someone for

their insurance information and he points a gun at you and starts shooting at you? What would you have done differently?

MR. BARTON: Objection. That calls for a hypothetical that is not reflected in the evidence.

Q (By Mr. Ogle) Go ahead and answer.

A Okay. Well, recognizing that I'm in downtown Austin the final week of South by Southwest, at this point at least one state trooper has passed by me, an officer on an ATV has passed behind me, I know that numerous other officers are in the area, if I'm involved in a collision and there is someone that is not stopping as required by law to exchange information or to check on my status to make sure that I'm not okay, I would flag down a police officer -- I'm almost done -- I would flag down a police officer and make the report that I was involved in a collision as opposed to shooting at police officers.

Q That has nothing to do with my question. You're going up -- you're, you're -- I'm talking about the incident before Isaiah even -- before the police officers even come to the scene. Isaiah, you saw Isaiah at the door and you see Isaiah get shot at. Okay? Demarios is the one that, that is punching the

driver, and as a result of, according to Demarios, him being shot at -- a gun being pointed at him.

But since you don't describe Isaiah as a victim, what is it that -- and up until -- I'm not talking about the police, but when it comes to his interaction with the Monte Carlo driver, did he -- did Isaiah deserve to be shot by the Monte Carlo driver, in your opinion?

MR. BARTON: Object to the form, calls for speculation.

A I guess my understanding of your original question was what I, if I were Isaiah in that situation, what I would have done differently.

Q (By Mr. Ogle) How about the question I just finished asking. Do you choose not to answer that one? You want to --

MR. BARTON: Well, Scott --

Q -- go back to the first one?

MR. BARTON: -- he gets to answer as best he can the questions you've asked.

MR. OGLE: But he doesn't get to pick and choose.

Q Don't go back to that previous question. Answer the question I gave you.

A Restate your question.

MR. OGLE: Could you repeat my question?

Q Are you enjoying being belligerent?

MR. BARTON: Object to the form. Scott, do we -- maybe we should call this deposition off, because you've -- you're making very personal, antagonistic remarks that -- I don't see it, I don't know why you're doing it, and so I'm going to continue to make my objections on that for sure.

MR. OGLE: Sorry. Could you repeat my question I'd asked him?

THE REPORTER: Yes. If you all keep talking, though, I can't do it.

MR. OGLE: Okay.

Q We'll get to discrimination in a minute.

THE REPORTER: Sorry. It was a long question.

(The referenced portions at page 118, line 21 to page 119, line 8, were read back by the court reporter.)

Q Yeah. What -- okay. There it is again.

THE WITNESS: You ready for me to talk?

THE REPORTER: Thank you.

Q I'm ready for you to talk.

THE REPORTER: Well, he's waiting for me to get to my spot. Go ahead.

A Actions have consequences. I think that both Demarios and Mr. Hutchinson approached the Monte Carlo with ill intent, and unfortunately, as a result of that, he was struck by, at least the record shows, that he was struck by --

Q The Monte Carlo driver.

A -- the driver of the Monte Carlo.

Q Okay. So you justify the Monte Carlo shots at Isaiah.

MR. BARTON: Object to the form.

Q (By Mr. Ogle) You're going to demonize Isaiah.

MR. BARTON: Object to the form.

A Was that a question?

Q (By Mr. Ogle) Yeah.

A I don't believe that I demonized Mr. Hutchinson.

Q Are you going to agree -- or is it your belief that Isaiah deserved to be shot by the Monte Carlo driver?

MR. BARTON: Objection, asked and answered.

Q (By Mr. Ogle) Yes or no?

A I think that he put himself in an unfortunate situation.

Q So he deserved to be shot by the Monte Carlo driver based on his actions?

MR. BARTON: Object to the form. Scott, that's an improper question for a lot of different reasons, but mainly because it calls for a pure opinion of someone who's a fact witness and a party to a lawsuit about an action that he did not participate in. Okay? He's not the Monte Carlo driver.

MR. OGLE: Yeah. But his, his opinion is, is that Isaiah --

MR. BARTON: No.

MR. OGLE: -- put himself in the position to be shot.

MR. BARTON: Sure. That's his opinion.

MR. OGLE: Okay.

MR. BARTON: And he's given it to you.

MR. OGLE: Okay.

Q Did you hear any of the officers on the scene instruct Isaiah to drop his firearm?

A I don't recall.

Q Okay. You don't recall any of the police officers announcing themselves, correct?

A I don't recall.

Q And so, but you do believe that officers in uniforms whose only distinct characteristics of being a police officer are patches that he should have identified as police officers, correct?

A That's incorrect.

Q Okay. What's incorrect about that?

A Well, I don't believe that their only distinguishing features are their patches.

Q There's more to it?

A Yes. We talked about that. I can go over it again if you'd like.

Q Besides the patches.

A The badge, the name tag, the duty belt.

Q Can you see a name -- do you think he can identify your name tag from the distance that he saw you at to begin with?

A I'm telling you that there are more than just -- more distinguishing features on an officer's uniform than just their shoulder patches.

Q But all of them should have identified you as a police officer.

A I think when a person sees it -- a nonpolice

individual sees a police officer dressed in that, that that person -- the police officer is readily identifiable as a police officer.

Q I would -- Demarios says that he -- the driver has said afterwards that he didn't know you all were police officers. Would you, would you disagree with Demarios' position?

MR. BARTON: Object to the form, hearsay.

A I would say that Demarios, if that is his, his statement --

Q (By Mr. Ogle) Mm-hm.

A -- that he was in less of a position to see the approaching officers, because his primary concern was evading I think at the point.

Q Evading? Evading the police?

A That's correct.

Q Demarios?

A Correct.

Q Wasn't he evading the Monte Carlo driver that was shooting at him?

A As I said, I believe that he was primarily concerned with evading the police. If he was -- and he didn't -- so he got in the car, Mr. Hutchinson got in the vehicle, and they both took off.

Q Wouldn't you agree that from Isaiah's position of seeing you all from a distance as he was being shot at, in the heat of the moment when he's being shot at by the Monte Carlo driver and he sees four people coming over, a black guy addressed in dark blue, that he could misidentify you as being a police officer? I mean you're wearing, you're wearing beanies, right?

MR. BARTON: Object to the form.

A Are you suggesting that my blackness increases my propensity for violence?

Q (By Mr. Ogle) Uh-huh.

MR. BARTON: Object to the form.

Q (By Mr. Ogle) I think that's, I think that's a perception that police have. Don't you agree?

A I don't think Mr. Hutchinson was a police officer (crosstalk) --

Q Don't you agree that police -- that black people commit a majority of the crimes?

MR. BARTON: Object to the form.

A Your question is do I believe that the police have a perception of that? Is that correct?

Q (By Mr. Ogle) What if I just asked you do you agree that the black -- that a majority of crimes are committed by black people? Are you going to

disregard that question?

A So I have not reviewed the FBI statistics, so I'm not in a position to answer that question.

Q Okay. But from Isaiah's angle he's being shot at by a thug in a Monte Carlo, and all the sudden there's four police officers that are dressed the way you all are. Can't you give him the benefit of the doubt that you all were misidentified --

MR. BARTON: Object to the form.

Q -- as not being police officers?

MR. BARTON: Object to the form.

A I believe that the opportunity to give any doubt did not exist once and after he fired his weapon at us.

Q (By Mr. Ogle) But at the same time he was being shot at by the Monte Carlo driver. So would you agree he's got tunnel vision?

MR. BARTON: Object --

Q (By Mr. Ogle) That you would have tunnel vision if you were being shot at, and then there's four other people coming from the flank like he's being ambushed?

MR. BARTON: Object to the --

Q (By Mr. Ogle) From his angle he's never seen you. He's being shot at by the Monte Carlo driver, and

these four officers -- these four, four people, they're coming from the side, are shooting at him. At that heat of the moment can't you give him the benefit of the doubt, Isaiah, or do you have to just demonize him regardless?

MR. BARTON: Object to the form.

A So maybe, maybe it's not clear that he actually shot at us first.

Q (By Mr. Ogle) Do you think that he had tunnel vision, yes or no?

A No.

Q No? Why would you not think that he has tunnel vision but you experience tunnel vision that you're trained for? Why would you not expect Isaiah to have tunnel vision in that moment?

MR. BARTON: Object to the form, calls for speculation, and, and calls for beyond the scope of his presence as a witness. He's here as a fact witness. He's here as a party defendant. He's not here as a tunnel vision psychology expert.

MR. OGLE: No. But he knows enough about tunnel vision that --

Q You give the benefit of tunnel vision to other officers. Do you believe that the public, like Isaiah, put in those same conditions don't exhibit the

tunnel vision that officers do?

A I believe that officers and the general public are all humans and are all susceptible to human pitfalls or downfalls. Again, as I stated earlier, I think that people's training and experiences will allow them to mitigate the effects in this case of some psychological factors. I --

Q You talking about police officers, right?

A I'm sorry?

Q You're talking about police officers.

A I'm talking about everybody.

Q Okay. Well, not everybody has training on it the way you're talking about. So when you're talking about the training you're talking about the police officers, correct?

A Well, I also said training and experience, and it's not just --

Q And --

A Let me finish talking.

MR. BARTON: Let him.

A I'm almost done. Not just work experiences, but I'm talking about personal life experiences as well. I think a person's general training and their life experiences and their work experiences, all those things can work towards mitigating the effects, the

physiological and psychological effects of trauma or high-stress situations.

Q (By Mr. Ogle) Okay. But can you, can you attribute tunnel investigation to Isaiah in that situation? No?

A I will say that if he did have it, it did not cause him to misidentify the police officers.

Q Why not?

A That is my opinion.

Q That's your opinion.

A That's correct.

Q Okay.

A For several reasons. To answer your question, one --

Q The main one is because you're a cop yourself, right?

MR. BARTON: Object to the form, and let him answer the question that you ask.

A One, Mr. Hutchinson knew that he was just a party to a criminal offense. Two, he sees officers responding --

Q (By Mr. Ogle) Stop right there. What criminal offense was he a party to?

A There were gunfire that just occurred that we --

Q That would be the criminal offense of the Monte Carlo driver, correct?
A But he's still a party to it.
Q What?
A He's still a party to it.
Q But he's the victim in that situation, right?
A However you categorize it, he is a party to it.
Q Yeah. But you're categorizing him as the offender, right?
A And so the other factors that --
Q Yes or no?
MR. BARTON: Let him answer his question, Scott.
A So I think the other factors that contribute to it are the fact that it was a well-lit environment. You know, it wasn't dark, you had officers that were wearing the distinctive uniform of the Austin Police Department.
Q (By Mr. Ogle) Mm-hm.
A I'm sorry. I'm not sure what the hand gesture means.
Q As if he could see the sides of your arms.
A Okay.
Q The distinctive police officer little name

tag, the sides and at the back of your shirt, those are the things that you're describing is what he should have seen.
MR. BARTON: Object to the form, and I ask for you to let Officer Wright finish his answer, and then you can follow up with questions.
A I think I'm done.
Q (By Mr. Ogle) Good. Are you active in the Austin Police Association?
A Am I what with the Austin Police --
Q Are you active? Are you a dues-paying member?
A I am a dues-paying member.
Q Would you be surprised if Ken Casaday has taken steroids?
A I would be surprised.
Q Wouldn't be surprised.
A I would be surprised.
Q You would be surprised?
A That's what I said.
Q Do you think that his physique is probable cause to assume that he does steroids?
A No.
Q How much more thick would you have to be than Casaday to assume that someone does steroids?

MR. BARTON: Object to the form.
A Oh, I don't investigate a person's --
Q (By Mr. Ogle) Sure you do. You're, you're in narcotics. That's all you do. You're a detective now, right? And so don't tell me you don't investigate drugs.
A I will tell you that -- no. That's not what I said. Now you're putting words in my mouth. What I was going to say before I was interrupted -- let me finish. What I was --
Q You're being dishonest.
A -- going to say --
MR. BARTON: Objection, Scott.
Q (By Mr. Ogle) Go ahead.
A -- before you interrupted me was that I do not investigate a person's ingestion of steroids. That is not something that I do. That's not something that --
Q Why not? It's the law. Do you regulate the law? There's a law against steroids.
A There's also --
Q Why is it you don't regulate steroids?
A There's also a law against tax evasion, but I don't investigate --
Q Tax evasion.

A -- tax evasion.
Q Okay. But there's steroid use among the law enforcement, and you cast a blind eye to it and say you don't know of any officers that do steroids.
MR. BARTON: Object to the form, and Scott, I'm going to -- are you finished? Because if you're going to just ask steroid questions, we're going to cancel the deposition. You can bring it up with the Court and submit a list of questions about steroids that you want him to answer. But as for me sitting here listening to your questions, they're irrelevant to this lawsuit. They're not likely to lead to the discovery of any admissible evidence, and so I'm going to ask you to go on with questions that are relevant to the issues of this lawsuit. Steroids is not one of them.
MR. OGLE: Steroids you don't think is a relevant issue?
MR. BARTON: I do not, but you've already asked it over and over again. So certainly you've had the opportunity --
MR. OGLE: Well, yes. But --
MR. BARTON: -- to ask and get answers.
MR. OGLE: That's right. But I've

been lied to regarding steroids, and we all know it.
MR. BARTON: Well, that may be --
MR. OGLE: We all know it.
MR. BARTON: -- your perception, but he has answered the questions and now you're just replowing the same ground. So you're not entitled to ask all these same questions twice or three times.
Q (By Mr. Ogle) Are steroids regulated in law enforcement in Austin -- among law enforcement at Austin Police Department?
A My understanding is that the use is prohibited.
Q Yeah. That's what our -- it's a felony, correct?
A I don't -- I've not read that particular portion of the Texas Health and Safety Code, so I can't answer whether or not it's a felony. You said it earlier, so if it is, I'll take you at your word in that instance that it is a felony.
Q But you're not aware of any police officers that have ever been arrested at Austin Police Department for using steroids.
A Oh, I've also not done the research on it. That, and I also don't investigate police officers. We have a unit for that.

Q Do you know if any unit investigates police officers for taking steroids?
A I know that the Special Investigate -- Investigations Unit conducts criminal investigations of police officers.
Q Are steroids even tested as part of the annual testing that y'all do?
A What annual testing?
Q Is there any drug testing that officers are, are required to submit to?
A So officers are required to submit to randomized testing, and then -- I'm almost done -- and then officers in other units -- Organized Crime, Special Operations and maybe another division -- are also, in addition to the general pool are also required to do an additional layer of randomized drug testing.
Q But on the standardized testing of prohibited drugs, steroids is not one of the drugs tested, correct?
MR. BARTON: Objection, asked and answered.
A I think the Austin Police Department drug coordinator, drug testing coordinator would be a better person to pose that question to.
Q (By Mr. Ogle) Is there anything that you think any of the police officers could have done better?

MR. BARTON: Objection, asked and answered.
Q (By Mr. Ogle) That led to the death of Isaiah Hutchinson.
A So as I answered that question earlier, I believe that the -- I don't believe that there was much, if anything, that the officers could have done differently that would have resulted in a different outcome or a more favorable outcome.
Q Have you ever had any training in de-escalation?
A Yes, I have.
Q Do you think there was any opportunity to de-escalate this incident --
A No, sir. I don't.
Q -- without killing Isaiah? Have you heard about any issues of there being discriminatory practices within the Austin Police Department in regard to black suspects being killed more frequently than anybody else?
A Being killed more frequently than anybody else?
Q Yeah.

A I've heard that people have made allegations that the lethal use of force has been discriminatory. I don't know that it's actually been proven that that's the case.
Q You don't think there is any discriminatory practices?
MR. BARTON: Object to the form.
A Do I believe that there are any discriminatory practices? I believe that there are practices that people might perceive as being discriminatory.
Q But you don't perceive them that way?
A I have not personally experienced it.
Q There was a study done less than six months after this incident that the Austin City Council criticized the police department in regard to patterns of racist behavior, stating that "APD's state-mandated profiling reports consistently show that black and Latino drivers are more than twice as likely to be killed as their white counterparts." Would you agree with that?
A Would I agree with the study? I can't agree to it. I haven't read it.
Q Okay. Gildardo Vasquez, have you ever seen him?

A Who's that?
Q The Monte Carlo driver.
A Seen him personally?
Q Yeah.
A No.
Q Okay.
A At least I don't believe so.
Q Okay. He looks kind of like a white guy. You've got Isaiah, black guy; Gildardo the white guy. The white guy's got the gun shooting at Isaiah. Isaiah's the one that's running from, from Vasquez. Could that lead some to believe that there is some discriminatory opinions that surround your opinion that Isaiah, the black guy, deserved to be shot by the Monte Carlo driver?
MR. BARTON: Object to the form. It's a mischaracterization of his testimony, and your own question is basing speculation and opinions on top of more speculation and opinions. It's an improper question.
Q (By Mr. Ogle) Answer the best you can.
MR. BARTON: Is there even a question, though, Scott? I mean, because he clearly did not say that Isaiah --
MR. OGLE: Deserved to be shot?

MR. BARTON: -- deserved to be shot. He's never said that. So you're asking him his opinion for why he deserved to be shot, and he's already said he doesn't agree with that. He's never said that. So my suggestion is -- my objection is, please ask a more concise question.
MR. OGLE: Would you read back my question, please?
(The readback at page 137, lines 8 through line 11, was begun by the court reporter.)
Q Keep smiling.
THE REPORTER: Do you want me to finish?
MR. OGLE: Yeah.
THE REPORTER: Okay.
(The readback from page 137, lines 12 through 15, was continued by the court reporter.)
Q Could you answer that question, please?
MR. BARTON: Same objection. It's, it's not a question that can be answered.
MR. OGLE: Are you instructing him not to answer?
MR. BARTON: Yes. I'm instructing him not to --
MR. OGLE: Okay. He's, he's --

MR. BARTON: -- answer that question.
MR. OGLE: He's enjoying this at this point.
MR. BARTON: Well, Scott, you're, you're just argumentative. You're taking this to a personal level. I think I'll let you go ahead and continue asking a few more questions, but --
MR. OGLE: Yeah. When I get beat up --
MR. BARTON: -- it's, just this personal sort of thing --
MR. OGLE: -- by black officers, I take it personally.
MR. BARTON: -- we're going to have to suspend this deposition and you take it up with the Court.
MR. OGLE: That's fine.
MR. BARTON: So I recommend for you to kind of focus in professionally on questions that have to do with the issues of this lawsuit.
MR. OGLE: Yeah. Well, when he sneers at me.
MR. BARTON: Well, see? Right there, that's, that's your observation, and it's

irrelevant to the lawsuit and it shouldn't be part of this --
MR. OGLE: I agree.
MR. BARTON: -- transcript.
MR. OGLE: Shouldn't be.
Q Would you consider yourself to be a warrior, in Casaday's description of his officers?
A Can you describe Mr. Casaday's description of what a warrior is?
Q No. You just -- I can't describe Casaday's description of a warrior, but the basic definition of warrior is -- you can take at face value.
MR. BARTON: Object to the form.
Q (By Mr. Ogle) But as a warrior -- or do you think -- do you consider yourself to be an alpha dog --
MR. BARTON: Object to --
Q -- someone that likes to give people orders?
MR. BARTON: Asked and answered. You've already asked that, Scott, like, two hours ago, and he answered it; I think he did.
Q (By Mr. Ogle) Give me an answer.
A I mean, if you think it's appropriate, maybe we can refer back to my original answer, but I don't think that anything's changed since the time that you first asked that question and now.

Q I don't think I asked you specifically whether you believe you were a warrior. And so you're asking me to define a warrior, and I'm asking you to simply answer based on your opinion of what "warrior" means.

A I tell you that I believe that when I'm presented with a situation that requires me to exhibit courage or bravery --

Q Mm-hm.

A -- that I'm equipped with that ability to do that.

Q But you --

A I'm also -- I'm not done. I'm also equipped with the ability to discern when and how I should utilize whatever skill sets are necessary in that time. And so am I warrior? I don't think that I go out and I fight a battle every single day. I go out and I serve a necessary service to and for the public, and if that requires me to wear a certain hat on a certain day, then I'll wear that hat. If it requires me to wear a different hat, then I'll wear that hat.

Q And if you wear a beanie, what does that make you look like?

MR. BARTON: Object to the form.

A A person that's trying to get warm from the

elements.

Q (By Mr. Ogle) Does it also look like someone that's not a cop when you're wearing a thug beanie on your head?

MR. BARTON: Object to the form.

A I'm not sure what a thug beanie is.

Q (By Mr. Ogle) A beanie is, is a -- to me --

A I know what a beanie is.

Q -- if you're wearing a beanie --

A I don't know what a thug beanie is.

Q What?

A I said I know what a beanie is. I don't know what a thug beanie is as you've described it.

Q Well, I don't see many police officers wearing beanies. I guess you do, right?

A As well as a bunch of other officers when it's --

Q I'm sure.

A -- March and it's 30 degrees outside.

Q But thugs are also wearing beanies, right?

MR. BARTON: Object to the form.

Q (By Mr. Ogle) It's kind of hard to figure you all out when you're wearing the same kind of clothes. Would you agree? It might be funny to you. The jury can't see you smiling, but apparently you take

some kind of, of -- you think something about what I'm saying is funny when I'm describing beanies.

I'm asking you whether you agree that wearing a beanie does not differentiate you from a thug. Would you agree with that?

MR. BARTON: Object to the form.

A I disagree with the question.

Q (By Mr. Ogle) Okay. Do you dis- well, what about wearing a beanie?

A Does it --

Q Does that -- do you think that helps or hinders someone to identify you as a cop if you're wearing a beanie? Let's not talk about everything else. Let's just talk about the beanie as opposed to a regular police officer's hat that's easily identifiable.

A Well, so I guess does this beanie have the police patch on it? Because now, I've seen some beanies that does have the --

Q I don't know. Did the beanie you have on that night have a patch on it?

A I don't remember.

Q Okay. So sometimes they don't, right?

A Okay.

Q Okay. And so wearing a beanie does not

differentiate you from a thug when it comes to wearing a beanie. Would you agree with that?

A No. I would not agree with that.

Q Just without the identifying clothes, why, why would your beanie without a patch be any different than a thug wearing a beanie?

MR. BARTON: Object to the form. Scott that's just such a leap of, of whatever. I mean, are you saying that only people that wear beanies are thugs? Thugs wear beanies? I mean, who -- what about a baseball cap? I mean, your question is nonsensical, with all due respect. It doesn't lead to anything.

MR. OGLE: Okay.

MR. BARTON: It's just a waste of everyone's time.

Q (By Mr. Ogle) A beanie is a very typical attire of the public, correct?

MR. BARTON: Object to the form. If he knows. I mean, he's, he's not a fashion expert.

A Certainly not a fashion expert.

Q (By Mr. Ogle) I wouldn't expect you to be, sir. Not accusing you of that, I promise you.

But would you, would you just simply agree that a beanie is something that's commonly used in the public?

A I think that in the wintertime --
Q Yes or no?
MR. BARTON: Scott, he gets to answer.
A In the wintertime at night when it's cold --
Q (By Mr. Ogle) Okay.
A -- you're more likely to see people wearing head garments that will keep them warm.
Q Head garments. I'm talking about the beanie, which is very common for gang members and other members of the public that wear. I'm -- as far as differentiating you from someone that's not in the public, wearing a beanie as opposed to a -- some kind of a hat that police officers wear that show -- that distinguishes them as an officer, do you agree that wearing a beanie does not do anything to identify you as a police officer? Just the beanie, not talking about anything else.
MR. BARTON: Object to the form.
A I think a beanie that's worn by an officer absent any patches or anything else does not do anything to help establish that that person is or is not an officer.
Q (By Mr. Ogle) Thank you.
A Which is different than what you initially

asked.
Q Okay. But why wouldn't you want to stand out in regard to everything you wear, including a beanie versus a hat?
A I don't know that I ever said I didn't want to stand out.
Q Do you think that it would be better to stand out as a police officer in terms of what you wear?
A Depends on the application.
Q Okay. If you're under cover, you wouldn't want to stand out, right? Is that the distinguishing "depends" that you're talking about?
A Sure.
Q Okay.
A That's fine.
Q So we're not talking -- were you in plain -- basically undercover that night?
A No. I was wearing the distinctive uniform --
Q Distinctive uniforms.
A -- of the Austin Police Department.
Q And so why not be more distinctive, I guess is my question. Whether it's your opinion or not, would it be better for the police policies to have officers not wear beanies and instead wear something more distinctive?

MR. BARTON: Object to the form.
Q (By Mr. Ogle) We're talking about things for the better -- trying to change the system, which is real difficult around here, especially police officers that cover for other police officers.
MR. BARTON: Object to the form.
Q (By Mr. Ogle) Would you at least agree that it's better to be distinctive in the clothes that you wear if you're not undercover?
A I believe that distinction is important so that --
Q Thank you.
A -- people can identify --
Q Let's stop there.
MR. BARTON: No.
A I'm almost done.
MR. BARTON: Let him continue, Scott.
Q (By Mr. Ogle) Distinction is important. Go ahead.
A Distinction is important for people to be able to identify police officers. I believe that the uniform that we wear is distinctive in that people are able to identify us as Austin police officers.
Q You're not talking about the beanie, though,

right?
A I'm talking about the same (crosstalk) --
Q When you're saying -- you've already said the beanie --
A -- (crosstalk) Austin Police Department.
Q -- is not distinctive. You're talking about the other things now.
MR. BARTON: Scott, don't, please don't interrupt the witness. Let the witness continue, and then you can ask a follow-up question.
THE WITNESS: For your benefit, I was saying I was talking about the distinctive uniform of the Austin Police Department.
THE REPORTER: Thank you.
Q (By Mr. Ogle) Do you think it should be more distinctive?
A I believe that it's adequate.
Q Is there anything -- any room for improvement that you would, that you would advise, or would you rather stick with status quo?
MR. BARTON: Object to the form.
Q (By Mr. Ogle) Don't rock the boat?
A I'm sorry?
Q I said would you rather not rock the boat and not recommend or at least admit to any, anything, any

uniforms that would be more distinctive than what you wear? You say it's adequate.

A Yes.

Q And you think that's good enough?

MR. BARTON: Object to the form.

Q (By Mr. Ogle) Well, do you think that's good enough?

A I believe that for the entire time that we've worn these uniforms that the overwhelming majority of people are able to identify us as police officers, and so based on that I believe that is more than good enough.

Q So no need for two-tone uniforms?

MR. BARTON: Object to the form, asked and answered.

A I mean, I don't know. I don't know what a two-tone uniform looks like.

Q (By Mr. Ogle) Okay.

A I mean, is it two-tone highly reflective? Is it two-tone with a contrast? what are we talking about here?

Q Usually what I've seen, and I'm old school, but usually there's some type of a distinctive different color on the shoulders of a uniform. Sometimes they're dark versus the -- or a different

color than -- different color shade. Have you seen police uniforms that are different colors? That's what I'm talking about, something that's not completely dark blue. More distinctive.

A All the places I've lived in the course of my life I've seen cops that have similar uniforms to what I wear. I've never had an issue identifying or distinguishing the officers from the general public.

Q Have you seen police officers with different funny-looking hats?

A Different funny-looking hats?

Q Mm-hm.

A I've seen trooper-style hats.

Q Uh-huh, uh-huh.

A I've seen the ball caps, I've seen garrison caps.

Q Okay.

A I've seen, like, the Alaskan or Russian fur caps, which I actually have one of.

Q A Russian what?

A I forgot what they're actually -- what their technical name is, but it's like a Russian-style cap.

Q Oh, okay. But as far as being distinctive, you don't see any rooms for improvement or any need for more distinctive uniforms than what Austin has; is that

fair?

MR. BARTON: Object to the form.

A I believe that the uniform is adequate.

Q Was that my question?

MR. BARTON: It's been asked and answered, Scott.

MR. OGLE: What time is it?

MR. BARTON: It's 4 o'clock.

Q Have I been polite and courteous to you up until now?

A No.

Q How would you describe my behavior?

A Impolite.

Q What else?

A Definitely not courteous, unprofessional --

Q Do I deserve to be a target?

A Let me finish.

Q Yeah. Go ahead.

A I believe that you've cut me off numerous times.

Q Uh-huh.

A I believe that you've exhibited unprofessional behavior, from what I've experienced from courtroom testimony.

Q Okay.

A And that I'm quite surprised at your behavior, to be honest.

Q Wow. Would you be surprised that I've been, I've been hit from behind by officers as a human rights advocate?

A I don't know anything about that.

Q Would you be surprised if I was gang-gang-assaulted in Hays County jail by six officers?

MR. BARTON: Object to the form, relevance.

A There's not much that surprises me.

Q (By Mr. Ogle) Do you think that -- are you aware of -- well, what's the opinion in the police department of human rights protestors and human rights advocates? Are they adversaries to law enforcement?

MR. BARTON: Object to the form.

A I believe, like with all sides, you have people that are in favor of law enforcement, you have people that have issues with some of the policies and practices of law enforcement.

Q (By Mr. Ogle) Mm-hm.

A I've not personally taken a poll of the Austin Police Department to figure out what the collective feeling is or feelings are toward human rights activists. I've had good experiences, I've had

bad experiences. So I look at the individual as opposed to the collective, and I think --

Q Mm-hm.

A -- the majority of officers do that as well.

Q Well, can you understand why police officers -- there's police officers that target me, based on the way I treat you?

MR. BARTON: Object to the form.

A I can see how your antagonistic behavior causes people to --

Q Retaliate?

A -- respond differently to you.

Q And do you think that it justifies police officers attacking me from behind?

MR. BARTON: Object to the form.

Q (By Mr. Ogle) Embellishing charges and just plain lying about my behavior?

MR. BARTON: Object to the form. This is hearsay based on what you're saying, which no reason to doubt it, but certainly this officer has nothing to do with that Hays County incident.

Q (By Mr. Ogle) Would you be surprised that Ken Casaday sends individuals to my office to -- with fraudulent claims?

MR. BARTON: Object to the form.

Same objection.

A Do you want me to answer that?

Q (By Mr. Ogle) Yeah. I'd like you to answer every question I ask you.

A Sure. I'll answer it. I don't believe you. I think you're misguided, and so yes, I'm surprised by that. Based on my -- I did not know you since -- until you walked into this room today, and my opinion of you is not, not good. So yes, I am surprised that if that were to actually have occurred -- that that actually did occur, but I don't believe it.

Q Would you be surprised that Gary Clark, Jr. claims that I yelled racial epithets to him?

MR. BARTON: Object to the form.

Q (By Mr. Ogle) And told me he doesn't belong in this neighborhood?

MR. BARTON: Same objection. And Scott, before we go farther down these types of questions --

MR. OGLE: Yeah.

MR. BARTON: -- can you tell me how they're relevant to this lawsuit?

MR. OGLE: Well, we're talking about discrimination.

MR. BARTON: Well, but --

MR. OGLE: And in this context I'm talking about law enforcement's treatment towards advocates.

MR. BARTON: Okay. Well, that has nothing to do with this particular lawsuit, right?

MR. OGLE: Well, this lawsuit, 75 percent of it, has to -- well, a lot, a majority of the complaint has to do with discriminatory practices of Austin Police Department, which I've not gotten him to agree to either. And so it is a tangent off the discrim- discrimination claims that we filed, but the fact that he now has described the way he's described me, I am asking him some follow-up questions that you (inaudible), I guess.

MR. BARTON: Well, I think you're --

THE REPORTER: I'm sorry. Follow-up questions what? I didn't hear the tail-end of your comment.

MR. OGLE: I'm asking follow-up questions to the discriminatory discussion we had before.

MR. BARTON: Okay. My objection for the last couple of questions and going forward is, questions about you personally.

MR. OGLE: Yeah.

MR. BARTON: And I know that they're important to you, but wouldn't you agree with me as far as this lawsuit goes whatever's happened to you has no bearings on the facts of this lawsuit?

MR. OGLE: I agree that what happened to me nobody cares about --

MR. BARTON: Well, but --

MR. OGLE: -- including law enforcement.

MR. BARTON: -- I'm not saying nobody cares about. I'm saying they're irrelevant to this lawsuit. So I think asking him questions about what happened to you is clearly outside the scope of this lawsuit and irrelevant. And I'm not meaning that in a personal sense, but it's just a waste of time.

MR. OGLE: It's just his answers are so obnoxious.

MR. BARTON: Well, now you're making personal cutting comments.

Q (By Mr. Ogle) I think I'm about done. Is there anything you'd like to clarify?

A Nope. No, sir.

Q Do you believe that there's been a disproportionate use of excessive force against people

of color by Austin Police Department?

A No.

Q Would you disagree with any negative comments having to do with the Austin Police Department?

MR. BARTON: Object to the form.

A Would I disagree with any negative comments? I haven't heard all the negative comments, but there's some that I might --

Q (By Mr. Ogle) That you would agree to?

A May or may not. It depends on what they are. If you said that the Austin Police Department has crappy police cars, I'd say yeah, that's true. That's a negative comment. We have pretty bad police cars.

Q But as far as any crappy -- as far as having any bad apples, you would disagree with that, right?

A I think the department does an adequate job of identifying those persons and doing their best to try to get them out of the department if and when they exist.

Q Oh, okay. Do you think that there could be some improvement regarding the disproportionate use of excessive force when it comes to fleeing suspects?

A I think that's probably predicated on my belief that there is a disproportionate use of excessive force, which I've already answered that I

don't believe that there's a disproportionate use of excessive force.

Q At all?

A Again, like, I don't -- in my capacity as a detective and in my capacity as an officer I don't investigate the use of force. I certainly don't witness the use of force against people, so I'm not in a position to answer that question.

Q Well, you've used use of force against people, and you're saying that you're not judged on that?

MR. BARTON: Object to the form.

Q (By Mr. Ogle) You shot two people. You killed two people in your line of duty. So you don't think that you should be judged on that?

A Well, I think that an investigation has been conducted, and I think that as an end result of that investigation the determination was that my use of force in that incident and this incident were both justified.

Q And the people that justified those were your fellow police officers, right?

A I --

Q And Internal Affairs.

A And the Travis County District Attorney's

Office and in this case, as you know, the grand jury of Travis County.

Q And the fact that you were found to be justified in your actions by the, even the district attorney's office, do you think that the district attorney's office and the police do a fine job in, in isolating those people that go -- that, that violate policies, or do you think they do a pretty good job of simply closing the cases and finding 99 percent of the police officers to not be in violation?

MR. BARTON: Object to the form.

A I think because you said that there's 99 percent shows that there isn't finding, if that number is accurate, that there's a finding that there are some instances where force could have been used.

Q (By Mr. Ogle) Yeah. 1 out of a hundred.

A Okay. So then maybe that's accurate.

Q Okay.

A The Travis County District Attorney's Office issued a 40-some-odd-page summary, summary of my first critical incident. And so that summary, 43 pages or however long it was, laid out the case for why the district attorney's office believed that I was within my legal right and justification to use deadly force.

Q But this time we're taking it to simply the

grand jury?

A That's what occurred.

Q Okay. Why do, why do you think you were sent to the grand jury this time based -- rather than as opposed to the first time?

A It's two different policies of two different administrations.

Q The first one was not in Austin?

A The first one was of District Attorney Margaret Moore, who headed up the Civil Rights Office that issued declination letters. The second one was of Jose Garza, who made a point to send all critical incidents for officer-involved shootings to the grand jury.

Q So the people that speak in favor of Isaiah, like Amanda Estrada, you, you discount what Amanda had to say as far as being polite to the Monte Carlo driver, correct?

MR. BARTON: Object to the form, asked and answered and calls for hearsay.

A So I think that Ms. Estrada, again as I said earlier, her recollection or perception of events, you know, could have been affected. There are things that I know about Mr. Hutchinson that she doesn't know, for example, and you know. So whether or not that was her

perception that that's what occurred, looking back with all of the information that I have had an opportunity to review and understanding what happened with this, I don't believe that her assessment is accurate. I don't believe that he politely went and requested the insurance information from the driver of the Monte Carlo.

Q (By Mr. Ogle) And you're basing that opinion on what, regarding Amanda Estrada, that you don't believe her?

A It's not that I don't believe Amanda Estrada. I believe if she's saying that, that's probably what her perception was.

Q Okay. Well, why don't you believe that her perception is correct?

A I just answered that question, and I'll state it again.

Q Okay.

A I don't believe that her assessment was correct based on all the information that I've seen and have read regarding this incident, and that includes surveillance video from the point of -- from the initial point of the collision at the intersection of 7th and Neches, the driving pattern, the way that they stopped, the egress route, the way that they

approached, the suspicious and preparatory behavior of both Mr. Hutchinson and Demarios as they approached that vehicle, the, the physical encounter that occurred between Demarios and the driver of the Monte Carlo, the fact that Mr. Hutchinson ran away from that scene and then fired upon four officers. That is the reason why I don't believe that he politely requested the insurance information from the driver of the Monte Carlo. Now, the (indistinct), whatever her name is, she does not -- she's not privy to all that information.

Q No. Amanda just heard him.

A Or Amanda. Okay. Well --

Q Yeah.

A -- so she may have, but she also heard, she also heard gunfire several times, and so that tends to affect a person's recollection of events. So I'm not, I'm not saying she's lying. I'm just saying that I have a better understanding of what actually occurred, and based on that I don't believe that it was a simple, Sir, can I have your insurance information.

Q Okay. I don't have anything further. Actually, I want to show you the other video if I could.

MR. OGLE: Oh, you've already

closed it? That's all right. Don't worry about it.

MR. BARTON: Okay. And I have no questions, but for the record I would say that we do want the opportunity to read and sign the transcript.

THE REPORTER: Scott, would you like a copy?

MR. OGLE: Not now.

MR. BARTON: While we're still on the record I think the only exhibit that was shown in this was Exhibit No. 5. Is that correct?

THE REPORTER: (Nodding head)

MR. BARTON: And that's our ongoing list of exhibits, so that's Exhibit 5 that we've already established.

(At 4:20 p.m. the proceedings adjourned.)

CHANGES AND INSERTIONS

DETECTIVE DEANDRE WRIGHT

August 3, 2022

PAGE	LINE	CHANGE	REASON

ACKNOWLEDGMENT OF DEPONENT

I, DETECTIVE DEANDRE WRIGHT, do hereby certify that I have read the foregoing pages and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Changes and Signature Page (Errata).

DEANDRE WRIGHT

DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON AND BENNY HUTCHINSON, ON BEHALF OF THEMSELVES AND THE ESTATE OF ISAIAH HUTCHINSON,	§	
Plaintiffs,	§	CIVIL ACTION NO.
v.	§	1:21-CV-00221-LY
THE CITY OF AUSTIN AND DEANDRE WRIGHT AND DANE O'NEILL AND ZACHARY WOODS AND THOMAS BERNARD NELSON III,	§	
Defendants.	§	

REPORTER'S CERTIFICATION OF THE
ORAL DEPOSITION OF DETECTIVE DEANDRE WRIGHT
August 3, 2022

I, Sandra S. Givens, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, DETECTIVE DEANDRE WRIGHT, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the original deposition transcript was submitted to: DETECTIVE DEANDRE WRIGHT in care of his attorney, Monte L. Barton, Jr.;

That a copy of this certificate was served on all

parties and/or the witness shown herein on August 5, 2022.

I further certify that pursuant to FRCP Rule 30(f)(1) that the signature of the deponent was requested by the deponent's attorney before the completion of the deposition and that the transcript is to be returned within 30 days from the date of receipt. If returned, the attached Changes and Insertions page contains any changes and the reasons therefor:

That $ is the deposition officer's charges to the Defendants for preparing the original deposition transcript and any copies of exhibits;

That the amount of time used by each party at the deposition is as follows:

Scott Ogle - 3 hours, 7 minutes
Monte L. Barton, Jr. - 0 minutes

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

Scott Ogle - Attorney for Plaintiffs
Monte L. Barton, Jr. - Attorney for Defendants

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was

taken, and further, that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this 5th day of August 2022.

GIVENS COURT REPORTING
6549 Fair Valley Trail
Austin, Texas 78749
(512) 301-7088

SANDRA S. GIVENS, CSR
Certification No. 5000
sg-1957 Certificate Expires 1/31/24

Exhibit 2

Transcript of the Testimony of
Dane O'Neill

July 19, 2022

Christine Springs-Hutchinson, et al. v. The City of Austin, et al.

Givens Court Reporting
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON AND BENNY HUTCHINSON, ON BEHALF OF THEMSELVES AND THE ESTATE OF ISAIAH HUTCHINSON,	§	
Plaintiffs,	§	
	§	CIVIL ACTION NO.
v.	§	
	§	1:21-CV-00221-LY
THE CITY OF AUSTIN AND DEANDRE WRIGHT AND DANE O'NEILL AND ZACHARY WOODS AND THOMAS BERNARD NELSON III,	§	
Defendants.	§	

* * * * * * * * * * * * * * * * * * *

THE VIDEOTAPED ORAL DEPOSITION OF
CORPORAL DANE O'NEILL,
July 19, 2022

* * * * * * * * * * * * * * * * * * *

ORAL DEPOSITION OF CORPORAL DANE O'NEILL, produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above styled and numbered cause on the 19th day of July 2022, from 1:38 p.m. to 4:20 p.m., before Sandra S. Givens, CSR, in and for the State of Texas, reported by machine shorthand method at Austin City Hall, 301 W. 2nd Street, 4th floor, Austin, Texas 78701, pursuant to the Federal Rules of Civil Procedure.

A P P E A R A N C E S

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VIDEOGRAPHER:
Ms. Lauren Morris
Audio Evidence Forensics

I N D E X

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E X H I B I T S

NO. DESCRIPTION PAGE

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7th Street and Neches HALO Video of Shootings, COA 003 "The Halo Incident"

Exhibit 2 - 106
Amanda Estrada Video of Shootings, COA 1561 "Facebook Video"

Exhibit 3 - 52
KXAN Article, "Austin officer-involved shooting one of two shootings overnight"

Exhibit 4 - 107
COA 002 "Video of 7th and Neches Collision"

VIDEOGRAPHER: Good afternoon. Today is Tuesday, July 19th, 2022. My name's Lauren Morris. I'm the videographer today for the deposition of Officer Dane O'Neill in Cause 1-21-CV-00021. The time is 1:38 p.m., and we are on the record.

DANE O'NEILL,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. OGLE:

Q Could you state your name for the record?

A My name's Dane O'Neill.

Q And Officer O'Neill, just to kind of get the level of the sanctity of the oath understood, are you willing to swear as God is your witness to your answers being truthful today?

A Yes.

Q Okay. Have you ever given a deposition before?

A Yes.

Q What times were those?

A It's kind of a guess on the year, but I think I did one in 2016, 2017, and then probably 2018. So about two prior to this.

Q Okay. What were the instances? Were they officer-involved shootings in 2016 and '17?

A That was a guess, 2016 or '17. That was not an officer-involved shooting.

Q What was that?

A That was an incident with a member of an Outlaw motorcycle club where we took pictures of his tattoos, and he subsequently sued the city.

Q Okay. Have you ever been involved in another, in another officer-involved shooting?

A Yes.

Q Besides this one?

A Yes.

Q And what -- when was that?

A That was April of 2017.

Q Okay. And what did that involve?

A We had a call for service for a subject with a gun, pulled a gun on his family members. When we got there the family had left the scene, and we were preparing for a surrounding call-out. As we're setting up containment on the house, Lawrence Parish came to the door with a gun two times. Second time he raised it in the direction of officers and we fired on him.

Q In that instance was he fleeing when he was hit?

A No.

Q I'll go over some general statements I have. Today I'm going to ask questions and I'm going to ask that you give complete and full answers so that if I ask you the same questions at the time of trial, we would expect you to give the same answer you give today. Is that understood?

A Mm-hm. Yes.

Q And if you give an answer that's different than the answer you give us today, then we can point that out to the judge and jury and we can talk about why your answer will be different. Understood?

A Yes.

Q I want to be honest with you. I may ask you some hard questions, and some of them are going to require hard answers. Because of that I want to be fair and give you every chance to tell your side of things. You understand that this is our opportunity to find out from you as much as -- as much detail as you know about the events that took place involving Isaiah Hutchinson.

A Yes.

Q When I ask you a question if -- where appropriate, if you would please start with a yes or a no or an I don't know, and then if you feel the need to explain the answer, then you can take as long as you need in your response. Is that fair?

A Yes.

Q Tell me a little bit about your, your life after high school.

A I went to college in El Paso. I got my degree from the University of Texas at El Paso, criminal justice. Got married at the end of that time, moved to Arizona. Was in Arizona for about two years waiting to get hired here, and once my wife finished her graduate school and I got hired here we moved to Austin.

Q Do you have any military experience?

A No.

Q When was it you began working for the Austin Police Department?

A August 2011.

Q And so you've been continuously employed from then until now?

A Yes.

Q What was your interest in Austin?

A At the time that I was applying for other police agencies a lot of the country wasn't hiring because of the economic situation. Went to school in El Paso, knew some people from Austin. I always heard good things about it at the time, so I just put in an application.

Q Did you see a lot of Arab military in El Paso? I taught ESL, English as a second language, to cadets that were from the United Arab Emirates --

A Mm-hm.

Q -- and they would go back and forth. So I lived there about four years.

Tell me about the training that you had with firearms.

A I went through the Austin police academy. That was eight months long. I've been through our rifle school. I've been through a number of pistol classes outside of the department. Went through our CAST school, Counter Assault Strike Team, which is a response to active shooters. I'm also a member of the training cadre for the CAST team now.

THE REPORTER: A member of the what?

VIDEOGRAPHER: CAST team, C-A-S-T.

A I've been through SWAT school, been through organized crime school, been through dynamic entry vehicle assault. Pretty much every school that SWAT offers I've been through it. I'm an adjunct instructor for Sheepdog Response, which is a firearms and -- just firearms, grappling, all kinds of different things for

civilians and law enforcement. It's Tim Kennedy's company, who's a current Green Beret, former UFC fighter. So I worked for him as an adjunct instructor teaching people how to shoot. That's just a few of the things I've been through.

Q Have you shot anybody before?

A Yes.

Q Did you shoot Isaiah Hutchinson?

A Yes.

Q Were you the one that came up to the door and fired several rounds through the window?

A The door was open.

Q Or the door was open. There were, there were bullet holes through the window. Do you know where they came from.

A Which window?

Q The -- I always thought that he had been shot through the window on -- in addition to what's on that, that witness video. But since the door was open those shots from you didn't come from -- the shot through the window did not come from you?

A No.

Q Do you have any idea where the shot that did go through the window came from?

A No.

Q More than likely another officer?

A Yes.

Q I've left my glasses, and so I may be handicapped a bit here, but give me a second.

In the classes that you've taken I'm focusing on the imminent danger when it comes to a fleeing suspect. To begin with, you were taught obviously the ground rules for when you're able to shoot and how long you're able to shoot. What classes do you recall that you went through where that education material was involved?

A Any use of force class through the department, case law, dates, that I've continued to go through since then I can't specifically tell you the names of classes or dates and times of it.

Q Well, you know more about this than I do, and I'm just curious that if someone points a gun at a police officer --

A Mm-hm.

Q -- and that obviously puts the police officer in imminent danger, if -- does that threat ever cease, or do police officers have a right to shoot someone who's fleeing under those circumstances?

A You have the right --

MR. BARTON: Object to the form.

Q That was like a double question there. But what do you understand about the ground rules of what you're able to respond with when you're presented with imminent danger, someone pointing a gun or shooting at you? How far can you go in terms of stopping that suspect who still has a weapon?

A You can use any, any amount of force to stop that threat.

Q Can you shoot him in the back as he's running away?

A Sure, depending on the circumstances.

Q Okay. Now, clarify that. Give me a circumstance where that would or would not be applicable.

MR. BARTON: Object to the form, calls for a hypothetical. You can go ahead.

A It wouldn't be applicable in this circumstance, because Isaiah wasn't shot in the back, and the autopsy report shows that.

But if a subject is running away from you and still has a gun, if he's shooting at you over his shoulder, if you can articulate that he's still a continuing threat to the public or law enforcement in the future, you can shoot a fleeing suspect.

Q (By Mr. Ogle) Now, Isaiah was shot in the

head, correct?

A Mm-hm.

Q Are you aware what position his head was as he was fleeing?

A I would assume that he was looking at me, as the entrance wound came from the front of his head.

Q So you think that as he was fleeing -- and I'm not talking about when -- I know that he jumped into the seat --

A Mm-hm.

Q -- and you engaged.

A Mm-hm.

Q And then the Maserati fled --

A Mm-hm.

Q -- the scene and there were several other off- several officers that were shooting at the Maserati.

A There was one officer that was shooting. Yes.

Q And in fact, there were a couple of, of, of members of the public that were shot themselves by bullets, stray bullets. Are you aware of that?

MR. BARTON: Object to the form.

A Yes.

Q (By Mr. Ogle) So can you, can you conclude

that he was not shot by one of the guns as the vehicle was fleeing?

A Yes.

Q By where the -- okay. You would have to know where his head was turning as the car was fleeing in order to determine whether it was -- he was shot by one of the bullets as the police officers were shooting as he was fleeing, the way I understand. What's your position?

A I don't really, I don't under- are you asking if it's possible that Isaiah was looking behind him through the rearview -- rear back glass when he got shot in the head?

Q What -- yes.

A I don't believe that's likely.

Q Was there any ballistics tests done that you know of?

A I know they did ballistics. I don't know what all that entailed.

Q There were bullet casings in the vehicles that were -- that had bullet holes in them that were just innocent by- you know, innocent other cars. Do you know whether those were tested to see whose bullets they came from?

A Are you speaking about the Hyundai?

Q Yes.

A I believe they came from Isaiah's gun.

Q Okay. So to begin with, where were you on the night that it started?

A I was in the Gulf parking lot, the Gulf gas station parking lot at 7th and 35.

Q Talking with a couple of girls that were lost?

A I was standing there with the other officers. We were 30, about 30 minutes from being done for the night, and about that time that particular parking lot gets very crowded with people leaving the downtown area, and there were a couple girls that came up to us saying that they wanted to stand with us so that they could be safe. We actually recommended that they go somewhere else, because it wasn't safe.

Q What time of night was this?

A Somewhere around, I think it was, just before 3 in the morning.

Q Okay. All right. And so shots fired, and what do you do?

A I heard shots coming from in front of me, so somewhere on 7th Street, and I started running that direction.

Q Okay. Then what?

A As I came to around the sidewalk about to enter the street I saw who turned out to be Isaiah coming around the front of that SUV, which turned out to be the Maserati. He had a gun in his hand, and at that point I engaged him.

Q You've seen the HALO video?

A Yes.

Q Does it appear that Isaiah was escaping the Monte Carlo driver that was shooting at him?

A Yes.

Q So how certain are you that as Isaiah was in the heat of the moment being shot at by the Monte Carlo driver that he recognized you and the other four or five that were all dressed in dark clothing?

A We were dressed in our standard APD uniforms.

Q I understand they're standard, but they're, they're not two-tone like they used to be. Do you know why they have -- do you know why the policy is to have what looks like four thugs coming from the left if -- in, in this situation? Because you're not from -- from, from the distance that you all were at, which was basically at the side of the road, on the sidewalk of the Valero --

A Mm-hm.

Q -- and Isaiah, of course, was running -- or

he's probably, what, 150 feet away?

A I'd say he was probably 20 feet away.

Q 20 feet.

A Yeah. A lane --

MR. BARTON: (Inaudible)

A -- a standard lane's about 10 feet wide.

MR. BARTON: I'm just going to interpose an objection to the form, because it seems like it's just kind of ongoing and in a narrative format. So I object to the form.

Q (By Mr. Ogle) And so would you agree that he would have been able to identify you easier if you did have two-toned OG traditional police uniforms?

A I don't know what the two-tone OG police uniform is, but I know that it's pretty -- our uniforms are pretty consistent with the uniforms around the country with police agencies.

Q Would you agree that they're making themselves look more like pedestrians?

A No.

Q Would you agree that it's harder to identify a police officer when they're dressed in all dark blue?

A No. Our badge is pretty identifiable, and our patches reflect light.

Q Okay. Now, would you agree that the "Police" that's on the back of one of y'all's jackets would not have been seen by Isaiah based on the fact that you all were facing him?

A I think that's reasonable.

Q Okay. Would it be -- would you agree that more than likely on either side of your shoulders it would be difficult from looking straight at you to identify the badges on your shoulders, both right and left?

A I don't think so. I think our, I think our uniforms are very identifiable. That's why we wear them.

Q But you've got to see them to be identified, and what's on the back and what's on the side of your shoulders, to someone that's looking straight at you, especially in a situation where he -- it looks to me like in the video he's nursing his, his wrist, and he did have bullet holes through his -- on his wrist, which, you know, may lead to a determination that he was shot by the Maserati driver. So in the heat of the moment he's looking around -- or he's trying to run back to the car and he runs around on your side.

A Mm-hm.

Q Does that sound like someone is trying to get

away from you or to assault -- or to, to confront you, would be to come around on the other side where you're at and sit in the seat?

MR. BARTON: Object to the form.

A You're asking me to speculate. I think he -- I don't believe he was shot by the Monte Carlo driver. I think he was hunched over to avoid being shot. He ran to the front of the Maserati so he could retrieve his gun and is coming around on the other side so he could reengage the driver of the Monte Carlo.

Q (By Mr. Ogle) Retrieve --

A At that point he saw us coming and decides he was going to buy himself some time, shoot at the police, and then try to jump in the car and drive away. That's what I believe, based off watching the video.

Q Buy some time by shooting the police.

A Mm-hm.

Q Buy some time from the Monte Carlo -- to distract the events going on with the Monte Carlo driver?

A The Monte Carlo never reengaged. The Monte Carlo was defending himself. Once that threat ceased he drove away.

Q Have you ever -- do you know what the driver of the Monte Carlo, I think his name is Demarios, what

his -- what he said happened?

A All I know what happened, all I know about what happened is what I saw on the HALO video.

Q Right. Did you see on the HALO video that the Monte Carlo was shooting at them?

A After --

Q Did you see sparks coming out?

A After he'd been --

Q After --

A -- assaulted, yes.

Q Okay. Now, and that's the city's position, isn't it? The, the suspect or the assaulter began by attacking the Monte Carlo driver.

A I believe so.

Q The Monte Carlo driver is the victim.

A That's how I understand it. Yes.

Q Would it change your position if the Monte Carlo driver [sic] testifies that the Monte Carlo driver pulled a gun on him and he, he attacked him as -- to -- because he -- a gun was pointed at him? Even though you can't see that in the HALO video, you approach a car and the driver pulls out a gun, certainly if you don't have a gun -- Demarios is saying that he started punching him because he had a gun pointed at him. Does that sound like a reasonable,

plausible explanation of what really happened?

MR. BARTON: Object to the form.

MR. OGLE: (Inaudible)

THE REPORTER: What'd you just say, Scott?

MR. OGLE: I said "I don't blame you" to his objection.

A I, I think -- Demarios is the driver of the Maserati; is that correct?

Q Yes.

A I think -- I don't, I don't know if he was interviewed by SIU or not or what his story was. I would anticipate somebody in that situation to remove themself from the scenario and not try to jump through the window and punch a guy that's pointing a gun on him.

Q Well, now, you would shoot someone in the back --

A I didn't shoot anybody in the back.

Q No. I'm just saying that you have -- you as a police officer, if the Monte Carlo driver pointed a gun at you, you could have engaged as he was fleeing the scene, correct?

MR. BARTON: Object to the form, hypothetical.

A Potentially.
Q (By Mr. Ogle) And on the other extreme you're saying that Demarios, given that same situation, should not have engaged.
MR. BARTON: Object to the form, speculative hypothetical.
A I believe as a citizen it would be smarter not to engage somebody with a gun if you have the opportunity to remove yourself from the situation.
Q (By Mr. Ogle) Well, you --
A I'm not saying that in that it's not wrong. It may be your best option, if somebody pulls a gun on you, to attack. Or if somebody, if somebody's confined in a vehicle and you can remove yourself from the situation and change your angle so he can't shoot at you, which is what he did after he punched him and he didn't get shot, then why would you go into a hand-to-hand altercation with a guy who's got a gun?
Q I think my first reaction would be to try to swipe the, the end of the gun away in a fight-or-flight situation. Running away is certainly an option, but there -- if Demarios is to be believed, would you agree that who started the interaction may have been the Monte Carlo driver?
A No. I think the interaction started before

that during the fender-bender.
Q Oh. Well --
A Because if we're speculating --
Q -- that happens all the time.
A Right.
Q I mean --
A But it doesn't end this way all the time.
Q Well, I, I saw the, the, the accident.
A Right.
Q And that's an example of what happens all the time in terms of car accidents --
A Potentially.
Q -- correct? Well, now, what I think you're pointing out is that Demarios as the cars were moving cut into the Monte Carlo's lane. Is that -- do you recall that?
A Yes.
MR. BARTON: Object to the form.
A If we're -- yes.
Q (By Mr. Ogle) So while, you know, I'm really focused on what happened after they got out of the car, the totality of the situation began with the incident involving a small impact. But what's your point in pointing out what happened to begin with?
A I believe that the people in the Maserati

induced the situation to create the fender-bender, and then they were looking for an altercation. As they pull, as they pull up to a green light at 7th and 35 they stop at a green light and effectively box in the Monte Carlo. Then they get out of the car, which I can buy that, Okay, we're going to exchange information right here.
I don't buy the fact that Isaiah puts his hood up to go have a friendly conversation with the driver of the Monte Carlo. Immediately upon engaging with the driver of the Monte Carlo, Demarios, the driver of the Maserati, assaults the driver of the Monte Carlo. I think the Monte Carlo, the driver of the Monte Carlo was suspicious from the very beginning. That's based off the Maserati's driving behavior that something else was going to happen, and when two guys get out of a car and one of them puts their hood up and you believe that they may be looking for a fight, I don't think it's unreasonable to have a gun ready.
We don't know that that's what happened. I don't think that's what the driver of the Monte Carlo said, and I don't know that Demarios was ever interviewed.
Q In fact, no charges were brought upon either one of them, correct?

A Correct.
Q Would that be because the police hoped that this would just go away?
A I don't think so.
Q There would not be any motive on the police -- on the part of the City of Austin to not charge the Monte Carlo driver and Demarios?
A I don't think so.
Q At least one of them? Would you agree that the incident only involved Demarios, the Monte Carlo -- the Maserati driver and the Monte Carlo driver, Gildardo Vasquez? It didn't involve Hutchinson, correct?
A It did. It involved him as he got out of the car and was standing there.
Q And by putting his -- okay. So by putting his hoodie up you find him to be suspect and that's probable cause for him being up to no good, Isaiah?
A It's indicative of somebody who's potentially about to commit a crime.
Q Does it -- is it also indicative of your brother's keeper?
MR. BARTON: Object to the form.
Q (By Mr. Ogle) In terms of Isaiah simply going there to, to pair up with Demarios to simply ask

for the insurance information as opposed to any ill will?
A What is your, what is your question?
Q Do you think the truth involves Isaiah with, with the intentions of simply approaching the police officer to join with Demarios as opposed to being up to no good?
A I certainly think he got out of the car to join Demarios for something, and I have to believe that it was an assault or an altercation with how quickly Demarios assaulted the driver of the Monte Carlo.
Q Did you read or are you aware of Amanda Estrada, a witness that took a video of you shooting Hutchinson?
A I was actually just made aware of her this morning.
Q Excuse me?
A I was only made aware of her this morning.
Q Yeah. She has -- she's on record as saying that they just politely asked for the insurance information and then shooting occurred. So in terms --
MR. BARTON: Object to the form.
Q (By Mr. Ogle) In terms of Hutchinson's response to the Monte Carlo driver, is it understandable that he would, after being shot at would

pull a gun and, and respond in kind?
MR. BARTON: Object to the form, hypothetical.
A I think it's understandable if he didn't create the situation.
Q (By Mr. Ogle) Do you think he deserved in that situation to die?
A He was a lethal threat to me and everybody out there, and I did what was necessary to stop the threat.
Q He became a lethal threat only because you came up upon a gunfight yourself, correct?
A He became a threat, a lethal threat when he started shooting at me.
Q He shot at you after you confronted an already-going gunfight, correct?
A Yes. We ran towards the sound of gunfire.
Q Okay. And so Isaiah, not being responsible for the driver punching or the Monte Carlo driver pointing a gun, his reaction in terms of defending himself at that particular moment, do you -- can you agree that it was reasonable for what Isaiah did?
A No.
Q Where did -- where do you think he made a conscious, enough time to make a conscious decision

when he's already being shot at by -- as far as he knows, he's being ambushed. Have you -- you've been trained in terms of ambushes, correct?
A Mm-hm.
Q Okay. Where you've got someone shooting here and you've got three other people coming at you? Now in that one split second Isaiah sees these black -- four dark-colored cops with hoodies.
A Nobody was wearing a hoodie.
Q I think there was a couple.
A No. There were a couple people with --
Q Hats. Okay. Hats.
A -- beanies on.
Q Beanie, not a hoodie. What's -- never mind. And so can you step into the shoes of Isaiah in the heat of the moment and give him some slack in terms of misunderstanding who the good guys and who the bad guys were?
MR. BARTON: Object to the form.
A No.
Q (By Mr. Ogle) That's a pretty strong -- how certain are you in that no on a scale of 1 to a hundred?
A A hundred.
Q A hundred. He absolutely deserved to die

because he made a split-second misunderstanding when he's being shot at.
MR. BARTON: Object to form.
Q (By Mr. Ogle) In that -- while he's being shot at by him and you he's supposed to identify two badges on either shoulder of yours and the back, correct?
MR. BARTON: Object to the form.
Q (By Mr. Ogle) That's a pretty tight line for people, but I would like an answer.
A I believe he did identify us as he came around the front of the Maserati.
Q And he did that in a quarter of a second, correct?
A Yes.
Q And you swear to God you believe that he identified you as a police officer in that second?
MR. BARTON: Object to the form.
A I don't know how I could. He's not here to talk about it.
Q (By Mr. Ogle) Are you willing to swear -- who -- are you talking about God or Isaiah?
A Isaiah.
Q No. But you're making an opinion, and you're saying that he deserved to die because he became your

threat.

MR. BARTON: Object to the form. I think it's a mischaracterization of the testimony.

Q (By Mr. Ogle) And at that -- please, please correct me if that's not true in terms of your opinion.

A I'm saying that he created a situation in which my life and the lives of everybody out there was on the line.

Q In terms of percentages between Gildardo Vasquez, Demarios, Isaiah, and the police department, how much percentage do you put on Isaiah?

MR. BARTON: Object to the form. It's -- I don't understand the question and --

Q (By Mr. Ogle) Yeah. Okay. But you've got different people of different responsibility, people --

A Mm-hm.

Q -- who may or may not have, have violated their responsibilities that caused Isaiah's death.

A Mm-hm.

Q And so we've got people blaming everybody. We have Isaiah, we have Demarios, we have Gildardo Vasquez, who was hiding in his mama's bathroom last week but was served the next day. And then who else do we have? And then we have the Austin Police

Department. Now, in terms of who's at fault, who, who created the scene, and you've got -- I would think that you would not just point out second base, Isaiah, but you would start with first base with Gildardo and Demarios.

You've adopted Gildardo's statement. He's the victim in all of this. He's the white guy, but you're blaming a black guy, Isaiah, and a black guy Demarios, and two other black people were shot by stray bullets. So in regards to who's responsible, do you place any blame on the Monte Carlo driver?

A No.

Q None. How about Demarios?

MR. BARTON: And let me just object for the sake of making the record clear. I object to the form. Go ahead.

MR. OGLE: You're invited to a running objection.

Q So the -- so with all of those, those different factors, which factor do you blame among one or more that adds up to a hundred percent?

A I blame the fact that Isaiah came around the front of the car with a gun in his hand shooting and pointing at the police. My responsibility is to those innocent civilians that were standing out there to make

sure they could go home safely to their families and my responsibilities to my family to make sure I go home safely to them.

Q Okay. So --

A Isaiah tried to stop that from happening.

Q So it's all, 100 percent Isaiah?

A Isaiah is the one that decided to shoot at the police.

Q Isaiah was shoot -- was being shot at by a Monte Carlo driver.

A Okay.

Q You don't give him --

A He's the one --

Q -- any slack for that?

A -- that decided to shoot at the police.

Q He was shooting in what could have been an ambush. So if you're in the position of an ambush, are you going to be able to adequately identify who the sides are, who the good guys and bad guys are in the middle of an ambush?

MR. BARTON: Objection, speculation, hypothetical.

Q (By Mr. Ogle) Something you've been trained in.

A Yeah. I'm trained to positively identify my

target.

Q Okay. And in that situation where you've got two sides at the same time, have you ever had that computer graphic simulation?

A I've never been through any computer -- I don't know what you're asking.

Q Don't y'all have simulated televisions and things that --

A No.

Q Okay. From Isaiah's point of view he's being shot at. He turns around and he sees other people shooting at him, and it's your position that he clearly identified you?

MR. BARTON: Object to the form.

A My position is after he was shot at by the driver of the Monte Carlo he shot at us before we shot at him.

Q (By Mr. Ogle) How certain are you that he identified you as police officers?

A Within a reasonable degree.

Q Say, 50, 50 to 60 percent certainty, or more?

A I don't know. I can't put a percentage on it.

Q Juries have to every day.

A Well, we're not in a -- I'm not sitting in a

jury right now.
Q But what --
A In a split-second decision that could prevent me from going home to my wife and son that night, I made a split-second decision to stop the threat. He had a gun, he was shooting at me. It's just, I mean, it was as simple as that.
Q Did you have a jacket on that said "Police" on the back?
A No.
Q What did you have on the front of your shirt?
A My badge. It's a standard --
Q How small --
A -- long-sleeve --
Q -- was that?
A I don't know. It's a standard size of a badge.
Q Clearly identified -- identifiable at 20 feet?
A Yes.
Q Does it make any difference what eyesight Isaiah had, or is that his problem?
MR. BARTON: Object to the form.
A All I know is he made a decision to shoot at me.

Q (By Mr. Ogle) Regardless of who --
A A fully --
Q -- you were.
A -- uniformed officer.
Q If you were, if you were off duty as a civilian would you have done the same thing?
A No.
Q What documents have you reviewed in preparation for your testimony today and the videos?
A I went over the, really just the videos today.
Q Did you notice the police officers shooting at the Maserati as it was fleeing?
A I noticed one police officer shooting at the Maserati as it began to drive away.
Q And who was that?
A Detective Nelson, who's now Sergeant Nelson.
Q Was it -- let's see. An officer testified that, that the innocent bystanders that were shot were not shot by law enforcement, they could have been involved in some other shooting incident.
Do you have any knowledge in regard to whether or not there was ever a determination of two people that were shot, one in particular the forearm, Desmond Williams?

A I believe what investigators believed happened was Desmond was shot in the left forearm by Isaiah.
Q He was found on the corner southbound side of I-35, correct, where he, where he was shot?
A That's -- yes. He drove away from the original scene and went over there.
Q So you're thinking that Isaiah was, was shooting at -- out the, out the car after they fled?
A No.
Q Which direction did Isaiah shoot?
A It would have been south.
Q Right. Towards --
A Me.
Q -- the Valero or the Shell.
A Towards me. Yeah.
Q And you were still on the sidewalk. You, you were not in -- you didn't enter the roadway --
A No.
Q -- right, when the first barrage started? An officer testified about two rounds of shots. Do you -- in terms of the sequence of events. Have you heard it described in that way?
A I haven't. No.
Q Or do -- have you had a chance to hear how

many shots went off?
A I've heard. I couldn't tell you how many shots were fired though.
Q How many shots are attributed to the Monte Carlo driver?
A I think it was three.
Q How many shots are attributed that came from Hutchinson?
A Three.
Q Well, the Monte Carlo driver has three and Hutchinson has three?
A As far as I know.
Q The way the deposition went yesterday it was my understanding that there was one set of shots and then a whole bunch more immediately after, and those that were first shots are all attributed to Isaiah shooting. But that discounts in his testimony those that were shot by the Monte Carlo driver.
So I just -- if you have any personal recollection of the shots fired and where you believe they came from, please tell.
A So I believe there were three shots from the Monte Carlo.
Q Okay.
A And there were three shots from Isaiah. I

fired four, and I don't know how many the other officers fired.

Q Well, why didn't you shoot the Monte Carlo driver?

A The Monte Carlo driver wasn't shooting at me.

Q He was shooting at Isaiah, and so you would agree it's a very confusing situation where possibly innocent life, an innocent life was killed. Would you agree with that?

A No.

Q Let's talk about the shots fired by Officer Nelson as, as the car was fleeing, the vehicle was fleeing. Do you believe that he was still in imminent danger when he was continuing shooting?

A Sergeant Nelson --

Q Sergeant Nelson.

A -- is the one that made that decision, and I can't speak to why he did what he did.

Q Well, you can speak to what Isaiah should have done. Can you speak to what Sergeant Nelson should have done?

A No.

Q Well, why is, why is there a difference between your brother and Isaiah?

MR. BARTON: Object to the form.

A I don't understand what you're asking me. I, I had a problem with Isaiah shooting at me, that's why I addressed it. As far as why Detective Nelson at the time, now Sergeant Nelson, did what he did, he was here yesterday answering those questions. I don't know why he did what he did.

Q (By Mr. Ogle) Well, Detective or Sergeant Nelson?

A Now he's a sergeant. At the time he was a detective.

Q Okay. How should I address him?

A However you want.

Q I'll just say Nelson. Nelson says that he didn't endanger anybody while he was shooting at Isaiah. Not the car but the, the suspect.

A Mm-hm.

Q Do you agree that Nelson in no way endangered the public by firing while the car was fleeing?

A Yes.

Q Yes what? Why?

A Why do I believe he didn't endanger --

Q Yeah.

A -- anybody? Because Trey is extremely well trained and been doing this for a long time. I know that he would not fire wantonly into the public. He

fired into a vehicle where he believed Isaiah was still a threat, and as far as I know, none of his rounds exited the vehicle and hit anybody.

Q So you would do the same thing in that situation?

A I've never been in Trey's situation, so I don't know what I would have done.

Q But you -- according to training, what he did was, was standard operating procedure, correct?

A I believe what Trey did was reasonable.

Q And so you discount any danger to the public --

A I don't believe --

Q -- when it comes --

A Go ahead. Sorry.

Q Well, in terms of Trey's actions --

A Mm-hm.

Q -- that you can speak of, you can put yourself in the shoes of him, and it's your opinion that Trey and you, given those circumstances again, will shoot as they're fleeing even though it's South by Southwest and there's people everywhere.

MR. BARTON: Object to the form.

A If you're asking me if I would have done the same thing over again, I would have. Yes.

Q (By Mr. Ogle) I'm asking you in that situation -- okay. So you will shoot even though there's a lot -- there's a chance that your bullet will, will end up killing someone that's an innocent bystander.

MR. BARTON: Object to the form, mischaracterization of testimony.

A I responded to the situation in the way that would mitigate the risk to the public as much as possible. That's why I closed the distance to Isaiah rather than shooting him from the sidewalk.

Q (By Mr. Ogle) I think there's a lot of people are going to think that mitigating the danger to the public would be to not shoot at fleeing suspects when the imminent danger is no longer there or is so small that it shouldn't prioritize people being shot through crossfire. Do you agree that, that that can be a common opinion?

A No.

Q No? So you think that, that the public is not in danger at all when you're shooting at a fleeing suspect?

A I didn't shoot at a fleeing suspect.

Q Detective Nelson did, and you're saying that what he did was standard operating procedure?

A I'm saying what he did I believe to be reasonable.

Q Which is to shoot at a fleeing car. I'm -- not a fleeing car. At a fleeing suspect.

MR. BARTON: Object to the form, argumentative, asked and answered.

A Yes. I believe what Detective Nelson did was reasonable.

Q (By Mr. Ogle) So the public and any stray bullets would be considered acceptable collateral damage?

A No.

Q Well, is it acceptable or not?

A Of course it's unacceptable with --

Q Well --

A You're responsible for every round that you fire.

Q But you're saying that, that there is an overriding reason to shoot a fleeing suspect despite the fact that there apparently is a danger to the public.

MR. BARTON: Object to the form.

A I guess I don't understand what you want me to, what you want me to -- how you want me to answer this question.

Q (By Mr. Ogle) I'm wondering why --

A Detective Nelson believed there was a continued threat. He engaged a threat as he saw reasonable. It was for a very short amount of time. By the time he got to the 35 service road, which was only feet away, he had stopped engaging. No civilians were injured by Detective Nelson's rounds. The only people -- the only innocent civilians that were injured were shot either by Isaiah or most likely the driver of the Monte Carlo.

Q And you're saying the Monte Carlo driver, since he was determined to be the victim --

A Mm-hm.

Q -- would not be charged with anything. Is, is --

A He wasn't charged with anything. I don't make that decision.

Q How long after a car or a suspect flees do you still consider yourself to be in imminent danger to the point that you can stop them by shooting them?

A I don't know.

Q Well, what if they're running away and they're a hundred feet away, would that still be an imminent danger based on the training you received through Austin Police Department?

MR. BARTON: Object to the form, hypothetical.

A We're, now we're just going through speculative scenarios, and it would depend on the actions of your suspect.

Q (By Mr. Ogle) My suspect was in the back seat of the car, Demarios was driving away, and the question is, are you still in imminent danger when it starts fleeing?

A Well, I didn't engage anybody when it started to flee though. It was Detective Nelson. You spoke to him yesterday. I can't answer for him, and I can't speculate on why he did what he did. You talked to him yesterday. I can't answer these questions about what he did any more than I already have.

Q Have you ever been disciplined?

A Yes.

Q How many times?

A Three times.

Q Could you go into detail on each one of them?

A First time I got an oral reprimand when I was brand new because I hit a curb and got a couple flat tires. The second time was --

Q What would you get a reprimand for that for? It's got to be something more. Are you --

A That was the extent --

Q -- trying to minimize?

A -- of it. You're welcome to look it up.

Q Flat tires?

A Yes.

Q So that was due to your driving over something, maybe a construction area when you shouldn't have or --

A I hit a curb.

Q And it flattened the tires in that curb?

A Yes.

Q So it was pretty -- okay. All right. Why -- what, what distracted you?

A Looking at the map to go see where I was going.

Q Hello. What's number two?

A I got a written reprimand for not giving a warning to somebody that I tazed.

Q Was it a homeless person?

A No.

Q All right. What's the third one?

A It was a written reprimand for taking pictures of a Outlaw motorcycle member's tattoos without his consent.

Q Hm. What gang?

A At the time he was in a support club with the Bandidos. Now he's a full-patch Bandido.

Q I represented a victim of the Twin Peaks shootout, and I was offered to be an honorary Bandido, but I turned it down. I was going to put that old letter -- old English letters for the back of a jacket and go to court, but I decided it would probably be better to just not join the Bandidos.

Did that end in a conviction of the office- Bandido?

A There were no charges filed.

Q Where are your -- what were your, what were your duties at the police department at the time of this incident?

A I was, I believe I was in the Gang Unit at the time.

Q Have you discussed the gunfire incident with any of the other officers that were present at the scene?

A When?

Q Have you discussed with the other officers at any time who were present at the scene?

A After we give our SIU statements we are able to do a debrief with the psychologist and all that in a group setting, so yes.

Q This case went to the grand jury, correct?

A Correct.

Q Do all police shootings go to the grand jury?

A They do now.

Q Did they at the time?

A Well, this one didn't go to the grand jury until last summer.

Q Without saying what was said in the grand jury, which I'm prohibited from asking you, were -- is there -- has there been any changes in policies or procedures as a result of this incident?

A Not to my knowledge.

Q Do you know if anyone was disciplined regarding this incident?

A No.

Q Do you believe anybody should have been disciplined in this incident?

A No.

Q Do you believe that there's anyone that should have been arrested that didn't --

A Yes.

Q -- in this incident? Who should have been arrested?

A The people in the Maserati.

Q Demarios?

A Demarios and the other people that abandoned Isaiah's body.

Q Who else?

A Whoever else was in that car.

Q Who else?

A The --

Q The Monte Carlo driver, yes or no?

A No.

Q Did you see how quickly he was shooting out the window after Demarios approached the window?

A Pretty quickly after he was assaulted.

Q Did it appear as though he probably already had the gun pointed for him to shoot? He didn't, like, just -- you know, didn't have time to, to look around and find it, based on the video. Do you believe it was pointed at Demarios?

A I don't know.

Q Is there a likelihood, more likely than not, that Demarios was defending himself from the Monte Carlo driver who was pointing a gun at him?

A I think it's unlikely.

Q Have you -- are you aware of Amanda Estrada's testimony that she and Isaiah and, and maybe someone else in the Maserati were flirting with each other and that Amanda believes that the Monte Carlo driver was

jealous? Have you heard that version of Amanda's testimony?

A No.

Q How certain are you that Isaiah shot at all?

A A hundred percent.

Q Did you see him shooting yourself?

A That night?

Q Yeah.

A No.

Q Okay. So you heard shots fired.

A Yes.

Q And why is it you attributed them to Isaiah and not the Monte Carlo driver?

A Because Isaiah's the one I saw with a gun.

Q Okay. But you -- so whoever's got the gun is, is responsible for all the shots fired beforehand?

A All I can speak to is what I knew at the time.

Q So in your -- you're, you all are the gatekeepers. Okay? Sometimes you have a real wide gate as to what you're going to do, and other times you've got a very narrow gate. Some laws are regulated and some aren't. Would you agree with that?

MR. BARTON: Object to the form.

A I don't know.

Q (By Mr. Ogle) So the factors involved in targeting Isaiah and attributing the gunfire that you heard to him is because you saw him with a gun. Does that adequately summarize your response?

A Yes.

Q Aren't you tagging the wrong person by throwing responsibility on Isaiah rather than attributing the gunfire to the Monte Carlo driver?

A No. I feel like you've asked me this a couple times, and no. He was shooting at me. He posed a serious threat of serious bodily injury or death to me and everybody out there, so I engaged that threat and stopped that threat.

Q Did it appear as though they were just defensive shots, like he wasn't really pointing at anybody?

A I don't know what, I don't know what a defensive shot is.

Q Well, kind of pointing it down towards the street?

A No.

Q Giving a warning shot, is that a possibility?

A No. Which is still illegal.

Q But when you're faced with someone that's already shooting at you and you're desperately trying

to get to safety does it seem strange to you that he would find safety on your side when all you did was run up to him and shoot him pointblank?

A After he shot at me.

Q How do you know -- you didn't see him shoot at you though.

A Right.

Q So how do you know he was shooting at you and not the Monte Carlo driver?

A All I know is (crosstalk) --

Q Oh, my gosh.

A Do you want me to answer the question or not?

Q No. I'm sorry. Yes, I do, but I'm frustrated.

All right. So you didn't see him shooting at you.

A No.

Q But you're convinced that he was shooting at you.

A It's pretty clear on the video. Yeah.

Q No. How many shots do you -- did you attribute to Isaiah?

A I think they said it was three.

Q And of those three were any of them pointed at the Monte Carlo driver?

A No.

Q They were all attributed, all three were attributed to Isaiah, and you said there was an additional three that were attributed to Gildardo Vasquez, the Monte Carlo driver?

A Yes.

Q Or none?

A I said there were three.

Q So a total of six or a total of three?

A Between the two of them six.

Q All right. So of the three that are attributed to Isaiah, since you didn't know, didn't see him point at you, how do you -- can you conclude he was pointing the gun at you?

A Because you could see it on the video.

Q You don't see yourself. You only see him.

A You see where we're coming from.

Q But without you in the picture you're -- that's a strong assumption, correct?

A I don't think so.

Q And if you didn't see him, you have no idea whether he saw you or your badges, do you?

A I've already told you I don't know.

Q You don't know whether he saw you at all. You didn't tell me -- you saw -- you told me before

that you were clearly identified.

A I said --

Q But --

A -- I believe he identified us and we were --

Q Wait, wait, wait, wait, wait. How can you believe that if --

A Because it's showing us --

Q What's your basis of believing if you didn't even see him?

MR. BARTON: Object to the form. This has gotten argumentative. Why don't we take a little five-minute break.

VIDEOGRAPHER: Going off the record the time is 2:44 p.m.

(At 2:44 p.m. the proceedings recessed, continuing at 2:56 p.m.)

VIDEOGRAPHER: We are back on the record. The time is 2:56 p.m.

Q (By Mr. Ogle) Could I get you to read the underlined portion (Exhibit 3), which starts with the "Police," with regard to their statement of what happened.

A Yeah. This is from KXAN, I guess, and the title is "Austin officer-involved shooting one of two shootings overnight." The underlined part says,

"Police say two men from the Maserati walked over to the Monte Carlo and started punching the driver. The driver of the Monte Carlo started firing a weapon, hitting at least one of the men who then began firing back at the Monte Carlo."

Q And that's consistent with your position, correct?

A Not entirely.

Q What would you add or delete?

A I don't believe the driver of the Monte Carlo hit either, either of the people from the Maserati, and the firing, nobody was firing back at the Monte Carlo.

Q What is your personal knowledge of Isaiah's intentions to shoot you --

A Only --

Q -- or shoot at you?

A Only what I saw on the video.

Q And that leads to your conclusion that he identified you as a police officer or that he didn't see you?

A No. I believe he identified us as police officers.

Q You had testified before that he had -- that you had not -- you did not see Isaiah, correct?

A No. I saw Isaiah.

Q You didn't see Isaiah pointing a gun at you or shooting at you, correct?

A Correct.

Q And so if you didn't see him shooting at you, what leads you to believe he saw you when he was shooting?

A Why else would he -- why would he shoot at the police?

Q Well, are the other alternatives as to why he was shooting at all, given the, the previous sequence of events?

A I don't know, but I don't believe so.

Q You just demonize him because why?

MR. BARTON: Object to the form.

A I'm not demonizing anybody.

Q (By Mr. Ogle) Well --

A He was shooting at me and the public, so I responded by stopping the threat.

Q And it is foreseeable that the Monte Carlo driver started the sequence of events shooting at Isaiah and that Isaiah was simply fleeing from him and misunderstood who you all were. Is that reasonable to believe?

A No. It's reasonable to believe that Demarios

and Isaiah started the sequence of events, causing the Monte Carlo driver to shoot at them and then Isaiah seeing us and shooting at us.

Q What, what was it in your mind that Demarios and Isaiah did to get shot at?

A Demarios assaulted the driver.

Q So you think that, that Demarios was not responding to a gun being pointed at him as he says?

A I don't, I don't believe that he was, but I don't know.

Q If a police officer was in the shoes of Demarios, you would have no problem with the police officer shooting Gildardo in the head if he was with a -- if, if Gildardo had pointed a gun at a police officer, correct?

MR. BARTON: Object to the form, speculation.

A Correct.

Q (By Mr. Ogle) So there's a different standard for police and the public, correct?

A There's a higher standard for police.

Q Higher standard. There's a lower standard of what you can do to shoot somebody, though, correct?

A No.

Q All right. And so you found it reasonable to

assume that if a police officer had a gun pointed at him by the Monte Carlo driver that the police officer has a right to do whatever means possible to stop the threat, correct?

A Yes.

Q Okay. But put Isaiah in that same situation and why doesn't Isaiah -- I'm sorry, not Isaiah. Put Demarios in that same position and why don't you give Demarios the same amount of rights to defend himself?

A I don't believe that Demarios was in that situation.

Q Okay. Why is -- right there what is it that distinguishes Demarios from a police officer posed with that same situation of a gun pointed at him? Why do you blame the guy that's being -- that has a gun pointed at him?

MR. BARTON: Object to the form.

Q (By Mr. Ogle) That's against the law to point a gun at someone, isn't it?

A We don't have any reason to believe that he pointed a gun at him.

Q You don't have any reason to believe. Do you, do you discredit Demarios' testimony?

MR. BARTON: Object to the form.

I'm unaware of any testimony by Demarios.

A Yeah. I haven't seen any, anything by Demarios. As far as I know, he was never even interviewed.

Q (By Mr. Ogle) Why wouldn't he be?

A Well, I'm very sure that our investigators tried to get ahold of him and get a statement. They got ahold of everybody else.

Q Could it be that the police just didn't arrest anybody in hoping this whole thing just went away for public-image purposes?

MR. BARTON: Object to the form.

A I don't believe so.

Q (By Mr. Ogle) What could have Vasquez, the Monte Carlo driver, what could he have done that would lead you to give Demarios the right to punch him? If he did point a gun at Demarios, would you give Demarios the right to defend himself?

A We're speculating on pretend scenarios.

Q No. These are -- well, you're saying it's a pretend scenario that Gildardo pointed a gun.

A I don't have any reason to believe that anybody said that. Demarios (crosstalk) --

Q Demarios says that.

A To who?

Q To me.

A Why didn't he tell it to the police?

Q I don't know. You -- are you all saying that he's missing in action?

MR. BARTON: Object to the form.

A I don't know where he is. I have no idea where he is. I know that --

Q (By Mr. Ogle) Do you have any interest in contacting him?

A What's that?

Q Do you, do you have any interest, do you all, does the police department have any interest in contacting Demarios?

A They did at the time, but now that this case has gone through the grand jury I doubt that they would.

Q Well, it would -- could it -- it would or at least could change your opinion if Demarios said that he was defending himself because a gun was pointed at him?

MR. BARTON: Object to the form, speculation, hypothetical.

A No. I think if you watch the series of events from a block back where they created that collision, I think they, they started the whole thing looking for a fight, and that's what I believe.

Q (By Mr. Ogle) Amanda Estrada's testimony that what she overheard was them simply politely asking for the insurance, do you believe her or discount her testimony?

A I don't know who she is.

Q She's someone that was interviewed.

A Okay. And I don't know where she was at the time. So it makes --

Q Where she was, she was the one that took the video that we're about to look at.

A So she was closer --

Q (Crosstalk)

A -- to the door?

Q She was right there at the door. She took your -- a picture of you running up to the door and, and shooting Isaiah.

A I don't know anything about Amanda Estrada.

Q Have you -- well, she has already stated that she overheard Demarios and Isaiah, one of the two, politely approach the Monte Carlo driver and ask for his insurance information, and then all she heard was gunshots.

So given that piece of evidence that is -- I'm assuming, I know that her name and she was interviewed -- is listed in the documents, but if you

haven't heard or given any weight to Amanda Estrada's testimony, does that change your opinion as to Demarios and Isaiah up to no good?

MR. BARTON: Object to the form.

A No.

Q (By Mr. Ogle) So do you believe her, or do you think that maybe they did start out by politely asking for insurance information?

A No. I don't believe her.

Q Why not?

A I don't think she was in a position to be able to hear that.

Q Is it because that's not the police department's side of things?

A No.

Q And you're willing to "testilie" in order to bolster what the department's position is?

MR. BARTON: Object to the form, argumentative.

A I don't know what the department's side is. I can only speak --

Q (By Mr. Ogle) The department's --

A -- to what I did.

Q -- side is that Demarios was the, was the assaulter and the Monte Carlo driver was the victim.

A That's what it looks like on the video.
Q And so when you're -- when you don't even know about an independent witness that, yes, did -- was approached, did sit and was -- actually had a lot of psychological problems and she lived in Abilene, but she was the one that videoed what, what went on. And she watched it, she said, between 25 and 50 times a day for a long time after that, and it really affected her. And so for her -- and, and I've spoken to her a half dozen times, but I'll let her know that you don't believe a thing she has to say.
MR. BARTON: Object to the form.
Q (By Mr. Ogle) Would you like to know what her response would be?
A I think it's speculative, but you can say.
Q Well, let me make it clear. If she says what I've said that she said, that being that she overheard Demarios and Isaiah go up and politely ask for the insurance information, you would not believe her; is that correct?
MR. BARTON: Object to the form.
This is all irrelevant, Scott, to the issues of this lawsuit.
A I don't know what she heard or what she thinks she heard, but if you look at the video, I don't

think that's what happened.
Q (By Mr. Ogle) Is it -- does the video -- is the video consistent with, even though you can't see it, a man pointing a gun at them and them defending themselves?
A I don't know. Can't see a gun. They walked up to him pretty quick --
Q And there was gun --
A -- and assaulted him --
Q And there was --
A -- and then there was gunfire.
Q There was gunfire within two seconds of them approaching the car, correct?
A I don't know how long it was --
Q Would --
A -- but I know Isaiah got there first, looked into the window first, and Isaiah had a gun in his waistband. So if Isaiah saw a gun, why didn't he produce his own gun?
Q How do you know Isaiah had a gun in his waistband?
A Because he pulled it out and pointed it at me.
Q Pulled it out and pointed it at you. How many -- is that the -- how many different times were

you in a confrontation with Isaiah?
A Just the once.
Q So he pointed a gun at you after he jumped into the back seat of the Maserati?
A You can very clearly see on the video when he pointed a gun at me.
Q Well, after he pointed a gun at you he ran over to your side of his vehicle, correct, and jumped into the back seat?
A He pointed a gun at me as he came around the front of his Maserati.
Q Okay. And under those circumstances with him being shot at, now that you see that he's not -- well, now that you see that he was being shot at by the Monte Carlo driver, is it reasonable for him to make a split-second misjudgement as to who you are?
A I've --
MR. BARTON: Object to the form.
A I've answered this question a lot of times. I don't know, I don't know what he believed he saw. All I can say is what I believe he saw, and I believe he recognized us as the police and shot at us.
Q (By Mr. Ogle) Do you think that he was experiencing what they call tunnel vision?
A I don't know what he was experiencing.

Q Have you ever been trained on what tunnel vision is?
A Yes.
Q What do you know about tunnel vision?
A Where you hard focus on your threat or whatever is inducing threat- inducing stress --
Q Okay.
A -- and you lose your peripheral vision.
Q Now, why couldn't that apply to Isaiah?
A Because I don't know anything about Isaiah. Maybe it did.
Q That's the -- doesn't he fit the profile of someone that would have tunnel vision?
A I don't know what the profile is for somebody who has tunnel vision.
Q Well, then you didn't learn much about what -- how are you supposed to avoid tunnel vision?
A Through training.
Q And what, what -- through training. And what does the training talk to you about doing? What, what should have Isaiah done to avoid the tunnel vision of being shot at by a Monte Carlo driver, what appears to be him nursing his arm -- you're claiming no, but whether or not he was shot in the arm by the Monte Carlo driver or not, he was being shot at and you're

discounting all of that circumstance for his actions, correct?

MR. BARTON: Object to the form.

A He decided to shoot at the police.

Q (By Mr. Ogle) Okay. Let's back up. He was in a very compromised position when you ran up to a gunfight that was already going on. Would you give him that much credit?

A He was -- yes. He was in a compromised position that he created.

Q That he created.

A Yes.

Q What did he do to create the Monte Carlo driver to shoot at both of them?

A He and Demarios walked up --

Q (Indistinct)

A -- and confronted him.

Q Okay. So you connect -- whatever Demarios did you include Isaiah for that same act.

A Yes.

Q And you're blaming Demarios, and I just can't get you to even consider Demarios reacting to having a gun pointed at him, and yet your position remains that Isaiah is the bad guy, correct?

MR. BARTON: Object to the form

(crosstalk) --

Q (By Mr. Ogle) Isaiah, Isaiah deserved what he got.

A Isaiah was the one that was shooting at me.

Q What would you have done in Isaiah's position after you were being shot at by the Monte Carlo driver? What would you have done?

A Not --

Q You're --

A -- shot at the police.

Q -- running around the corner, you see four more people all, all in dark clothes from 20 feet away 3 o'clock in the morning. Was it bright out there?

A It's pretty bright for 3 o'clock in the morning.

Q The officer yesterday said he had a flashlight on his camera -- I'm -- a flashlight on his gun. I believe -- yeah. And his testimony was that what you see as he's, as he's pointing at the Maserati as it's fleeing the scene were not shots but were simply flashlights. Do you agree with his testimony?

A Yes.

Q So before you said that he was the only one that was shooting at the fleeing vehicle, correct?

A Yes.

Q Well, you can't agree to both.

A Agree to both what?

Q Was he shooting or not at the fleeing vehicle?

A He was --

Q I'm sorry, sorry. Not the fleeing -- was he shooting at the suspect in the ve- in the, in the vehicle?

A Detective Nelson?

Q Yeah.

A Yes.

Q He says he wasn't that, that those were -- that was just his flashlight.

A I don't think that's what he said, but I wasn't here.

Q Yeah. I may, I may be wrong, but I recall him saying that at the same time he took the position that you can shoot at a fleeing suspect, just like you have stated today.

In regards to how far you can continue shooting at a fleeing suspect, you're not willing to give a distance, correct?

A Correct.

Q Are you authorized through the imminent danger standard of continuing to shoot at the Maserati

up until it got onto I-35 and, and beyond?

A I don't know. That's not what happened.

Q No one ran after the Monte Carlo. Why not?

A Because I don't think any of us knew about the Monte Carlo.

Q Would you agree that if you had not even been part of the scene that there wouldn't have been a fatality?

A No. I have no idea what would have happened.

Q Other than those incidents in which you've already discussed, are there any other on-the-job discharges of your service firearm while on duty?

A Yes.

Q And were any of those controversial?

A No. I was attacked by two dogs.

Q Did you shoot the dogs?

A Yes.

Q So could you summarize for me what the Austin Police Department's policy regarding the discharge of an officer's service firearm at a fleeing suspect?

A If the suspect still poses a lethal threat, a threat of serious bodily injury or death.

Q Imminent danger, in other words, correct?

A Yes.

Q And is that requirement satisfied if the

suspect still has a weapon?

A Yes. Could be.

Q Is that the only factor that's required?

A If he still has a weapon?

Q If he still has a weapon, can you shoot him in the back as he's fleeing after he pointed a gun at you or shot at you?

A Potentially.

Q Potentially. As far as you know, that would be sufficient for you to shoot at a fleeing suspect if he pointed a gun at you, correct?

A Yes.

Q So briefly describe from the time that you approached Isaiah to the end of your involvement what happened, in your own words. We understand that you came from the Gulf station and, after hearing gunfire, and what did you do from there?

A I ran towards the sound of gunfire. I believe there had been a shooting on the other side of the Maserati. As I closed the distance I saw who turned out to be Isaiah coming around the front of the Maserati. He had a gun in his hand, and I engaged him, fired four rounds. Once he fell into the back seat of the car I stopped engaging.

I knew there were other officers around

me or potentially behind me, so I looked back to see where they were at and I started to fall back until Officer Wright called to me to fall back, and then I fell back to his position.

Q Okay. So before you engaged there were two things that you saw, if I want -- I want to narrow down what priorities and what elements of your gunshots entailed. Number one is that you heard gunshots, correct?

A Correct.

Q And then you saw Isaiah with a gun.

A Yes.

Q Those two events, hearing gunshots and seeing Isaiah with a gun, was that sufficient to engage?

A Yes.

Q You guys are tough. There are many circumstances in which you very well will be shooting an innocent person, correct?

MR. BARTON: Object to the form.

A No.

Q (By Mr. Ogle) Come on. If all you have to do is hear gunshots and see someone with a gun, there's a lot of people around here with open carry. And so you're authorized through your training with the Austin Police Department that if you hear gunshots and you see

someone with a gun, you're going to shoot to stop what you believe to be an imminent danger to yourself, correct?

A In this particular scenario, yes.

Q That goes for any scenario. If those two elements are present, you're going to shoot whoever has a gun.

A No --

MR. BARTON: Object to the form.

A No two scenarios are the same.

Q (By Mr. Ogle) Is there any more element you would require under the same or similar circumstance where someone's running away but he's got a gun after you hear gunshots? You're going to do the same thing, you're going to shoot the man with the gun, correct?

A I don't know. It's a speculative scenario.

Q Well, this -- on this night you decided the black guy with the gun was the bad guy, right?

MR. BARTON: Object to the form, argumentative.

A No.

Q (By Mr. Ogle) Did his color have anything to do with this?

A No.

Q What color was Vasquez?

A I don't know.

Q He sounds Hispanic, but he sounds...

A I've met black guys named Vasquez.

Q Was he interviewed?

A I believe so. I think he was fully cooperative.

Q I'm sure he was. And what's his side of the story from your understanding?

A That he was in a collision, Demarios assaulted him, and he fired a gun to protect himself.

Q In terms of the sequence of events, you all took his side, adopted his version that he was assaulted first before he pulled his gun out, correct?

A I haven't adopted anything. That's what the video shows.

Q The video didn't show -- if, if Demar- if Gildardo was pointing a gun, the video wouldn't show that, would it?

A No.

Q And so because it doesn't show it, you're not going to assume anything, correct?

A Not...

Q You're not going to, you're not going to give the benefit of the doubt to Demarios that Gildardo started out by pointing a gun at him, because you

didn't see that in the video. Based on the evidence, which is nothing for Gildardo, you're going to absolve Gildardo of anything he may have done and blame Demarios?

MR. BARTON: Object to the form.

Q (By Mr. Ogle) Or would it depend on what Demarios has to say?

A Demarios didn't have to say anything.

Q Demarios, anything Demarios says you're not going to believe anyway, because you've already pigeonholed him and gaslighted him to the point where you're not -- you've already decided that he's not believable, from my understanding.

MR. BARTON: Object to the form, argumentative.

Q (By Mr. Ogle) Is that too descriptive of your opinion or, or not, in terms of Demarios?

A My opinion is based off the video that we saw, Gildardo, his willingness to cooperate, and Demarios' nonwillingness to cooperate.

Q If you were in Demarios' position, would you cooperate?

A Of course.

Q And so what Demarios says now about something as significant as to whether it was an assault or a

defense, you're not going to believe anything Demarios says now because of his failure to cooperate with police.

MR. BARTON: Object to the form.

A As far as I know, Demarios hasn't said anything.

Q (By Mr. Ogle) If Demarios says that a gun was pointed at him, would you consider that as a factor in whether you believe him or not?

A I don't know, because to my knowledge Demarios hasn't said anything.

Q If you were to grade yourself and the others, including Nelson, on an A-to-F level, what would you give yourself?

A I would say that we passed, because to fail would mean we died or somebody else, somebody innocent died, somebody innocent got hurt. None of us got hurt. We passed and stopped the threat and got to go home to our wives and kids.

Q What about Christine Hutchinson, her son Isaiah who was fleeing from the Monte Carlo driver, when it was at best Demarios that was assaulting him?

A Christine Hutchinson's son shot at the police, tried to take me away from my family.

Q Who started shooting at who first? Were you

all shooting at Isaiah before he shot at you?

A No.

Q How do you know?

A It's on video.

Q How did the sequence of events of police -- of, of all shots begin? Let's start with Gildardo.

A The driver of the Monte Carlo gets assaulted. He fires his weapon three times to protect himself. Isaiah runs around the front of the Maserati and retrieves a gun, sees us coming, starts shooting at us.

Q How many times?

A Three times.

Q Okay.

A I engage him until the threat stopped.

Q Now, after he shot three times he came to your side of the car, correct?

A That's the direction he was already going. That's --

Q Yeah.

A -- the direction he came from.

Q Now --

A So it makes sense that he'd get back into the seat that he got out of.

Q That was pointblank next to you.

A That's the direction he was already going.

Q If he was trying to get away from you -- do you think he was trying to get away from you, or was he charging you by going to your side of the vehicle?

A I think he was shooting at us to try to stop us from getting to him to buy himself time to get into the car and take off.

Q And do you think he was shooting you in defense of being shot at?

A No.

Q Could that be -- since he was being shot at, does he have the right to shoot back at the driver of the Monte Carlo?

A Not when he created the situation.

Q He didn't -- Isaiah created the situation by simply being next to Demarios, right?

A Yes.

Q That's ridiculous. That's a pretty --

MR. BARTON: Object to the form, argumentative.

Q (By Mr. Ogle) If you're an accessory to crime, if you're even the wheelman, you're responsible for the death of somebody, right?

A Yes.

Q Isaiah steps in the shoes of Demarios in this situation, that makes him the prime suspect to be shot.

A Isaiah got shot because he was shooting at the police.
Q Isaiah was, was shooting -- Isaiah had the right to shoot back at least at the Monte Carlo driver, given --
A He didn't shoot at the Monte Carlo. He shot at us.
Q He had the -- do you give him the -- do you give him any -- do you give Isaiah any right to self-defense in the situation that he's jump -- that he's running away from?
A No. Because that's not what happened. He wasn't shooting --
Q He put his hoodie on.
A -- at the Monte Carlo, he was shooting at us.
Q He put -- all Isaiah did was put his hoodie on and stand behind Demarios, correct?
A Isaiah shot at the police, so he got shot.
Q You're jumping from first base to third base.
A We've been over this, we've been around the bases about a hundred times now.
Q And I just can't you -- the facts don't really make any difference to you in terms of other potential possibilities, simply because you're unwilling to even consider any -- some people's

statements, correct?
MR. BARTON: Object to the form. Scott, all this has been asked and answered. It's, it's just argumentative at this point. He's a fact witness. He's here to answer his observations and questions about the facts, but all you're asking him about now are opinions, and then you're getting upset because he doesn't agree with your opinion that you want him to give --
MR. OGLE: That's true.
MR. BARTON: -- and I think it's a completely improper line of questioning.
MR. OGLE: Okay. I'll change the subject.
Q Let's talk about steroids. Do you lift weights?
A Yes.
Q In terms of contraband steroids that are purchased by local steroid drug dealers, are you aware of any police officers in Austin Police Department that buy steroids that are not prescribed?
A No.
Q Have you ever used steroids?
A No.
Q You swear to God --

A Yes.
Q -- you've never used steroids? Are you aware of a steroid use among some Austin police officers?
A No.
Q Are you aware of Ken Casaday being involved in steroid use?
A No.
Q Do you think any police officers take steroids?
A I don't know.
Q Isn't it a common use among the frontline police officers in order to keep the upper hand and because of the fact that they don't have time to lift weights that steroid use is actually accepted or at least not regulated at Austin Police Department?
A No. And -- no.
Q Do you -- and do you understand why steroids are I think an important issue to talk about?
A No.
Q Are you aware of the aggression and roid rage that often accompanies people who use steroids?
A Yes.
Q Do you think that it, it's a good mix to have a police officer who has a gun who's going to be making split decisions, is it important to figure out whether

or not they take steroids?
A Yes.
Q And yet those that do take steroids, no one's going to report them, correct?
A No.
Q And why is it they won't? Is it because it's just kind of generally acceptable behavior that --
A No. You --
Q -- it is not regulated?
A -- manipulated my answer. Somebody would report them.
Q Have you ever heard of any reports of steroid use among officers?
A No.
Q I have a client who has a friend that was a steroid user -- a steroid dealer that was arrested delivering steroids to police officers.
A It's called a controlled buy.
Q Oh. By a confidential informant?
A Or an undercover officer.
Q Do a lot of them drive Dodge vehicles, like Dodge Ram trucks and...
A Do a lot of who?
Q The undercover officers in the maybe the -- in one division or the other?

A I have no idea.
Q What's your understanding of how human rights advocates are thought of among law enforcement?
MR. BARTON: Object to the form.
Q (By Mr. Ogle) Protestors, human rights advocates, are we -- are, are those people at the -- have the -- do those people -- are those people given the lowest amount of respect?
A No.
Q If you had a do-over in this incident which led to Isaiah's death, now that you've seen the HALO video of what was happening, do you think Isaiah would have done anything differently?
MR. BARTON: Object to the form.
A I would have -- I would think that he would have done everything differently.
Q (By Mr. Ogle) Do you -- is there a good chance that he wasn't aware of everything going on?
MR. BARTON: Object to the form.
A I have no idea.
Q (By Mr. Ogle) He was -- would you agree that he was ambushed?
A No.
Q Why was he not ambushed?
A Why was he ambushed?

Q Well, from his -- now, he doesn't know -- I mean, one of -- even though you all are the good guys, and I'm going to take Demarios' position that the gun was pointed at him, which caused him to react, we're going to change the scenario that you've painted and I'm going to place Demarios as being the person that was fending off Gildardo. And in that situation, you would agree in that situation that Isaiah was a victim.
MR. BARTON: Object to the form.
Q (By Mr. Ogle) If the Monte Carlo driver had pointed the gun at Demarios, then that would have been -- and, and according to Amanda, she believed because she was flirting with Isaiah and, and one of the other occupants of the Maserati before this happened. They were driving down the street, she was on one side, which was why she was able to video the scene right there that included you with Isaiah jumping into the car. But she described the events up, up until then as the two cars flirting with each other, very heavy traffic, and that the Monte Carlo driver was jealous. Apparently from Demarios' point of view the Monte Carlo driver was giving these very condescending, snotty answers to their asking for his insurance information.

So given that circumstance, Isaiah -- the guy starts shooting, whether that's because of Demarios or the driver, and Isaiah goes running. When he's fleeing the Monte Carlo driver he sees you all coming from the side, split second. So why -- what I say as being ambushed is that he's got already a situation going on, and then you all coming to stop the fight entered the fight. Is that a fair alternative opinion as to the sequence of events?
MR. BARTON: Object to the form, and it assumes many facts that are not in evidence. It's kind of a work of fiction there, Scott, so I object to this whole line of questioning.
Q (By Mr. Ogle) Do the best you can to answer.
A In your made-up scenario if he's still shooting at me, then I handle it the same way.
Q And more, more simplistically, because you heard gunshots fired -- gunshots and you saw him with a gun, that justified you to shoot him.
A In this instance I believe it did. That's why I fired.
Q Do you agree that shooting at a fleeing suspect puts the public in danger?
A It can.
Q And do you think that that public danger ever

outweighs shooting at a fleeing suspect?
A You're asking me something very broad instead of about this particular scenario.
Q Well, I'm --
A I've already answered the fact that I don't believe that Detective Nelson put anybody in danger besides Isaiah who was his target. Detective Nelson put every one of his rounds where he intended to put it inside that car, and none of them came out and hit anybody else. He's extremely well-trained. He's part-time SWAT team, part of an FBI taskforce in the same cadre I'm a part of. Everything he did was reasonable, and he did everything he intended to do.
Q Christine Hutchinson, Isaiah's mother, has looked at the Amanda Estrada video hundreds of times, and she swears, and it does appear as though, Hutchinson had his hands up after he jumped into the back of the seat. Now, would it have mattered to you whether he had his hands up or not at that point?
A Yes, but he didn't.
Q How do you know?
A Because I was standing three feet away from him.
Q Does he have at least one hand up?
A I don't think you can see that in the video,

and it's just three years ago, so I don't --
Q Well, the video --
A -- remember specifically.
Q -- hasn't changed in three years.
A No. But my --
Q And the --
A -- memory has.
Q -- video was taken right there at the scene. And so are you saying that he did not have even one hand up?
A I don't know what he had up.
Q You don't care, do you?
MR. BARTON: Object to the form.
A This is three --
Q (By Mr. Ogle) But is it --
A -- years ago.
Q -- is it material whether someone has their hands up after they've already posed an imminent danger to you?
A Sure.
Q Okay. And so would you still have the right to engage and will you do it again if someone who you say points a gun at you, even though you don't see him pointing a gun at you, has their hands up?
A Once again, you're presenting a made-up

story --
Q A made-up story.
A -- that I'm not -- I don't -- I can't answer. I can only --
Q Have you ever heard --
A -- answer what happened that night.
Q You can't answer. You can see the video though.
A Yeah. And you can't see him put his hands up.
Q He didn't point the gun at you when he was in the car, did he?
A I don't remember.
Q He -- is it fair to say that Isaiah retreated to a point of safety by going back into the vehicle that he had been in? He was retreating?
A After he had shot at me, yes.
Q He was retreating after he was being shot at by the Monte Carlo driver too, though, in split seconds. This all happened within, you know, what, 10 seconds. He's being shot at by the Monte Carlo driver. You place all blame on Hutchinson at being shot at because you blame Hutchinson for being responsible. Is that correct so far?
A I blame him and Demarios for creating the

situation.
Q For creating the situation, and you're saying that -- or when you say "creating" you're talking about the car accident to begin with or when they went up to the door?
A Both.
Q Both. So the accident was a factor in Isaiah being responsible for his death.
MR. BARTON: Object to the form.
Q (By Mr. Ogle) Not the driver, but Isaiah.
MR. BARTON: Object to the form.
Q (By Mr. Ogle) Did Hutchinson do anything wrong in approaching the Monte Carlo driver prior to being shot at?
A No.
Q When did he do something wrong in the sequence of events? What was the first thing? Before I hear it again, he pointed at you or shot at you. What else before then, if any, did Hutchinson do wrong since he didn't do anything wrong in approaching the Monte Carlo driver to begin with?
MR. BARTON: Object to the form. Scott, when you ask him a question he gets to answer as best he can without limitations by you on his answer.
Q (By Mr. Ogle) Without limitations.

A He shot at me, so I shot him. If he doesn't shoot at me --
Q And regardless of what was happening to cause him to be in that situation, the fact that he had a gun and you heard shots, you have the right to engage.
A I've already answered this a bunch of times. Yes. And I believe I did at that time.
Q I was going to speed things up today. Have I been polite and courteous up until now?
A You've yelled at me most of the time, so I wouldn't say so.
Q Would you go as far as to say that I've been disrespectful with you?
MR. BARTON: Object to the form.
A I don't think it's polite to scream at people.
Q (By Mr. Ogle) Have you heard about me before this deposition?
A No.
Q Are you active in the Austin Police Association?
A I pay my dues.
Q Do you know what the police association's position is on this case?
A No.

Q Are they in support of you all, your --
A I'd assume so.
Q -- you officers? When you ran up did you ever announce yourselves as being police officers?
A I don't know. I don't believe I did.
Q And so while Isaiah is running away from the Monte Carlo driver he sees you. The gunshots that you did hear you attributed to Isaiah at that time, correct?
A Yeah.
Q And as a result after hearing those shots, whose ever they are, and you've seen Isaiah with a gun, you shoot him.
A Yes.
Q Why wouldn't you announce that you're a police officer if you expect him to know who you are?
A When I'm running towards something, somebody shooting, and I'm in full uniform that wasn't something that --
Q Full uniform.
A -- I was thinking about. I was thinking about how to handle a life-threatening situation.
Q Would you agree that someone without the patches would look like gang members?
A No.

Q You're dressed in all black.
A We're dressed in navy blue with gun belts and a badge on our shirts.
Q That, isn't that what the -- that right-wing group of people, the guys that are in the tan khakis and same-colored shirts?
A We weren't in tan khakis and --
Q I know --
A -- tan shirts.
Q -- but you're, you're all in the same dark blue uniforms.
A What does that have to do with (crosstalk) --
Q Kind of the Crips and the Bloods?
MR. BARTON: Object to the form.
A No.
Q (By Mr. Ogle) The fact that you're dressed in dark clothes and the only identifiers you have of being law enforcement is the patches on your back and your, and your shoulders, that's where I'm having a hard time understanding when you're saying that you don't need to even announce yourself, that you're supposed to be able to readily identify yourself by being in what I'm hoping that you agree to be plain clothes if it weren't for the patches.
A No. It doesn't look like plain clothes.

This is plain clothes. You're wearing plain clothes. That's not what we were wearing. We were in uniform.
Q Are there a lot of people that wear dark clothes, the same dark blue?
A Yeah. But this isn't --
Q Okay.
A -- dark -- these are dark uniforms with full gun belts, patches, and a badge.
Q All dark. Everything's black or --
A No. It's --
Q -- dark blue.
A Yeah.
Q I'm sorry. Dark blue.
A Yes.
Q And the gun belt technically is black, probably, right?
A Yes.
Q Okay. So, but all of that kind of downplays the identity of the police officer as opposed to more colorful type of uniforms. Would you agree with that?
A No.
Q Why not?
A There's thousands of police around the country --
Q I know --

A -- that wear the same uniform.
Q -- they do. They do. But without the patches they could be certainly misunderstood as being not uniforms at all but regular casual wear, just dark-colored, long-sleeve shirt, right? And dark pants.
MR. BARTON: Objection. Scott, this is just argumentative, and we've gone through this uniform issue at least one other time.
Q (By Mr. Ogle) (Inaudible) answer, please.
THE REPORTER: What'd you say?
Q Go ahead and answer, please.
MR. BARTON: I would object to say it's asked and answered.
MR. OGLE: Okay. Your objection is, is preserved.
Q What's your answer?
A I'd say no. We were wearing patches and badges --
Q Okay.
A -- and gun belts. I've never had an issue with not being identified when I'm in full uniform.
Q Without the patches would you be able to find a shirt very similar to that at Target?
A Yes, but we were wearing patches.

Q Okay. So we do agree that the same style of shirt could easily be purchased and is in wide use by those that wear casual clothes, correct?

A I don't think so.

MR. BARTON: Object to the form.

Q (By Mr. Ogle) Oh, you think -- what, what's special about the shirts? You can buy them at Target, correct?

A No. You can't buy --

Q You can buy them that look darn near, correct?

A I don't know.

Q Because they're not -- they don't have two-tone or anything. It's not like the, the older generation's identity of a police officer. Without the patches it's a regular dark-colored, long-sleeve shirt, correct?

A Close enough.

Q And would you at least agree that the more casual you look the less you're able to be identified as a police officer?

A I don't think we look casual. We're not --

Q It's a --

A We don't look casual.

Q -- shirt, it's the same casual shirt that you

could buy from Target.

A No, it's not.

MR. BARTON: Object to the form, and it's just argumentative, Scott. I mean, you can say whatever you want about it being casual or not. He's answered in his opinion as a police officer --

MR. OGLE: That it --

MR. BARTON: -- it is a uniform that he's never been misidentified in before. So I don't know what you hope to get from this line of questioning other than it's -- I probably am going to instruct him not to answer the next time you ask it, because I don't -- I'll take that risk with the Court that I'm overstepping my bounds.

MR. OGLE: Fair enough.

Q How do you think that Isaiah ended up -- whose shots do you believe led to Hutchinson being killed?

A Mine.

Q How do you feel about killing somebody in that circumstance?

A I feel like he tried to stop me from getting back home to my family and I'd to anything at any cost to get home to them.

Q Even if it's a 5 percent chance of being in

imminent danger, you're willing to eliminate that 5 percent chance of someone fleeing the scene. Is that a fair assessment of your boundaries?

A No.

MR. BARTON: Object to the form.

Q (By Mr. Ogle) If the jury decides that Hutchinson had his hands up, do you think that that would play a factor in whether you should have shot him?

A No.

Q Do you believe that someone who has his hands up still presents imminent danger that gives you the right to shoot him?

A Potentially, but I feel like we've already answered this question a couple times.

Q I'm running out of questions. Give me a second.

The factors that you had discussed today that, that lead you to being necessary to shoot someone to stop them, which are hearing gunshots and seeing someone with a gun, are those consistent with the training and policies of the Austin Police Department?

A Yes.

Q Who trained you in those regards?

A I don't know.

Q What's the name of the trainer?

A I don't know.

Q Which training class was it that taught you about the boundaries of imminent danger?

A The Austin police academy.

Q Any particular -- was Ken Casaday one of your instructors?

A No.

Q Ken Casaday says that I need to take medication. Do you know what medication he's talking about?

A I've never talked to Box about you.

Q But you've never heard about me before, you swear to God?

A No.

Q Would you give me the credit even if it's a bad, a bad reputation if you had?

A Yeah.

Q Do you believe that there's a -- never mind.

If this incident happened again, you would act in the same manner, or would you do anything differently?

A I would do the same thing.

Q And you won't grade yourself other than saying you passed, correct?

A Yes.
Q And it's objectively reasonable to shoot someone even if they have a gun and their hands are raised.
MR. BARTON: Object to the form, asked and answered.
Q (By Mr. Ogle) Okay. Was it reasonable for Isaiah to fire back at the Monte Carlo driver? You've only answered that one other time.
MR. BARTON: Object to the form.
A No.
Q (By Mr. Ogle) It was not? He, he didn't, he didn't have any justification to shoot the Monte Carlo driver?
A Legally when you create a situation --
Q And he created the --
A -- that requires deadly force you don't get to defend yourself from a self-defense situation that you created.
Q And who decides that as to whether to prosecute or not?
A The DA's office.
Q And before it even gets to the DA's office the police make their own independent decision as to, based on what -- whether or not someone cooperates, and

if they don't cooperate, then what they have to say is discounted.
A Well, they didn't say anything. There's nothing to discount.
Q You talking about Demarios?
A I'm talking about what you just talked about.
Q Well, you're adopting Gildardo's position that he shot at what began with an assault by Demarios.
MR. BARTON: Object to the form. I think it's a mischaracterization of testimony.
A I've already answered this --
Q (By Mr. Ogle) Yeah.
A -- but we don't have anything else to base the situation off of besides the video. We have his statement and the video.
Q Were there any commands that were given to Isaiah before you all -- before you engaged?
A I don't know.
Q None from you, though, correct?
A I don't believe so.
Q What would be your reason for not identifying yourself as police?
A I've already answered this, but I wasn't thinking about identifying myself. I was thinking about how I was going to respond to a deadly force

situation, a life-threatening situation.
Q Wouldn't it be fair to the person you're, you're going to justify as identifying you that for you to identify yourself?
A I was identified. I was in full uniform.
Q But besides that you didn't shout out to him.
A No.
Q And you expected him to be able to identify that at what you say is 20 feet away, correct?
A Yes.
Q Would that make it -- would, would his eyesight make any difference?
A You already asked me that, and I don't know what his eyesight was.
Q That was yesterday I asked. I never asked -- did I ask you about eyesight?
A Yes.
Q My bad.
MR. OGLE: What time it is?
MS. BLACKWELDER: It is 4:04.
MR. OGLE: I'm going to let y'all leave early today.
Q Oh, let me ask you a little bit about racial discrimination. Would you consider yourself to find black people with guns more, more of a reason to shoot?

A No.
Q Are you aware that the City of Austin police department has been cited for racial, racial discrimination?
A No.
Q You're not aware of that?
A No.
Q You never got the memo?
A No.
Q Is it fair to say that the police officers are rarely -- are relatively conservative in their political position?
A I can't speak for an entire group. I know officers on both sides.
Q Do you agree with the racial profiling reports that show that black and Latino drivers are twice as likely to be searched as their white counterparts in Austin PD data?
A I don't know anything about that.
THE REPORTER: Austin PD what?
MR. OGLE: Austin PD data, D-A-T-A.
Q Do you recall the chief of police issuing a directive to the police department about what is not considered to be imminent danger after a naked black guy was running down the street and was shot by a

police officer? That was about two or three years ago.
A I don't remember a directive. I remember the case. It was about six years ago.
Q Yeah. And not maybe a directive, but that was an example of what was not imminent danger, correct?
A The officer at the time felt like it was, who was also black.
Q Well, but what -- so you may still be in agreement with what -- of shooting a black person without their clothes on running towards you, but the police chief made that -- and tried to emphasize that that was an example of overreach on the part of the police to shoot him.
A I don't remember what the police chief said.
Q But your position is in that situation you would find yourself in imminent danger?
MR. BARTON: Object to the form.
A I'm different from that officer. I'm very different from that officer. So what I would do is not consistent with what he would do.
Q (By Mr. Ogle) Do you think there should be any limits on when is appropriate to shoot at a fleeing suspect?
A Of course. There are limits.

Q Would you put a hundred-foot limit?
A You've already asked me this a lot of times.
Q You won't place a limit on it, correct?
A Correct.
Q Austin Police Department was cited as being -- having disproportionate use of excessive force against people of color. Would you agree with that allegation?
A No, and I don't know where it comes from.
Q Have you been truthful in all of your answers today?
A Yes.
Q Is there anything that you would like to add?
A No.
Q That's all the questions I have.
MR. BARTON: Okay. I'm going to have just a few questions and just tell everybody in the room what they're about. We've discussed quite a bit the videos, and so I'm simply going to ask Ruth to play three videos and ask Dane if those are the videos he has seen prior to his deposition today. So Ruth, if you can --
MS. BLACKWELDER: Which one do you want to start with?
MR. BARTON: I guess what we want

to use is the same exhibits from yesterday, Sandy, if you can help us get that, what I want to refer to as Exhibit 1, Exhibit 2, and I guess Exhibit 3 from Officer Nelson's deposition and incorporate those here into Dane O'Neill's deposition.
THE REPORTER: Yes. I've got them right here.
MR. BARTON: Okay.
MR. OGLE: Yeah. I'm becoming lazy as these depositions go on, and I failed to show you the video.
MR. BARTON: What was Exhibit No. 1, do you recall?
THE REPORTER: Yes. No. 1 was the HALO video of the shooting, COA003.
MR. BARTON: Okay.
MS. BLACKWELDER: Okay. So you want me to play that one first?
MR. BARTON: Let's start with that, and we'll mark that -- identify that as Exhibit 1 to Dane O'Neill in the deposition.
(Video Played)
EXAMINATION
BY MR. BARTON:
Q And for the record, I'll ask Officer O'Neill,

can you identify this video?
A Yes.
Q And is this video of -- that leads up to the shooting incident that you were involved with?
A Yes.
MR. BARTON: Let me stop right there, Ruth, and ask this question.
Q Can you identify, Officer O'Neill, the two cars that have been discussed quite a bit in your deposition, one being the Monte Carlo and one being the Maserati?
A Yes.
Q And the Monte Carlo being to the left quarter of the television screen and the Maserati being up towards the front --
A Yeah.
Q -- of the intersection of, I guess is that the frontage road and -- street, what is the street number, 6?
A 7th.
Q 7th?
A Yes.
MR. BARTON: Go ahead, Ruth.
(Video Played)
MR. BARTON: All right. Let's stop

right there.

Q It appears that we just saw what's been discussed several times about the driver of the Maserati, who's been identified as Demarios, and then Isaiah Hutchinson approached the Monte Carlo, and then there looks like Demarios punched the Monte Carlo driver and there was an exchange -- or not an exchange, a fire, a gunshot by the Monte Carlo driver. Did you see that?

A Yes.

Q Does that fairly state what happened in the video at that point?

A Yes.

MR. BARTON: Okay. Go ahead, Ruth.

(Video Played)

Q And can you identify yourself in this video --

MR. BARTON: And let's stop it, Ruth, and back it up to the point where --

MS. BLACKWELDER: You can't back up this one up. It doesn't, it doesn't let you.

Q Okay. Did you identify -- were you able to identify yourself in --

A Yes.

Q -- that video, Dane? And Officer O'Neill,

were you at any point in this sequence -- did you foresee an imminent threat of death or serious bodily injury to the officers or members of the general public?

A Yes.

Q And when was that?

A When Mr. Hutchinson came around the front of the car with the gun in his hand.

Q Okay. And, and you've already testified what about happened from that point forward?

A Yes.

MR. BARTON: Okay, Ruth, go ahead and finish it out.

(Video Played)

MR. BARTON: Okay. Then we'd like to show you, Officer O'Neill, Exhibit No. 2. Which one is that, Sandy?

THE REPORTER: That one is the Facebook video.

MR. BARTON: Facebook video. Okay.

(Video Played)

Q Okay. Officer O'Neill, is that the same video that you've discussed earlier with Mr. Ogle about being the video from the car, sometimes referred to as the Facebook video?

A Yes.

Q And you were able to identify yourself in that video?

A Yes.

Q And the other officer, Thomas Nelson, was in that video as well?

A Yes.

Q All right.

MR. BARTON: And then let's go to Exhibit No. 3 -- 4, Exhibit No. 4. And that's the video of the collision?

THE REPORTER: Yeah.

(Video Played)

Q Okay. And Officer O'Neill, if I can get you to just look at the monitor here, and are you able to identify this as the video that involved the initial collision between the Monte Carlo and the Maserati?

A Yes.

Q And that's going to be identified as Exhibit No. 4 to your deposition, following the same sequence that was used with Trey Nelson's deposition.

THE REPORTER: Monte, Deposition 3 was the KXAN article. Do you just want to skip 3 then?

MR. BARTON: Let's go ahead and add Exhibit 3, since Dane read it and --

THE REPORTER: Okay.

MR. BARTON: Do you have any problem with that, Scott?

MR. OGLE: No. That's fine.

MR. BARTON: Okay. So for our purposes, the exhibits from yesterday are going to be incorporated, and they're the same exhibits for Dane O'Neill's deposition today. And I guess let's -- is that going to be identified in the record as Exhibit 3?

MR. OGLE: Could you make a copy of this for me, somebody?

MR. BARTON: Yeah. It's the KXAN --

THE REPORTER: You can keep that. I've already got it from yesterday.

Q Okay. Well, those are all the questions that I have, Officer O'Neill.

MR. BARTON: And I tender the witness.

FURTHER EXAMINATION

BY MR. OGLE:

Q That brings up a couple questions for me. In regard to the Maserati running the red light, there were several cars in front of it that were also running the red light on that particular night, correct?

A I guess.
Q So does the Monte Carlo driver, Mr. Vasquez, have a duty to wait until the intersection clears before he makes a left turn?
A He does --
Q So --
A -- but he proceeded quite carefully, and then the Maserati hit his brakes in the middle of the intersection.
Q He was carefully trying to make a left turn through all of these cars that were running the red light, correct?
A Yes.
Q So even though he had the right with protected green arrow, we assume, because the red light, it's reasonable for the Monte Carlo driver, Demarios, to follow other cars in progression that are also running the red light, correct?
A No.
Q You wouldn't -- everybody is responsible for their own acts, and just because other people are running the red light that it means -- doesn't mean that he's entitled to it. Is that your position?
A Correct.
Q Okay. Would, would you factor Gildardo as

any of the causes for the accident if you were investigating the, the incident as a car accident, or would you blame Demarios completely?
A The police don't determine who's at fault in a collision.
Q That's all I have. I'm tired. Thank you.
MR. BARTON: Okay. Well, thank you. That concludes the deposition.
VIDEOGRAPHER: Going off the record. The time is 4:20 p.m.
(At 4:20 p.m. the proceedings adjourned.)

CHANGES AND INSERTIONS
CORPORAL DANE O'NEILL
July 19, 2022

PAGE	LINE	CHANGE	REASON

ACKNOWLEDGMENT OF DEPONENT

I, CORPORAL DANE O'NEILL, do hereby certify that I have read the foregoing pages and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Changes and Signature Page (Errata).

DANE O'NEILL

DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON AND BENNY HUTCHINSON, ON BEHALF OF THEMSELVES AND THE ESTATE OF ISAIAH HUTCHINSON,	§	
Plaintiffs,	§	
	§	CIVIL ACTION NO.
v.	§	
	§	1:21-CV-00221-LY
THE CITY OF AUSTIN AND DEANDRE WRIGHT AND DANE O'NEILL AND ZACHARY WOODS AND THOMAS BERNARD NELSON III,	§	
Defendants.	§	

REPORTER'S CERTIFICATION OF THE
ORAL DEPOSITION OF CORPORAL DANE O'NEILL
July 19, 2022

I, Sandra S. Givens, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, CORPORAL DANE O'NEILL, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the original deposition transcript was submitted to: CORPORAL DANE O'NEILL in care of his attorney, Monte L. Barton, Jr.;

That a copy of this certificate was served on all

parties and/or the witness shown herein on July 27, 2022.

I further certify that pursuant to FRCP Rule 30(f)(1) that the signature of the deponent was requested by the deponent's attorney before the completion of the deposition and that the transcript is to be returned within 30 days from the date of receipt. If returned, the attached Changes and Insertions page contains any changes and the reasons therefor:

That $ is the deposition officer's charges to the Defendants for preparing the original deposition transcript and any copies of exhibits;

That the amount of time used by each party at the deposition is as follows:

Scott Ogle - 2 hours, 23 minutes

Monte L. Barton, Jr. - 18 minutes

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

Scott Ogle - Attorney for Plaintiffs

Monte L. Barton, Jr. - Attorney for Defendants

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was

taken, and further, that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this 27th day of July 2022.

GIVENS COURT REPORTING
6549 Fair Valley Trail
Austin, Texas 78749
(512) 301-7088



SANDRA S. GIVENS, CSR
Certification No. 5000
Certificate Expires 1/31/24

sg-1957

Exhibit 3

Transcript of the Testimony of
Thomas Bernard Nelson

July 18, 2022

Christine Springs-Hutchinson, et al. v. The City of Austin, et al.

Givens Court Reporting
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON AND BENNY HUTCHINSON, ON BEHALF OF THEMSELVES AND THE ESTATE OF ISAIAH HUTCHINSON,	§	
Plaintiffs,	§	
	§	CIVIL ACTION NO.
v.	§	
	§	1:21-CV-00221-LY
THE CITY OF AUSTIN AND DEANDRE WRIGHT AND DANE O'NEILL AND ZACHARY WOODS AND THOMAS BERNARD NELSON III,	§	
Defendants.	§	

* * * * * * * * * * * * * * * * * * * *

THE VIDEOTAPED ORAL DEPOSITION OF
SERGEANT THOMAS BERNARD NELSON, III,
July 18, 2022

* * * * * * * * * * * * * * * * * * * *

ORAL DEPOSITION OF SERGEANT THOMAS BERNARD NELSON, III, produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above styled and numbered cause on the 18th day of July 2022, from 1:08 p.m. to 4:26 p.m., before Sandra S. Givens, CSR, in and for the State of Texas, reported by machine shorthand method at Austin City Hall, 301 W. 2nd Street, Austin, Texas 78701, pursuant to the Federal Rules of Civil Procedure.

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VIDEOGRAPHER:
Ms. Lauren Morris
Audio Evidence Forensics

I N D E X

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VIDEOGRAPHER: Good afternoon. Today is Monday, July 18th, 2022. The time is 1:08 p.m., and we are on the record for the deposition of Officer Thomas Bernard Nelson, III, in Civil Action 1-21-CV-0021-LY.

SERGEANT THOMAS BERNARD NELSON, III having been first duly sworn, testified as follows:

EXAMINATION

BY MR. OGLE:

Q Could you state your name for the record, please?

A Thomas Nelson.

Q Okay. And Mr. Nelson, I understand that you're here as an officer involved in the incident that occurred on March 18th, 2019 involving Isaiah Hutchinson; is that correct?

A Yes, sir.

Q I'm going to ask that you give full and complete answers, and if I ask you the same question at trial, I would expect you to give us the same answer you give us today. Do you understand that?

A Yes, sir.

Q And if you give us an answer that is different than an answer you give today, then we can point this out to the judge and jury and then we can

talk about why your answer at the time of trial is different from the answer you gave us today in this deposition. Is that understood?

A Yes, sir.

Q I want to be honest with you, I may ask some hard questions of you, and some of them are going to require some hard answers. Because of that I want to be fair to you and give you every chance to tell us your side of things. Is that under- do you understand that?

A Yes, sir.

Q So when I answer -- or when you answer the questions that are asked today I ask that you give us your answers with as much detail as you possibly can. Okay?

A Okay.

Q When I ask you a question, where appropriate if you would, please start with a yes or no or I don't know, and then if you feel the need to explain the answer, then you can take as long as you need to explain your response. Will you agree to do that?

A Yes, sir.

Q I represent the family of Isaiah Hutchinson in a lawsuit that was filed as a result of the death of Isaiah Hutchinson. Do you understand my role?

A Yes, sir.

Q All right. Is it a fair question that I ask you if you would be willing to swear to God that you will give truthful answers today? Or if you would rather not swear as -- if you would swear as God is your witness that you'll give complete and correct answers today.

A I'll give complete and fair, accurate answers today.

Q But you're not willing to swear as God is your witness, correct?

MR. BARTON: Object to the form.

A As a habit I don't swear to God.

Q (By Mr. Ogle) Is there -- that, that's understood, but as God is your witness, not swearing to God, but just swearing as God as your witness will you agree that your answers will be full and complete and truthful?

A I'll give you truthful, full, and complete answers today, sir, to any --

Q But you leave --

A -- question you ask.

Q -- God out of it, correct?

MR. BARTON: Object to form.

Scott, I don't think this is a big point, but he's

already said under oath he's going to be truthful.

Q (By Mr. Ogle) Do you believe that there are consequences after life for those things that you do that affect people here on Earth?

A I'm not sure. I'm still working that out.

Q Were you in the military before you joined the police force?

A No, sir.

Q Tell us a little bit about your background after high school.

A I went to college at a junior college, and then I attended and finished at the University of Houston where I obtained a bachelor's degree, and I was hired by the Austin Police Department in 2006.

Q Did you -- well, I'm sorry. What degree did you graduate with?

A Sociology.

Q Do you have any training in mental health?

A As a certified police officer in the state of Texas we have gone through mental health training.

Q Okay. And we'll get into that, a little bit more about that in awhile. Are you a weightlifter?

A I work out.

Q Do you take steroids?

A No, sir.

Q Do you know any police officers that do take steroids?

A No, sir.

Q No bodybuilders that work for the police department you know of take steroids?

A No, sir. I do not know of any police officers that take steroids.

Q Do you know Ken Casaday?

A Yes, sir.

Q Do you think -- or are you aware of whether or not he uses illegal steroids?

A No, sir.

Q Do you know if he uses prescription steroids?

A No, sir.

Q Are steroids regulated within the police department?

A Yes, sir. I believe steroids are illegal without a prescription for some, and without a prescription you can't take them as a police officer.

Q It's a fel- steroids are actually a felony controlled substance, correct?

A Some are. Yes.

Q Are you aware of in a gym environment whether or not other bodybuilders use steroids?

A I don't know much about bodybuilders, sir.

Q You say you work out.
A Yes, sir.
Q How are steroids regulated within the police department?
MR. BARTON: Object to the form.
A I'm not sure how to answer that, sir. I know we have a controlled substance policy, and that's about the extent of my knowledge on that.
Q (By Mr. Ogle) There is an annual drug test that police officers take, correct?
A No, sir.
Q Are you aware that steroids cause aggression?
A Yes, sir.
Q And would that be contrary to de-escalation?
A I'm not sure I understand.
Q Is there a policy among the police department in regard to de-escalation of police violence?
A In the course of duties the preferred method is to de-escalate the problem first in order to come to a resolution of said problem.
Q Was there any de-escalation used the night that Isaiah Hutchinson was killed?
A In this particular incident due to the rapidly evolving dynamic nature in which it occurred, no, sir.

Q Did y'all announce yourselves as police officers?
A Again, sir, due to the rapidly evolving nature in which it occurred there was not time to give announcements.
Q Were you, were you dressed in a black, in a black shirt and black pants?
A No, sir.
Q How were you dressed that night?
A I was wearing the authorized issued uniform of my department, a shirt, navy blue shirt, navy blue pants with --
Q Okay.
A -- patch of my office on each shoulder and badge on the chest. In addition to this I was also wearing a jacket that said "Police" on the back in reflective material and also had the patch of the department on each shoulder and badge on the chest.
Q Now, someone in front of you would not be able to see that big police logo on the back of your jacket, correct?
A In addition to that I was also wearing a cap that had the patch of the department on the front prominently displayed, and the badge is on the front of the jacket as well.

MR. OGLE: Object to the answer.
Q Yes or no, would it be impossible for someone in front of you to see the back of your jacket?
A If somebody were standing in front of me --
Q Yes.
A -- they would not be able to see my back. No, sir. That would be correct.
Q Do you think Hutchinson was able to see the back of your jacket?
A I can't answer as to what he saw, sir.
Q Can you answer on behalf of the other police officers in general?
A I'm not clear on the question.
Q Well, I want to get away from you can't answer for him. You're in the situation. If you can put yourselves in the shoes of Isaiah, would Isaiah, would, would Isaiah have been able to see the back of your jacket?
A From where I was positioned?
Q Yeah.
A He would not have been able to see my back, but there were four other officers there, and a couple of them their back was facing the street. As well as the multiple people in that parking lot that had come up to us throughout the night asking for help hailing

cabs, requesting Ubers, asking for directions, all of those people recognized us as uniformed police officers.
Q Now, how many officers are you aware were involved? I know the four of you.
A There were five uniformed police officers in that parking lot, myself and four others.
Q Who was the -- and the fifth one was not involved?
A He was involved in the incident, but I later learned that he did not fire.
Q Well, which two had their backs to the -- what was going on?
A I'm not exactly certain as to who that was at the -- at the moment preceding this incident we were standing in a group attempting to assist a, a group of young ladies that were trying to hail a -- or get an Uber to pick them up. They had approached us and we were standing in a circular fashion around them.
Q Okay. And then shots fired. What do you do?
A Heard shots fired to the north of our location, and I immediately turned and started moving toward the sound of those -- that first sequence of gunshots. There was a second sequence of gunshots that I heard as we started moving toward the location where

that sound was coming from.
Q Okay. Were you ultimately able to identify where the first set of the shots were coming from?
A Ultimately, yes, sir. Having been able to review the video and the reports and statements regarding this incident, yes, sir.
Q Would you consider Isaiah to be the victim?
A Of?
Q Well, I mean, let me back up. Would you consider Isaiah in regard to the Monte Carlo driver, which I believe represented the first set of shots, would you consider Isaiah to be the victim of that circumstance?
MR. BARTON: Object to the form.
A Based on the video footage that I've seen, it appears that Mr. Hutchinson and a second party assaulted the Monte Carlo, Monte Carlo driver, making him the victim initially.
Q (By Mr. Ogle) I spoke to Demarios a couple days ago. What he says is that when they went up to the Monte Carlo driver that they simply asked for their -- his insurance information, and the Monte Carlo driver, who had been somewhat jealous, I think, because of a conversation going on between some girls in the Maserati, that the Monte Carlo driver ended up pulling

a gun on Demarios, the driver of the, of the Maserati. If that's true that Demarios, the driver of the Maserati, was fending off someone pointing a gun at him, would that change your belief that the Monte Carlo driver was the victim?
MR. BARTON: Object to the form, calls for hypothetical and kind of a -- I lost track of the question somewhere long the way. But go ahead and answer as you see fit.
A No, sir. Based on the -- no, sir. Based on the video that I saw, the second unidentified subject -- I believe is the one that you're referring to as Demarios -- approaches the car and almost immediately strikes the driver of the Monte Carlo through the open window of the vehicle.
Q (By Mr. Ogle) Yeah. And so --
A Based, based on that video, it appears that the driver of the Monte Carlo is the victim of an offensive assault.
Q Do you see -- and excuse me. And that's the official position of the police department, correct?
A I don't, I don't know the official position of the police department on that, that detail, sir.
Q Okay. Were you able to see what was going on inside the Monte Carlo from the video that you saw?

A No, sir.
Q So you're discounting the Monte Carlo driver pulling a gun, correct?
A No, sir.
Q Okay. If -- well, but your position is, is that under any circumstance the Monte Carlo driver was the victim and the -- and Demarios was the assaulter, correct?
MR. BARTON: Object to the form.
A No, sir. My opinion, based on, again, the evidence that I've been able to review, is that Demarios, the subject you're, you're referring to as Demarios --
Q (By Mr. Ogle) Mm-hm.
A -- appears to punch the driver of the Monte Carlo through his open window.
Q Mm-hm. And as far as what went on before that?
A Before that I have no knowledge of it.
Q So why would you be so conclusive as to the Monte Carlo driver being the victim?
A I'm only conclusive on him being the victim of an assault because that's what I can see on the video.
Q And if someone points a gun at you as an

officer what are you going to do?
MR. BARTON: Object to the form.
Q (By Mr. Ogle) Does that make it different?
A If someone points a gun at me?
Q Mm-hm. Are you going to...
A I would feel that I was being threatened.
Q Okay. And?
A I would attempt to handle that situation based on the options afforded to me at that time.
Q Okay. And suppose you're Demarios, the driver of the Maserati, who was overheard by an independent witness, Amanda Estrada, politely asking the man for his insurance information and shots are fired -- or, I'm sorry, a gun is pointed. So if you're in Demarios' position and you have a gun pointed at you that no one can see from the angle of the video, would you then say that Demarios' actions were reasonable?
MR. BARTON: Object to the form, calls for hypothetical and hearsay.
A Sir, I'm not really sure how to answer that question, because you're asking me to put myself in the position of somebody in a hypothetical situation that I have no knowledge of or no evidence supporting that.
Q (By Mr. Ogle) Okay. Here's the evidence.

Demarios says that the Monte Carlo driver pointed a gun at him and he punched him as a result. That's evidence. You've got -- you see the video of Demarios striking him. And so with the ev- if Demarios is sitting right there and Gildardo Vasquez is sitting right next to him and Gildardo says, He hit me, I didn't do anything, and Demarios says he pointed a gun, what would you conclude?

MR. BARTON: Object to the form. Same objection as previously.

Q (By Mr. Ogle) But that's not a hypothetical. That's what their position is going to be, and so you as a police officer, as the gatekeeper, would you conclude, given that added bit of evidence of Demarios' testimony, that the Monte Carlo driver was the victim?

A Again, based on this what seems to be a hypothetical situation that --

Q It's not a hypothetical.

A -- you presented to me --

Q Okay.

A -- I'm not -- I didn't -- I'm not able to see any of that on the video available to me. But based on the scenario that you have painted and you're asking me to comment on, if the Monte Carlo driver pointed a firearm at someone for, for no reason, as you say, then

that would then make the other person a, a victim of, of that at that time in that incident.

Q Okay. But in your conclusory position that Demarios was the assaulter, what in that video did you see where Isaiah did anything wrong?

A In that same video where I observed the subject you're describing as Demarios --

Q At the door.

A -- punch or throw, throw a strike through the open window of the Monte Carlo --

Q Uh-huh.

A -- the subject later identified as Isaiah, unknown to me up to that point, was standing at the window as well. Based, based on the video, whenever rounds were fired both subjects began to run away from the Monte Carlo. In the video you can see that Isaiah is holding what appears to be a handgun in his hand as he, as he runs from the Monte Carlo back toward the vehicle that he exited.

Q Does it look like he was shot? Does it looks like he's nursing his, his wrist?

A I could not tell that from the video, sir.

Q Well, the autopsy report shows he was shot in the wrist and in the head, and actually in numerous places. But the ones in particular, based on my

observation of the video, it appears as though Isaiah was the victim of the Monte Carlo driver. Would you draw that same conclusion?

A No, sir. Again, you're asking me to draw conclusions whenever I don't have all the facts of what that interaction was.

Q Just looking at that video you see him, it looks like he's nursing his wrist running back to the Maserati. Now, based on just the video that we're about to see, would you draw the conclusion that he was, he was shot before he even pulled a gun, if he did?

A No, sir.

MR. BARTON: Object to the form.

Q (By Mr. Ogle) What would be your conclusion to him nursing his wrist as he's running away?

A I did not draw the same conclusion that you did, that he's nursing a wound running away.

Q Let's take a look at the video if you don't mind. It's not going to -- well, it would be (inaudible), right?

MR. OGLE: Can I -- may I stand?

MR. BARTON: Yeah. You can move wherever you want. Be mindful of your microphone.

MR. OGLE: Oh, yeah. Am I loud

enough without the --

THE WITNESS: And real quick, Monte, can we take a break? I need to clear my throat before (crosstalk) --

MR. BARTON: Yeah, yeah. Let's take a --

VIDEOGRAPHER: Going off the record.

MR. BARTON: -- five-minute break.

VIDEOGRAPHER: The time is 1:31 p.m.

(At 1:31 p.m. the proceedings recessed, continuing at 1:40 p.m.)

VIDEOGRAPHER: We are back on the record. The time is 1:40 p.m.

(Video Played)

Q (By Mr. Ogle) And I am showing now the HALO video of the incident (Subsequently identified as Exhibit No. 1). Officer, are you able to kind of describe what's going on?

A That's the intersection of East 7th Street.

Q But where are you at at the moment?

A In the Gulf station parking lot there on the south curb lane up near the front of the store.

Q Over here?

A Further to the right of the screen.
Q Over here?
A Yes, sir.
Q Okay. Now, that's the Maserati there, correct?
A Yes, sir.
Q Okay. That's Isaiah and that's Demarios, correct?
A I don't know who Demarios is.
Q Demarios is this guy here. He was --
A Okay.
Q -- the driver. Now, you see, you see shots coming out of the car, correct?
A Yes, sir.
MR. OGLE: Can you rewind that a bit?
Q So is there any question in your mind that the Monte Carlo had a gun and was shooting at them?
A No, sir.
Q Okay.
MR. BARTON: Might just have to start from the beginning, Ruth. I don't know.
Q (By Mr. Ogle) How many shots do you see Isaiah shooting?
A Without audio that's, that's not really a

question I can accurately answer. On that video you can see Isaiah fire at least one round based on what appears to be the muzzle flash when he's at the front of the Maserati. Having been able to go through the video and the report, I've since learned that it appears Isaiah fired at least three rounds.
Q Where do you get that conclusion?
A From the offense report.
THE REPORTER: From the what?
THE WITNESS: From the offense report, the invest --
Q And the offense report, whose -- well, whose report are you referring to that, that talks about how many shots he took?
A In the investigator's report there are three rounds recovered, one from the Gulf station and two that were in a Kia, I believe, a vehicle in one of the other lanes of travel.
Q Three bullets that came from a gun of Hutchinson's?
A There were three .40 caliber rounds recovered from, from that scene.
Q Were, were you able to identify those as being from Hutchinson's gun as opposed to an officer's gun?

A Sir, I didn't conduct this investigation. I was involved in the incident.
Q Yeah.
A And most of this information I was not privy to until --
Q I understand.
A -- very recent of, of this, this deposition. So no, sir, I'm not drawing any investigative conclusions based on any of the evidence located or found.
Q Okay.
MS. BLACKWELDER: Okay. Play?
MR. OGLE: If you don't mind rewinding. So it has to --
MS. BLACKWELDER: Play?
(Video Played)
Q So you see Hutchinson here, and he puts his hood on. And does that -- from the distance that Hutchinson saw the police officers do you think any of the emblems would have been identifiable to him from that distance?
A Yes, sir.
Q The officers were about right here when Hutchinson ended up shooting in their direction. Would that be a fair assessment?

MR. BARTON: Object to the form. The video shows what it shows.
Q (By Mr. Ogle) The police officers were on the sidewalk when Hutchinson saw them running towards him, correct?
A Can we reference the video on that?
Q Yes.
(Video Played)
A I would answer that we were at the edge of the parking lot --
Q Mm-hm.
A -- near the sidewalk when Mr. Hutchinson fired.
Q Okay.
VIDEOGRAPHER: Let's go off the record. The time is 1:46 p.m.
(At this time the proceedings went momentarily off the record.)
VIDEOGRAPHER: We are back on the record. The time is 1:48 p.m.
Q (By Mr. Ogle) Officer, were you the one that pulled up -- or, I'm sorry, that ran up to the door and fired through Isaiah's window?
A No, sir.
Q Who was that?

A Officer O'Neill was the first person to make it to the vehicle.

Q Okay. And where were you in that sequence of events?

A At the -- toward the rear of the car.

Q Okay. Did you discharge your weapon?

A Yes, sir.

Q Towards Isaiah Hutchinson?

A Yes, sir.

Q Under the circumstances now of seeing the video now, which refreshes your memory in regard to the Monte Carlo driver, does it appear as though the Monte Carlo driver, that charges should be filed against the Monte Carlo driver?

A Again --

MR. BARTON: Object to the form.

A Again, as I previously, as I previously answered, I don't have all the facts of that incident, and I can't speculate to those facts. I didn't have any interaction with the Monte Carlo driver.

Q (By Mr. Ogle) Mm-hm.

A So I can't speculate as to whether or not charges should be fired -- filed.

Q Were there any efforts to even chase the Monte Carlo driver after the incident?

A Sir, that night I was on foot, so there were no efforts by me to chase the Monte Carlo, because I was on foot.

Q Well --

A That scene was chaotic and scary and rapidly evolving. I can't attest to what any other officers did or may have done.

Q In regard to Isaiah's position, being shot at by the Monte Carlo driver, do you think that he under those circumstances deserved to be shot himself?

MR. BARTON: Object to the form.

A Sir, at the time of this incident Mr. Hutchinson fired at uniformed police officers as well as indiscriminately in the direction of a parking lot full of innocent people that had no interaction with him or the Monte Carlo. Due to that, Mr. Hutchinson posed a lethal threat to both their lives, my life, other officers' lives, and our safety.

Q Did he have his hands up when he was in the back seat after he got into the vehicle?

A I did not see his hands up.

Q Would that have made a difference?

A At that time, as quickly and dynamic as this situation was unfolding, Mr. Hutchinson posed a threat, an imminent and immediate threat to the other officers

on the scene, the innocent public, and myself. Mr. Hutchinson had displayed a means and a willingness to inflict serious bodily injury or death upon the other officers, the innocent public, and myself.

Q Did he do anything that you wouldn't have done if, if you had been shot at by the Monte Carlo driver?

A Mr. Hutchinson fired at uniformed officers, sir.

Q How certain are you that he recognized them as being police officers?

A Sir, I can't speak to what Mr. Hutchinson did or did not see or think. I can only speak to the situation as it unfolded.

Q Okay. But you can, you can empathize with him being shot at by the Monte Carlo driver and then seeing four other strangers coming from his flank and him being confused?

A No, sir.

Q So for you to draw the conclusion that he shot at police officers your assumption is based on a certain level of certainty that he recognized you as police officers, correct?

MR. BARTON: Object to the form.

A Yes, sir. I believe five uniformed police

officers in a fairly well-lit parking lot running toward a problem is usually recognized by people as being help --

Q (By Mr. Ogle) But --

A -- not someone trying to harm you.

Q But you were in undercover clothes, correct?

A No, sir.

Q You didn't have the typical police shirt on.

A Yes, sir.

Q Is it typical to have a dark blue shirt on?

A Yes, sir. That's --

Q Okay.

A -- the authorized issued uniform of the Austin Police Department.

Q Okay. And so would you agree that it is harder to identify someone in your uniform than it would be in someone in a two-toned shirt --

A No, sir.

Q -- correct? No? Other than the little badges you have on the shoulder and maybe a badge in the front, there's no way to identify you from a distance that you're an officer. Would you agree with that?

A No, sir. I would not.

Q Why not?

A As I previously stated, sir, all five of us were wearing the authorized uniform of the Austin Police Department with Austin police patches on each shoulder. I was wearing a hat with a patch on the hat, badge on the chest. In addition, myself and at least one other officer were wearing jackets that said "Police" in --

Q Okay.

A -- reflective material on the front and the back.

Q When you're staring at me can you see badges on my -- if I had badges, would you be able to identi- clearly identify the badges that are on either side of my shoulder?

MR. BARTON: Object to the form.

Q (By Mr. Ogle) From the, from the distance you were on the sidewalk at the Shell station at night?

A Sir, the reason police officers wear a uniform is because it's a standard-looking article of clothing with patches and badge so that it's easily identifiable --

Q That's not my question.

A -- by the public.

MR. BARTON: Object --

A So yes, sir, I believe that you could easily

identify uniformed police officers as uniformed police officers.

Q From any distance?

MR. BARTON: Object to the form.

A That's an unreasonable ask, sir. From any distance doesn't put a limit on how far away.

Q (By Mr. Ogle) Exactly, and that's what I'm trying to gain from you, is your belief that you can be easily identified as a police officer when we both agree you can't see the, the emblems on the shoulder if you're looking directly at me, correct?

A No, sir. We do not agree on that. I believe at the distance that this incident occurred that it was very easily identifiable and recognizable that there were uniformed police officers in that parking lot that could have helped had somebody needed help for a type of incident.

In fact, there were multiple people during the course of that evening that approached us and requested help with directions, finding a taxicab, finding their hotel, soliciting an Uber. At the time of his incident, as I previously mentioned, we were assisting five or six young girls that were having a difficult time getting a ride out of downtown. The reason they approached us is they --

Q I don't care about that.

A -- they recognized us as uniformed police officers, so we were assisting them.

Q Okay. But in Isaiah's position do you understand that he would have had a difficult time clearly identifying you when he's being shot at by the Monte Carlo driver and you run up to the corner of the parking lot?

MR. BARTON: Object to the form, asked and answered.

A No, sir. I do not agree with that.

Q (By Mr. Ogle) Have you had any other discharge claims filed against you?

MR. BARTON: Object to the form.

A What do you mean by discharge?

Q (By Mr. Ogle) Discharge of a firearm.

A No.

Q Have you shot anybody else?

A No, sir.

Q Have you killed anyone else?

A No, sir.

Q Is this the only incident in which you've fired your weapon at a suspect?

A Yes, sir. This is the only officer-involved shooting that I've been involved in.

Q If you had to put a grade on yourself from A to F, in retrospect what would you give yourself?

MR. BARTON: Object to the form.

A I'm not going to give myself a grade on this incident, sir.

Q (By Mr. Ogle) A what?

A I'm not going to give myself a grade on this incident.

Q I'm going to ask you to.

A I don't know how you can put a metric on something like this, sir.

Q Well, that's what you do in any police-involved incident, correct?

A No, sir. We don't.

Q You don't --

A We don't rate --

Q -- question yourself?

A We don't rate ourselves or grade ourselves, so I don't, I don't know how to answer that if you're asking me to give myself a grade.

Q Is there anything that you would have done differently, knowing what you know now?

A No, sir.

Q You would have shot him regardless?

A Yes, sir. As I stated, Mr. Hutchinson posed

a threat to the public, other officers, and myself by firing at us indiscriminately.

Q And you think he meant to shoot police officers?

A Yes, sir. The video reflects that.

Q The video reflects four dark-clothed men that came up upon an already hectic situation. Would you agree with that?

A No, sir. I believe the video reflects five fully uniformed police officers running to help a chaotic, dangerous situation whenever Mr. Hutchinson fired on us and in the direction of an occupied parking lot with innocent persons there. At that time Mr. Hutchinson posed a threat to their safety as well as ours, an immediate and imminent threat. A handgun is capable of inflicting serious bodily injury or death. Mr. Hutchinson employed that manner -- that, that means and in a manner in which he used to do so.

Q Is there any chance you're gaslighting Mr. Hutchinson at this point?

A No, sir. There's not.

Q Had you been Mr. Hutchinson and you were fired upon by the Monte Carlo driver, how would you have reacted differently?

MR. BARTON: Object to the form,

calls for a hypothetical.

A I would not have shot at the police, sir.

Q (By Mr. Ogle) That wasn't my question. What would you have done differently in the beginning?

MR. BARTON: Object to form.

Q (By Mr. Ogle) Did, did he have reas- did he have reasonable cause to fire at the Monte Carlo driver after he was shot at?

A Sir, again, I don't know all the details of what transpired with the Monte Carlo.

Q You saw him -- you saw the Monte Carlo driver shooting out the window, correct?

A Yes, sir. It appears --

Q Okay.

A -- that shots were fired from inside the Monte Carlo --

Q All right.

A -- out of the vehicle.

Q Now, let's put you, put you in the situation of Hutchinson. When someone is firing a gun at you do you have the right to shoot at them?

MR. BARTON: Object to form.

A In Texas you have the right to defend yourself.

Q (By Mr. Ogle) You certainly have a right to

shoot someone pointblank if they even point a gun at you, correct?

MR. BARTON: Object to the form.

A That's not a clear question, sir.

Q (By Mr. Ogle) That's a very crystal-clear question. I asked that same question to the previous officer, Zachary Woods, and he said he was trained by the police academy that if a -- if you point a gun at a police officer, they can shoot you in the back. Would you agree with that?

MR. BARTON: Object to the form, playing one witness off the other.

A If, if a subject points a firearm at you --

Q (By Mr. Ogle) Mm-hm.

A -- posing a threat to life or safety, yes, sir, you can employ lethal force to defend yourself or someone else.

Q Well, you seem to --

A That, that is correct.

Q You seem to discount Isaiah's rights in regard to the situation that he was in. He's being shot at by the Monte Carlo driver, and you say that the only thing that -- well, you say that Isaiah po- do you, do you say that Isaiah posed an imminent danger when he was being shot at by the Monte Carlo driver?

MR. BARTON: Object to the form.

A When, when Mr. Hutchinson is being fired at is he --

Q Is he in --

A -- is he --

Q Yeah. Is he a danger at that point?

A I'm sorry. Are you asking if he's in danger or if he is a danger?

Q A danger.

A At that point he is being fired upon. Yes, he is in danger.

Q Okay. Does he have the right to pull out a gun? In fact, would you pull out a gun if you were in that same position that Isaiah was in?

MR. BARTON: Object to the form, calls for a hypothetical.

A If somebody were shooting at me and there were no other alternatives or options, then lethal force is an option, and pulling a handgun to defend yourself is an option.

Q (By Mr. Ogle) Okay. Now, as Isaiah was being shot at by the Monte Carlo driver do you give him some slack in, in even pointing a gun at police officers that were across the street --

A Absolutely not.

Q -- at that point in time?
A Absolutely not.
Q If he didn't recognize them, would that be a reason to not believe him to be a danger?
A No, sir. You have the right to defend yourself against someone that is posing a threat to you. It does not give you the right to fire indiscriminately at other uninvolved parties.
Q Well, were you --
A Based on, based on the video --
Q Okay.
A -- the Monte Carlo was parked behind them and off to their left. When Mr. Hutchinson fired at us, as police officers we were off to his right and in front of him uninvolved in that incident.
Q Were you the --
A There's not a legal justification for firing at people uninvolved if it posed no threat to you.
Q Were you shooting at him or the Monte Carlo driver?
A I was shooting at Mr. Hutchinson.
Q He's the suspect?
A In this incident I was responding to Mr. Hutchinson firing at me, at the other officers.
Q Did he point a gun at you?

A I believe so. Yes.
Q How do you know?
A The video clearly shows it, sir.
Q Okay. Does it clearly show more than one shot?
A Again, without audio it's difficult to say that the video answers that.
Q Are all the shots that were made in the first sequence attributed to Isaiah or to the Monte Carlo driver?
A That I don't know either.
Q Would that make a difference in your conclusions today?
A No, sir.
Q Why not?
A I took the course of action I did in order to defend the lives of the innocent people in that parking lot, myself and the other officers I was with. I reacted to Mr. Hutchinson firing his weapon at us from the front of his vehicle.
Q Was he, was he, was he killed by the officers?
A Sir, I can't answer that. I'm not a, I'm not a doctor or a medical examiner. Ultimately his, his, his manner of death was a result of being shot.

Q Was there a ballistics test done?
A I'm sorry. You looked at Mr. Barton. Is that directed at me or him?
Q You.
A As a, as a matter of course, as you know in these investigations, yes. There are ballistics tests that are conducted in forensic analysis of, of all evidence that's recovered.
Q This is actually my first round of police assaults in regard to litigation. I take that back. There was one in San Antonio.
But were you one of the officers that was shooting at the Maserati as it was fleeing the scene?
A I was not shooting at the Maserati, sir. I was shooting at Mr. Hutchinson --
Q Uh-huh.
A -- the subject I believe that posed the greatest threat to the persons in the parking lot, myself, and the other officers on the scene.
Q Okay. And you have to take responsibility for each shot you take, correct?
A Correct.
Q Every shot you have to be in imminent danger, correct, in order to shoot somebody?

A No, sir.
Q Oh, okay. When can you take shots at people when you're not in imminent danger?
A Your wording on that is what's confusing.
Q Do you --
A As a, as a police officer --
Q Uh-huh.
A -- we can employ lethal force --
Q Mm-hm.
A -- deadly force --
Q Mm-hm.
A -- when there's a threat to our life or a third party's or a threat of serious bodily injury to our life or a third party's.
Q Okay. So either you or someone else is in imminent danger. Thank you for the clarification.
What imminent danger did Isaiah pose as the Maserati was fleeing towards I-35?
A Again, as I previously stated, as fast and dynamic and chaotic as this incident was, as this scene was --
Q Mm-hm.
A -- Mr. Hutchinson posed a risk to all the previously mentioned parties involved, the uninvolved public, the officers, and myself. My response to that

was to stop that lethal threat as quickly as possible to prevent further loss of life or injury in that moment.

Q Okay. Well, you're causing an injury when you're -- when you shoot at someone in the back. Would you agree with that?

MR. BARTON: Object to the form.

A I didn't shoot at anyone in the back, sir, so I can't greet with that statement --

Q (By Mr. Ogle) Well, you --

A -- by the way, by the way that it's worded.

Q That was my question. In the video towards the end it shows police officers stumbling over each other shooting indiscriminately -- or, I'm sorry, shooting towards the Maserati as it's fleeing the scene during South by Southwest. Do you recall that part of the video?

A Again, sir, the way you're wording it I disagree with it. Officers are not firing indiscriminately.

Q Okay. I knew I was going to get in trouble with that.

The police officers were shooting at the Maserati as it was fleeing the scene, at the back of the Maserati, correct?

A No, sir.

MR. OGLE: Could we show the video again?

MS. BLACKWELDER: Yes, sir.

A I was the officer at the rear of the vehicle --

Q (By Mr. Ogle) Let me show you the video again so we don't have any confusion.

(Video Played)

Q All right. You saw the police officers shooting at the back of the Maserati?

A Again, sir, it's the wording on it. I can't speak to what the officers are doing. I was not shooting at the Maserati. I was targeting and firing my handgun at Mr. Hutchinson, not the vehicle. The back door was still open.

Q The police officers that were shooting at the Maserati as it was fleeing did so based on the policies that allow you to shoot people, correct?

MR. BARTON: Object to the form.

A I can't speak to them, sir. I can speak to what I did. Again --

Q (By Mr. Ogle) Would you -- go ahead.

A Go ahead, sir.

Q I'm sorry. Please, please explain.

A Mr. Hutchinson posed a threat, an imminent threat of death or serious bodily injury. Whenever I came around that gray car with innocent people sitting in it, the back right rear door, the back passenger door, was open, Mr. Hutchinson was in it. At that time I believed that Mr. Hutchinson still had a weapon and still posed a threat of death or serious bodily injury. I actively targeted him using the sights of my department-issued handgun and fired rounds to stop that threat as quickly as possible.

Q And you didn't see him with his hands up?

A Once the vehicle left I stopped firing.

Q But --

A No, sir. I did not see him with his hands up as you state.

Q Okay. You stopped firing, but you saw the other police officers shooting at the Maserati, correct, as it was fleeing?

A No, sir. I did not.

Q You didn't see the police officers shooting at the back of the, of the Maserati as it was fleeing?

A No, sir.

MR. OGLE: Could we show the video again?

(Video Played)

MR. OGLE: Maybe it's not on this one.

MS. BLACKWELDER: I'm going to fast forward it. Tell me where to stop, Mr. Ogle.

MR. OGLE: Okay. Right there.

Q You see that police officer in the brown shooting at the Maserati?

THE WITNESS: Can we go back just a little bit so I can see which one he's pointing to? I'm sorry, ma'am.

MS. BLACKWELDER: It's okay. I just to have to go...

THE WITNESS: Can you pause --

MR. OGLE: Right there, if you'll stop.

THE WITNESS: -- right there?

MR. OGLE: Right...

A Which officer are you referring to, sir?

Q This guy right there is clearly shooting, along with these two right there are shooting at him.

A So the subject you pointed to, sir, is me.

Q That's you?

A And the clearly identified jacket says "Police" on the back. That's how you're able to see me so well.

Q Well --
A So what you --
Q -- I see --
A I think what you're seeing, sir, is a weapon-mounted light. It's a flashlight affixed to the handgun, and that's a light beam illuminated on the vehicle. Rounds weren't fired as that vehicle drove away. I stopped firing once the vehicle started to leave.
Q There's, there's flashes coming out of the end of your gun.
A I'm not seeing flashes coming out of the end of my gun, sir. I'm sorry. We, we may, we may not be seeing the same thing.
Q Okay. Let's, let's take a look.
MR. OGLE: Right here just stop.
A So that's --
Q That's you.
A That's a weapon-mounted light, sir. That's a flashlight on the end of my handgun.
Q Okay. You're not shooting at the Maserati?
A I am --
Q Firing --
A In this sequence I can't tell you in this, in this --

Q Okay.
A -- still shot am I firing right now, but I think -- that's, that's not a muzzle flash. That's my, that's my flashlight.
Q Are you in imminent danger at this point?
A Yes, sir. All of us are. I believe Mr. Hutchinson still had the firearm that he used to fire on us.
Q Which means that you are -- you were entitled to shoot him in the back, correct, in that situation?
MR. BARTON: Object to the form.
Q (By Mr. Ogle) Correct?
A I'm justified in using lethal force.
Q I want you to answer my question yes or no. Are you authorized in that situation to shoot at a fleeing suspect in the back, yes or no?
MR. BARTON: Object to the form.
A If --
Q (By Mr. Ogle) Yes or no.
A If the suspect still, still, is still a lethal threat, yes. We are justified in shooting him.
Q And he is still a lethal threat as long as he's got a weapon in his hand, correct?
A Again, it's, it's the way you're wording the question.

Q That's right. I want you to answer yes, no, or I can't answer.
A At this --
MR. BARTON: Object to the form.
A At this time Mr. Hutchinson is still a lethal threat.
Q (By Mr. Ogle) Is it because he has a weapon that he is a threat?
A It's the totality of the circumstance, sir. He's already fired --
Q He's --
A -- on us and the public and still has a weapon and he's fleeing. He's not giving up, he's not surrendering, he's not being compliant.
Q Okay. So that gives you the right to shoot him in the back, yes?
A Because he still poses a threat to us and the, and the people in the parking -- the public in the parking lot.
Q But he's fleeing the scene. He's driving away.
A At this time, sir, as I, as I've stated, I believed he was still a threat.
Q And the reason you think he's still a threat is because he still had his firearm.

MR. BARTON: Object to the form.
Q (By Mr. Ogle) Correct?
A Sir, I'm not sure how else to answer the, the question.
Q Well, with a yes or a no would be nice. You were trained in this circumstance that you're, that you're still in imminent danger while a suspect is fleeing, correct?
MR. BARTON: Object to the form, asked and answered.
Q (By Mr. Ogle) Yes or no?
A I'm not trained that somebody's a threat when they're running away, if that's what you're asking.
Q With a gun.
A In this instance I believed Mr. Hutchinson was still a lethal threat.
Q Was he shooting at anybody as he was fleeing?
A That I'm unaware of.
Q But you just -- you based your justification on shooting him as he's fleeing because of the fact that he pointed a gun and shot, allegedly shot at police officers beforehand, correct?
MR. BARTON: Object to the form.
A I'm not sure that I'm still shooting in this still shot. And that's, that's what you're asking, am

I shooting right here. I fired the rounds that I fired when I believed he was still a lethal threat. Whenever he was, whenever he was no longer still a lethal threat or unable to be isolated or, or distracted or neutralized I ceased firing. I did not continue to fire at the vehicle as it fled the scene, and it eventually goes under, under the, under the highway and leaves. There's no more rounds fired.

Q (By Mr. Ogle) Okay.

A But in this still shot I believe you're looking at my flashlight and implying that that is, is a flash from a muzzle, and I believe you're incorrect in that, sir.

Q Why would you have a flashlight if it's a clearly lit area? Or did I misquote you on that?

A Sir, this is, this is almost 3 o'clock in the morning.

Q So is it a clearly lit area or not?

A The parking lot is very clearly lit. The interior of that vehicle is not as clearly lit as the exterior parking lot.

Q But you think it was lit enough that he should have been able to recognize the back of your jacket among the emblems on the side of your, your arms, correct?

MR. BARTON: Object to the form, asked and answered --

A Yes, sir.

MR. BARTON: -- argumentative.

A I do, because you pointed to it.

Q (By Mr. Ogle) Well, we can see police from this angle, but from Isaiah's angle you guys are running up and there's no way that he can see the back of your jacket, correct?

MR. BARTON: Object to the form.

Q (By Mr. Ogle) From his angle.

A I don't know what his angle was, sir.

Q His angle --

A If he's not standing behind me, that would be correct he can't see my back. But the patches and, and badge are visible from the front as well as my hat patch.

Q How can --

A It also says "Police" on the front of my jacket in reflective material, as I stated earlier.

Q Okay. But you guys are in dark clothes. This doesn't appear to be the typical police uniform. It's -- I understand Austin's des- design of police uniforms, but would you agree you look like thugs from a distance?

MR. BARTON: Object to the form.

A No, sir. I would not.

Q (By Mr. Ogle) Hey --

A We are all wearing the authorized uniform of the Austin Police Department.

Q Okay. The authorized uniform that is, is just dark blue pants, right?

A Yes, sir.

Q And you've got black shoes, right?

A Yes, sir.

Q You don't have any stripe on the side the way they used to have on police uniforms, correct?

A No, sir.

Q Does anybody wear a little stripe on the side of their arms -- or side of their legs?

A I don't know, sir.

Q Those are old school?

A I'm sure some police departments still do.

Q Yeah.

A I don't know where they're at or who does it.

Q Why would you downplay rather than accentuate a uniform? When I say downplay I mean look, kind of look like civilians except for the patches.

MR. BARTON: Object to the form.

A Sir, that's the authorized --

Q (By Mr. Ogle) I know --

A -- uniform of the --

Q -- it's authorized.

A -- police department. They don't consult me on which uniform we, we choose to, to go with.

Q Would you, would you agree that, that if they were more easily identifiable, people wouldn't mistake you running from the side of this instance?

A No, sir. I would not agree with that.

MR. OGLE: Okay. If we could show it one more time with the other police officers shooting towards the back of the Maserati.

(Video Played)

Q Okay. Right, right here. I see, like, puffs of smoke coming out of your, coming out of your, your vehicle [sic], but you're saying in this instance you were just flash- shining your flashlight at him?

A No, sir. I'm saying that that light spot --

Q Uh-huh.

A -- is my weapon, not a light.

Q Okay.

A It's activated so it's on.

Q Okay. But you're pointing and you've got your light on.

A Yes.

Q But you're saying you did not shoot any shots --
A No. That's not what I'm saying, sir.
Q So did you shoot at the fleeing vehicle, yes or no?
A I shot at Mr. Hutchinson.
Q Who is in the fleeing vehicle, correct?
A But it's the way you're wording. It's --
Q I'm wording it --
A -- it's a violation of policy to shoot at a, at a vehicle. I am targeting the person --
Q Oh.
A -- who is a lethal threat.
Q That's inside a vehicle.
A Yes. He's --
Q So --
A -- inside that vehicle posing a lethal threat, and I am targeting him and I am firing at him in order to stop that threat.
Q Tell me about the policy, I never heard of this, where you're -- it's against the policy to shoot at a vehicle.
A You can't arbitrarily shoot at a car, sir.
Q Arbitrarily. Oh, okay.
A Correct.

Q Well, you can't arbitrarily do anything, can you?
MR. BARTON: Object to the form.
A I don't know the answer to that, sir.
Q (By Mr. Ogle) Okay. But is the -- does the policy include the word "arbitrarily," or is there a more general definition to shooting at a vehicle?
A The policy states you can't shoot at a vehicle in order to mobilize it -- in order to immobilize it.
Q Okay.
A You can shoot at a -- you can employ lethal force against somebody that is a threat to yourself or a third party inflicting death or serious bodily injury.
Q Now, there are a couple of civilians that were shot. One was shot in the wrist, correct?
A There were a couple civilians that were injured.
Q Do you think they were, they were -- is there, is there a high likelihood that the police -- that the civilians were shot by bullets of the police officers?
A No, sir.
Q Oh, no? Are you, are you certain that they

came from Isaiah or the Monte Carlo driver?
A I'm not making assumptions as to where they came from.
Q You're sure making an assumption regarding the police involvement though. There's no way that they could have been shot by a police officer's bullet.
A I'm speaking to my actions, sir.
Q No. No. You -- I asked you whether or not there were any -- whether the civilians were hit by police officer bullets, not necessarily yours.
MR. BARTON: Object to the form.
A I can't speculate to that, sir.
Q (By Mr. Ogle) Can't speculate.
A I didn't conduct this investigation.
Q You can speculate as to Isaiah's actions. You can believe that he clearly identified you as a police officer, but you can't speculate on the actions of other officers?
MR. BARTON: Object to the form.
A No, sir. I believe it's -- it would be hard to say that five uniformed police officers in a well-lit parking lot are not easily identifiable.
Q (By Mr. Ogle) Okay.
A You have referenced this video and pointed to all of the officers in uniform based on the uniform

that we're wearing as being police officers.
Q But --
A So I believe that we were easily identifiable as police officers. Having been a police officer for 15 years and worn that uniform my career here, I believe it is a easily recognizable uniform, because that is how people approach us to ask us for help or tell us when they have a problem.
Q What about at South by Southwest where people are coming from out of town? What about them, like Isaiah?
MR. BARTON: Object to the form.
Q (By Mr. Ogle) He was from Grand Prairie. He didn't -- wasn't aware of...
A The patch and badge both say "Police" on it, sir. That's a universal title.
Q Would it be better to be more recognizable?
MR. BARTON: Object to the form.
Q (By Mr. Ogle) Or is there a reason why you wear almost plain clothes with a couple patches on them?
MR. BARTON: Object to the form.
A Sir, that's a uniform, as previously stated.
Q (By Mr. Ogle) I'm just asking you, even though that's the policy, that's the standard-issue

uniform that you are given, would it be more identifiable to have the old-school two-toned uniforms?

A I can't answer that, sir. I believe this uniform is easily identifiable. I believe hundreds if not thousands of people identify us as police officers or recognize us to be police officers. I don't know what else to tell you about the uniform, sir. It's what's issued, so I wear it.

Q What are your current duties with the Austin Police Department?

A I recently promoted to sergeant. A sergeant over Violent Crimes and night-shift detectives. Those detectives investigate all manner of violent crimes that occur overnight, triage crime scenes and investigate those crimes.

Q What was your current duties at time of this incident in March of 2019?

A I was a detective with the Austin Police Department assigned to the Gang Suppression Unit and the Safe Streets Task Force.

THE REPORTER: And what task force?

THE WITNESS: Safe Streets.

Q Have you been in any other division?

A Yes, sir.

Q What other divisions?

A I started on patrol, which was the Southeast Area Command. I then transferred to a street crimes unit in the north -- or Region 2 at the time. And then from there I transferred into the Organized Crime Division with a gang unit. And then as stated, I recently promoted out and am currently assigned to Violent Crimes.

Q Have you discussed this gunfire incident which resulted in Hutchinson's death with any of the other officers who were present at the scene?

A No, sir.

Q You were on duty at the time of the incident, correct?

A Yes, sir.

Q And was it ever determined the shots that, the first round of shots, where they came from?

A I'm confused as to what you're asking me to answer. Based on the video, it appears that the Monte Carlo fired shots.

Q Right. Okay. And who was the Monte Carlo driver shooting the shots at? Was he shooting at the police officers too?

A Based on the investigative report when he was interviewed --

Q Mm-hm.

A -- no, sir. He was not firing at the police.

Q Okay. Did you notify a supervisor prior to going to the scene of the shooting?

A Again I'm unsure -- did I, did I tell a supervisor that I was going to that location?

Q Yeah. In the heat of the moment, and the answer is no, right?

A I was sent to the --

MR. BARTON: Object to the form.

A I was sent to that location by a supervisor.

Q (By Mr. Ogle) Okay. Had there been any discussion on the radio about this Maserati?

A Prior to this incident?

Q Yeah.

A No, sir. Not that I'm aware of.

Q Had it been a suspect before this even occurred?

A Not that I'm aware of.

Q Was there any discussion of being a stolen Maserati with temporary license plates?

A Prior to this incident?

Q Prior to the incident.

A No, sir. I was unaware of any of that.

Q Okay. Whatever happened to the Maserati, or do you know?

A When? Like, in general or related to this incident?

Q Demarios said he just left the Maserati and he didn't know what happened to it. I saw CSI last night and apparently they take all the dealers' nice cars and they put them in a certain garage to use for undercover. I don't know whether or not that ever happened with the Maserati or if it was -- whatever happened it to. I'm just cur- Demarios is curious as to what happened to the Maserati.

A I know the vehicle was located the next morning with a deceased body in it.

Q Right. It was picked up?

A I don't know anything beyond that what happened to the vehicle, sir.

Q Your intention at the time of discharge of your firearm in the direction of Isaiah Hutchinson was to kill him, correct?

A No, sir.

Q Excuse me?

A No, sir.

Q No? Was it just to wound him?

A No, sir.

Q Was it to stop the threat?

A Yes, sir.

Q By killing him?
A No, sir.
Q Is that an acceptable collateral damage?
A When somebody is actively shooting --
Q Uh-huh.
A -- in order to save lives --
Q Uh-huh.
A -- the goal was to neutralize the threat to prevent further loss of life or injury.
Q Yeah. In regard to the training you received, what specific class or training session teaches you about imminent threat and when you're allowed to shoot at a fleeing subject?
MR. BARTON: Object to the form.
There's not just one specific course that addresses that issue. There are multiple courses that, that address that issue as well as the scenario-based training.
Q (By Mr. Ogle) And I'm looking to get my hands on maybe an Austin police manual that, training manual, that identifies and what educates -- what education there is in regard to shooting at fleeing suspects. Are you aware of where I could, where I could locate one of those or...
A I would start with our policy manual.

Q Your policy manual.
A And then defer --
Q Do you have a copy?
A And then defer to the Code of Criminal Procedure and the Texas Penal Code.
Q And what do you recall the, the short answer to when you can shoot at a fleeing suspect?
A As I previously stated, sir, lethal force, lethal force can be employed whenever the subject poses a risk.
Q Any risk?
A To myself or a third party of death or serious bodily injury.
Q Any risk, or does it have to be --
A Death or serious bodily injury, sir.
Q A risk of -- anyone with a gun poses a risk, correct?
MR. BARTON: Object to the form.
A If there's an imminent threat of serious bodily injury or death, lethal force can be employed, sir.
Q (By Mr. Ogle) When does that imminent threat stop in this situation in the Hutchinson situ- Hutchinson video?
A If Mr. Hutchinson is still armed and still

indiscriminately firing his gun, he is still a threat.
Q And was -- is that what you're -- is that your understanding as to what he was doing, was indiscriminately firing?
A In a parking lot full of people that are not involved in this incident, innocent people that could be killed or seriously injured, there is a disregard for life and safety of those people, to include the other uniformed police officers and myself.
Q Now, that disregard that you point out as Hutchinson's risk, the police officers that are shooting at the fleeing vehicle, they too posed danger to the public that's walking around, correct?
MR. BARTON: Object to the form.
A I can only speak to my actions, sir. I can't speak to the other officers. My actions were to prevent further threat to life or safety.
Q (By Mr. Ogle) And so if he was rounding the corner getting onto I-35 from that distance, based upon your training with the Austin Police Department would you have been justified in shooting at him in the vehicle?
A I didn't fire any rounds when he turned northbound --
Q That's not my question. Would you have been

justified in shooting him as far away as under the overpass?
MR. BARTON: Object to the form, calls for a hypothetical.
A Posing --
Q (By Mr. Ogle) He still had a gun.
A Posing an imminent threat or danger to life or of serious bodily injury or threat, it's not written into just a set distance of 20 feet or 10 feet.
Q Should it be?
A Sir, I don't write the law.
Q Okay. What --
A I don't make policy. I can't speak to that. I can't answer that. If the --
Q You fired the gun.
A -- sub- if the subjects of the vehicle were still shooting whenever they turned northbound on the frontage, they still posed a threat to public safety.
Q Were they --
A They still posed a threat --
Q -- shooting at --
A -- to the other officers.
Q Were they shooting at any time after Isaiah got into the vehicle?
A You're saying "they" as in --

Q They.
A -- other occupants --
Q Did anyone --
A -- of the vehicle?
Q -- in the Maserati? Was anyone in the Maserati shooting after Isaiah got into the vehicle?
A Once the door shut and the vehicle began to leave there were no more rounds fired.
Q By you or by the other officers?
A I didn't fire any more rounds, and the occupants of the vehicle, to the best of my knowledge, did not fire any more rounds as they left the scene.
Q Did you see other officers in the video that we've seen a dozen times shooting at the fleeing vehicle?
A I don't believe I did, sir. The video doesn't reflect gunshots. You can't see bullets in the video, sir.
Q You can't --
A You --
Q You can't --
A -- you can see, you can see officers pointing their weapon at the vehicle. I don't believe that any more rounds were fired when that vehicle left the scene, if that's what you're asking, but again, I

didn't conduct this investigation.
Q If there had been shots fired at the fleeing Maserati, would that have been outside of police policy in terms of justifying shooting?
MR. BARTON: Object to the form.
A Again, that's, that's a little vague. If the occupants of the vehicle are posing a threat, a lethal threat, then lethal force would be justified. So no, it would not be outside of policy.
Q (By Mr. Ogle) So the police officers were justified in this situation after Isaiah got into the vehicle and fled the scene?
A The officers were justified employing lethal force against Mr. Hutchinson. Yes.
Q Even after it was fleeing, shooting him in the back.
A As I previously answered, sir, I don't believe rounds continued to be fired as the vehicle fled the scene.
Q Okay. And if you -- if there's evidence that proves you wrong, would that change your position?
MR. BARTON: Object to the form, calls for hypothetical.
A At this time with the facts that I have, sir, and having been on that scene, no. I believe that

lethal force employed against Mr. Hutchinson was both justifiable and legal in order to prevent loss of life or serious bodily injury to, again, myself, the public, and the other officers on scene.
Q (By Mr. Ogle) Have you ever received continuing training after you became an active-duty police officer regarding circumstances where you are authorized to use deadly force?
A Yes, sir.
Q Were there -- was, was -- were there any differences regarding the use of force from the training you received at the police academy?
MR. BARTON: Object to the form.
Q (By Mr. Ogle) Had you been retrained, in other words, in regard to using deadly force?
A I've had continuous training since I went through the police academy. Yes, sir.
Q And there was one incident in which a naked man was shot by police officers here in Austin. Do you remember that, that case?
A No, sir.
Q Have you ever been sued before?
A No, sir.
Q If you had a do-over in this incident which led to the death of Isaiah Hutchinson, would you do

anything differently at this point?
A No, sir.
Q Did you hear any of the officers on the scene instruct Isaiah to drop his, drop his gun?
A I did not hear any commands, sir.
Q Okay. And we've already discussed the fact that none of you announced yourself as police officers, correct?
MR. BARTON: Object to the form.
A I don't know what the other officers did, sir. As you can see from the video, three went to the right and I went to the left.
Q (By Mr. Ogle) Do you remember --
A I didn't give any --
Q -- hearing --
A -- commands and I didn't say anything. It was a chaotic scene, sir. People were yelling, vehicles were driving, there was road noise, and we were being shot at.
Q So you're not certain whether Isaiah was killed initially while the vehicle was parked or as a result of shots fired after he was fleeing the scene. Is that fair?
A I'm, I'm not a doctor, sir. I don't know when, when he became deceased. I've read the report

and it shows he was shot in his chest and his, and his arms and in the head. It doesn't say anything about rounds to the back, and I don't know, again, what time or when he would have passed away.

Q So if you were to tell the jury whether you did your job in an excellent manner, you would say that you did your job -- would you say that you did your job in an excellent manner?

MR. BARTON: Object to the form.

A I did my job to the best of my ability, sir, in an effort to save lives and prevent death or serious bodily injury.

Q (By Mr. Ogle) As far as a grade, you're not willing to grade yourself?

A No, sir.

Q Is it unfair to pass judgment on a, on a police officer's behavior?

A Is it unfair?

Q Yeah.

A Sir, people are entitled to their opinions, and they can, they can critique anything or any person that they want to.

Q Are there consequences to that?

MR. BARTON: Object to the form.

A I'm not sure I understand that question, sir.

Q (By Mr. Ogle) Given the circumstances of Isaiah shooting at the police officers, do you find it surprising that Isaiah would run to the side the police officers were at to get into the door as opposed to the other side?

A I don't, I don't know how to speculate on the route he took to get back to his car. I'm sorry. I'm not sure what...

Q Well, did you see which, which -- his direction after he was fleeing from the Monte Carlo as he got into the Monte Carlo -- as he got into the Maserati?

A He ran around the front of the, the Maserati.

Q And ran around to the side that you all were at, correct?

A He ran around to the passenger side of the vehicle.

Q Do you think he found you to be a threat, in his frame of mind?

MR. BARTON: Object to the form.

A Again, sir, I can't speculate as to what he was thinking. As we've previously discussed over and over again, there were five uniformed police officers running to help.

Q (By Mr. Ogle) Uniformed. Okay. Did you

hear any commands whatsoever given to Isaiah Hutchinson?

A As I previously stated, sir, no, sir. It was a chaotic scene and we responded to gunshots, being shot at. This parking lot is next to the highway. There's multiple people in that parking lot, multiple vehicles in that parking lot, and everybody is trying to get out of the way, hiding behind cars, hitting the ground.

Q How are you so certain that the civilians weren't shot by the police?

A The ones that were injured?

Q Yeah.

A I can only speak to me.

Q But you're certain that -- you, you made a definite statement that no other police officers were involved in shooting the, the civilians, correct?

A I believe you asked me if I could agree that they could have been hit, and I didn't agree to that. I can only answer what I did. I targeted Mr. Hutchinson as the lethal threat, as the person posing a threat of death or serious bodily injury. I targeted him, I aimed at him, and I fired at him. I didn't fire at anyone else, I didn't fire at innocent civilians or anyone else in that vehicle. I fired my

handgun at Mr. Hutchinson.

Q And so stopping Mr. Hutchinson through the use of force prioritized shooting at him over the inno- lives of innocent bystanders. Would that be a fair statement?

MR. BARTON: Object to the form.

A I kind of got lost in your question a little bit.

Q (By Mr. Ogle) Well, shooting at Isaiah as, as they're fleeing, that posed a danger to the public by shooting at him, correct?

A Mr. Hutchinson posed the danger to the public by shooting at them.

Q I understand that, but shooting at a fleeing Maserati puts the public at danger, correct?

MR. BARTON: Object to the form.

A The fleeing vehicle was not fired upon. Mr. Hutchinson as the lethal threat was fired at.

Q (By Mr. Ogle) I'm sorry. The fleeing vehicle was not fired upon?

A Mr. Hutchinson.

Q Mr. Hutchinson was not firing after it was fleeing.

A Mr. Hutchinson was the lethal threat, not the vehicle.

Q That's right. And -- okay. Which leads me to my next question. We've already agreed numerous times that you are justified in shooting at a fleeing vehicle if it still poses a threat, correct?

A If the occupants of the vehicle --

Q Just yes or no.

A -- pose a --

Q Just, you know, that was my first belabored statement this morning -- or this afternoon, was that if we could -- and you agreed that if I -- when I ask you a question, where appropriate if you would please answer with a simple yes or no or I don't know, and then if you feel your need to explain the answer, you can do so. And you're not willing to swear as God is your witness to anything, but what I am asking you is, is to, if possible, answer with a yes or a no and then follow up with what you want to talk about. Is that still understood and agreed to?

MR. BARTON: Object to the form.

A All due respect, sir, I will answer yes or no to a question that is asked that I can simply answer yes or no. Your questions are becoming convoluted and asking me to agree to statements at the beginning of the question that I don't agree to, and then the end of the question is something that I can answer. I'm

attempting to answer the questions that you're asking as best I can without being pigeonholed into a statement that I do not agree with that you're sticking in, inside the question.

Q (By Mr. Ogle) I'm talking --

A The vehicle was not fired upon. Mr. Hutchinson as a lethal threat was fired upon. It is within policy and it is, it is within the law that if someone poses a lethal threat, then lethal force can be justified.

Q How big of a threat does it have to be?

A A lethal threat, a threat to life. So a, a threat capable of causing death or serious bodily injury, as we previously discussed.

Q Okay. So let me start again in my sequence of questions. Mr. Hutchinson as he was fleeing the scene still posed a threat, correct?

A Yes.

Q And you were justified in shooting at a fleeing vehicle in Hutchinson's case, correct?

A No. I was justified in shooting Mr. Hutchinson as a lethal threat.

Q What did I say? Did I say vehicle again?

A You said the vehicle again, sir.

Q I'm sorry. Okay. Hutchinson's in the vehicle.

A Yes, sir.

Q So you've got to go through the vehicle when you're shooting, correct?

A No, sir.

Q The bullet doesn't have to go through the vehicle in order to strike him?

A No, sir.

Q All right. Tell me why.

A The passenger door, the rear passenger door to the Maserati was open when I fired at Mr. Hutchinson, and that is reflected in the video.

Q Listen to my question: Fleeing vehicle. I'm talking about after the door was closed and they're fleeing, correct?

A Correct. That's what --

Q Okay.

A -- you're asking? Yes.

Q That's what I'm asking.

A Yes. Okay.

Q Okay? So are you justified in shooting at Hutchinson that's in the fleeing vehicle?

A As I previously stated, I no longer fired at him once the vehicle -- the door was shut --

Q I'm not --

A -- and the vehicle left.

Q -- asking whether you did or not. I'm asking whether you are justified in flee- in shooting at Hutchinson that's in the fleeing vehicle, yes or no?

MR. BARTON: Object to the form. That calls for a hypothetical different than the facts of the video and different from the testimony he's already given on this, Scott. So I -- you know, you can go ahead and ask the question and make the record, but I, I don't think you're making any progress with this. So I suggest you give anoth- give another shot or come at it from a different angle.

Q (By Mr. Ogle) Anytime someone has a gun who doesn't follow a command to drop it, you're allowed to shoot him, right?

A No.

Q The police officers that were shooting at the -- at Isaiah's -- at Isaiah that was in the fleeing vehicle were justified in shooting at him as he was driving away, correct?

MR. BARTON: Object to the form.

A Again, sir --

Q (By Mr. Ogle) Yes or no?

A -- I'm not trying to be argumentative with you.

Q Don't, don't -- I'm talking about the police officers that you saw shooting at the vehicle as it was fleeing.

A The officers that shot at Mr. Hutchinson in this incident --

Q As he --

A -- were justified.

Q -- was fleeing.

A They were justified.

Q Okay. Because he still posed an imminent danger inside the vehicle.

A Mr. Hutchinson still posed a danger. Yes.

Q And the shots fired at Hutchinson posed a danger to the public, correct?

A No.

Q Why not?

A Because --

Q They were shot.

A Correct.

Q And so that's not a danger?

A They were aimed at Mr. Hutchinson and not fired indiscriminately at the public.

Q Let me ask you again. Do you not -- do you disagree that the public was put in danger when Isaiah was being shot at?

A I believe the public was put in danger when Mr. Hutchinson fired at --

Q Yes --

A -- at them and us.

Q -- or no. In regard to the police officers shooting at Hutchinson --

A No.

Q -- as he was fleeing the vehicle --

A No.

Q -- were the public put in danger?

A No, sir. As evidenced by that video, the multiple people in vehicles that were between the officers and Mr. Hutchinson's vehicle, no officers fired until they had cleared those people and there was a clear line of sight. I believe that the officers employed the correct use of force and it was justified in addressing Mr. Hutchinson as a lethal threat based on his actions that day, sir.

Q Now, there's priorities in terms of -- there's a priority in shooting the suspect as opposed to the danger to the public. But your position is there was no danger posed to the public by the officers shooting at Isaiah as he was fleeing, correct?

A No, sir.

MR. BARTON: Object to the form, argumentative.

Q (By Mr. Ogle) Were the public -- was the public put in danger by the shots fired by the police officers shooting at Isaiah's -- shooting at Isaiah in the fleeing vehicle?

A No.

Q If they weren't put in danger, do you consider being shot in the wrist by an officer as being a danger?

MR. BARTON: Object to the form.

A If someone were shot by an officer in the wrist --

Q (By Mr. Ogle) Yeah.

A -- then yes. That is a dangerous situation.

Q Okay. But you don't believe that shooting at Isaiah as it was fleeing put the public into danger.

A No, sir.

Q Then how do you explain being shot in the wrist by a, by a cop?

A Who are we talking about here, sir?

Q I'm talking about there's two individuals that were in vehicles that got shot. One of them grazed his head and the other one got shot in the wrist. These are completely different people. Were you aware of the, of the members of the public that

were shot in this firefight?

MR. BARTON: Object to the form.

A The other subjects that were shot?

Q (By Mr. Ogle) Yeah.

A In the report?

Q Uh-huh.

A It only says that they were shot. One of them states that he was shot initially and not once the officers were engaging Mr. Hutchinson. I don't have the information that tells me exactly who --

Q I do.

A -- was, was shot and by whom, so I can't answer that, sir.

Q It's your position that, that one of the members of the public that was shot was shot in some other incident, or as a result of this incident?

A I'm unaware of any other persons that were shot by the police.

Q Are you attributing the two people that were shot as being shot by people other than the police?

A I'm unaware of anybody else that was shot by the police, sir. That's --

Q Are you aware of two people that were shot?

A I'm aware that there were two other people that were shot.

Q Okay. Were they -- was that involving firefights from this incident?
A I don't know, sir.
Q Okay.
A I didn't conduct the investigation, I haven't met them, I haven't interviewed them.
Q Okay.
A I was unaware of that until I got the information for the investigative report for this, this hearing.
Q But if you were to do this again, you would do the same thing, correct?
A Yes, sir.
Q Okay. And you would put the public in danger shooting at a fleeing suspect.
MR. BARTON: Object to the form, asked and answered.
A No, sir. That's incorrect.
Q (By Mr. Ogle) You still believe that the peop- the public was not in danger?
A Yes, sir. From --
Q And --
A -- the police.
Q -- being shot in the wrist is not a dangerous situation in your posi- in your opinion?

A I, I have no knowledge of someone else being shot by the police, sir.
Q Who do you attribute the people being shot by then?
A Mr. Hutchinson fired rounds in this, this incident.
Q Okay. So you're going to blame Hutchinson for the people up towards I-35 that were shot?
A No, sir. And the --
Q Then who --
A -- driver of --
Q -- are you going to blame?
A I'm not --
Q Nobody?
A -- blaming anyone, sir.
Q Not blaming anybody.
A No, sir.
Q Okay.
A That's, that's not my job.
Q Is it a pretty good chance that the public was -- that the two people that were shot were shot by stray bullets by the police officers that were shooting at the fleeing vehicle?
A No, sir.
Q Why not?

A Because, sir, you keep saying shooting at the fleeing vehicle.
Q I'm sorry. Shooting at Isaiah as it was -- who was in the vehicle.
A No, sir.
Q The stray shots that came -- that hit the, the members of the public you're convinced were not shot by police officers?
MR. BARTON: Object to the form.
A Correct.
Q (By Mr. Ogle) Why not? Why do you discount police officers?
A I don't have any evidence to indicate that, sir.
Q So are you somewhat biased in favor of the other police officers?
A No, sir.
Q Are you your brother's keeper?
MR. BARTON: Object to the form.
A No, sir. That's --
Q (By Mr. Ogle) You're not your --
A That's --
Q -- brother's keeper?
A That's a -- I understand what you're saying. That, that is a saying. Yes.

Q Have you ever heard of "testilying" before?
A Have I heard the phrase? Yes, sir.
Q I was involved in an incident at the Chris Brown concert where I just stumbled upon representing people that are raped in institutions, and there was a little sprinkle and they told us all to go outside the stands. And there was about six police officers, one of them was a captain, Captain Simon of TCOLE -- she was on a bicycle -- and one thing led to another. And I was just having a casual conversation with the officers about why they don't regulate rapes within Austin State Hospital. And I got these pithy answers, and it turns out Officer Simon came up from the back and slapped me in the back of my head, and I was arrested for I think trespassing. The police officers came to the court and they all lied.
Have you been in a circumstance where police officers will lie on behalf of a fellow officer?
MR. BARTON: Object to the form. This is kind of an abstract question not related to the facts of this incident at all, but go ahead and answer if you can.
A No, sir. I have not.
Q (By Mr. Ogle) Are you aware that 99 percent of the rapes at the Austin State Hospital are closed?

A No, sir. I'm not.
MR. BARTON: Object to the form.
Q (By Mr. Ogle) Would you consider yourself biased in favor of your fellow officers?
A No, sir.
Q But you can't speak on behalf of them, correct?
A I can't speak to their actions, sir.
Q You can judge Isaiah Hutchinson, though, correct?
A No, sir.
MR. BARTON: Object to the form, argumentative.
Q (By Mr. Ogle) So in regard to shots fired after the -- at Hutchinson after the Maserati was fleeing the scene, you're telling the jury that you believed, you perceived there was some imminent threat of death prior to each of the shots of you and the other officers. Is that, is that a fair statement?
MR. BARTON: Object to the form.
A I believe Mr. Hutchinson was still a threat. Yes, sir.
Q (By Mr. Ogle) That wasn't my question. And you believe that he was a severe threat that justified shooting at him because you believe he -- because he

possessed a weapon.
A No, sir. I believe he was a deadly threat because he utilized that weapon by firing at uniformed police officers.
Q What kind of formal train have you had with regard to de-escalation and how to communicate with people in these similar crises for mental health situations?
A It's mandated as a commissioned peace officer in the state of Texas that you go through de-escalation training to deal with persons who may be going through a mental health crisis or some sort of episode.
THE REPORTER: Some sort of what?
THE WITNESS: Episode. I'm sorry.
Q Are you aware of any training about de-escalation with individuals who may be carrying a gun or a knife?
A De-escalation training in general deals with utilizing de-escalation tactics and techniques in the course of business as a police officer on any call if possible, if it is safe to do so.
Q Would you consider under those circumstances that Hutchinson panicked?
A No, sir.
Q He's being shot at by the Maserati driver.

It looks like he may have been shot in the wrist by the Maser- by the Monte Carlo driver. Do you think that gave him reason to be panicked in his frame of mind?
MR. BARTON: Object to the form.
A I can't speak to his frame of mind, sir.
Q (By Mr. Ogle) Do you think any of the police officers there with you were -- had maybe tunnel vision?
MR. BARTON: Object to the form.
A I can't answer to what they were experiencing, sir.
Q (By Mr. Ogle) Have you ever experienced panic or tunnel vision?
A I'm human, sir. Those are, those are normal physiological reactions.
Q And what training have you had in tunnel vision or per- perceptual distortion?
A I don't know that there's a specific class for perceptual distortion, but within the police academy and in the nearly 4,000 hours of TCOLE credit training hours that I had, I've attended multiple courses that deal with reality-based training that impose you to stress that helps you to deal with that and mitigate that.

Q How many hours did it take to become a police officer? Is it still about six months?
A The Austin police academy is a 32-week academy. It's not based on hours.
Q So that's six months and another week or two, correct?
A I think it's eight months.
Q Are you active in the Austin Police Association?
A I'm a dues-paying member, but I am not active.
Q Do you receive any emails from anybody at the Austin Police Association with regards to the -- or I'm sorry. Did you receive any emails from anyone from the police association in regard to your incident with Isaiah Hutchinson?
A I don't recall any emails from the association regarding this incident, sir.
Q David Joseph shooting --
MR. BARTON: I tell you what, Scott. We've been going at it for awhile. Need to take a little restroom break.
MR. OGLE: Sure.
VIDEOGRAPHER: Going off the record. The time is 3:07 p.m.

(At 3:07 p.m. the proceedings recessed, continuing at 3:17 p.m.)

VIDEOGRAPHER: We are back on the record. The time is 3:17 p.m.

Q (By Mr. Ogle) Going back to your statement regarding endangering the public, is it, is it your position that the police -- that shooting at a suspect as it's -- as he's fleeing does not endanger the public?

MR. BARTON: Object to the form.

A Can you ask that again? Because I want to answer your question correctly, but it seemed like there were two questions in there, and you want a yes or no. So -- I'm not trying to be argumentative. I'm, I'm trying to be efficient here.

Q (By Mr. Ogle) Does shooting at a fleeing suspect endanger the public?

MR. BARTON: Object to the form.

A No.

Q (By Mr. Ogle) So would you consider the public to be acceptable collateral damage to the higher priority of stopping a suspect as he's fleeing?

A No, sir.

Q Why wouldn't shooting in the middle of South by Southwest at anything not endanger the public?

MR. BARTON: Object to the form.

A That's a little broad. Related to this, this incident, the reason I don't believe that the public was in danger from the officers that were fired [sic] is evidenced by the video and the case facts of this incident. No one fired until there was a clear line of sight. There was nothing between myself and Mr. Hutchinson. In the video evidence that the other officers that were fired were in the same boat. We ran from a packed parking lot around cars and people until we could deal with the deadly threat, the lethal threat that Mr. Hutchinson posed. That's why I'm confident that there was not a, a risk to the public based on our actions, sir.

Q And you're basing your opinion that the two people that were shot were not shot by stray bullets of the police officers, correct?

A I don't have any facts that say otherwise, sir. So my, my, my opinion is based on what I have available to me regarding this investigative report --

Q Okay.

A -- and the video.

Q And you may have seen more than I have, but what do you attribute the source of the bullet wounds to the person who got shot in the wrist?

A I can't attribute that, sir.

Q So you're not attributing that at all to the police officers, correct?

A I can't attribute that to anyone, because I don't know anything about it. I, I didn't --

Q But you read that in the report.

A I read that there were, there were other people that were injured --

Q Mm-hm.

A -- but I don't know where they were injured or who injured them.

Q One of them was on the access road of I-35 north. It appears to be that those members of the public that were shot, were shot in the direction of the firing of the police officers. If that's true, would you attribute those bullet wounds to the police officers?

MR. BARTON: Object to the form.

A No, sir. It's not that cut and dry. I, I can't speculate on somebody being shot as to where it's coming from without having any, any evidence or case facts to, to support --

Q (By Mr. Ogle) Did you --

A -- that.

Q Did you read where they say they were shot?

A Yes, sir.

Q And --

A They --

Q -- where was it?

A They said where they were shot, but they didn't say who shot them, and the report doesn't have a finding as to who shot them.

Q Okay. So for that matter you completely discount the police officers.

A I'm not discounting anything. I'm saying I don't have -- the report doesn't have evidence to lead me to make a decision on how they became injured.

Q So as far as you know, it could have been a completely unrelated accident -- incident that they got shot by, correct?

A As far as I know.

Q In that same vein, in regard to pursuing a vehicle, running through red lights, are you entitled, if someone is, is being chased by you that you're entitled to run red lights?

MR. BARTON: Object to the form.

A As a police officer you're asking can I run red lights?

Q (By Mr. Ogle) At, at someone that you're chasing.

A In pursuit of someone?
Q Yes.
A Yes. If you can safely proceed through the intersection, you can run red lights.
Q It's pretty hard to safely go through a red light, wouldn't you agree?
MR. BARTON: Objection. Object to the form.
A No, sir. I wouldn't agree. As a police officer we have lights and sirens.
Q (By Mr. Ogle) Have you --
A You proceed cautiously through the intersection if you can make it through, taking into account traffic pattern, congestion.
Q And are there any policies in Austin about who you can actively pursue through red lights?
A There is a pursuit policy that deals with who you can pursue. There's not a policy that specifically states you can only chase these people through a red light. It's, it's, it's pursuit in its entirety. You have to take into the -- you have to take these factors into account as to whether or not you should pursue this vehicle.
Q Do policies really matter anymore? Do you have to -- is it -- what happens to you if you violate

a police policy?
A There's all manner of different options, depending on the severity of the policy broken, depending on -- it's, it's each circumstance. I can't blanketly say nothing or you get in trouble or, or whatever. So it depends on the severity of, of the infraction, ranging from an oral reprimand and counseling and retraining to indefinite suspension.
Q Were there any policies that you or the other officers broke in this incident?
A No, sir. Not to my knowledge. Internal Affairs conducted a thorough investigation.
Q The Internal Affairs justify police-involved incidents 95 percent of the time?
MR. BARTON: Object to the form.
Q (By Mr. Ogle) A majority of time?
A I don't have statistics in front of me to answer that.
Q Was Hutchinson known to be a violent -- was he -- before this incident did you have knowledge of Hutchinson being violent in any way?
A Before this incident I had no knowledge of Mr. Hutchinson at all.
Q And so the Austin Police Department's policy regarding discharge of an officer's service firearm at

a fleeing suspect is that, what, as long as he's a danger you can shoot at him?
A The policy for lethal force is if they -- again, if they pose a threat to life or serious bodily injury or if they're fleeing as a, as a threat to life or serious bodily injury, you can employ lethal force.
Q Okay. And that's the part I'm stuck on. As they're fleeing why is there still an imminent threat?
A In this instance Mr. Hutchinson was not fired on as he was fleeing. But to answer your question --
Q By you.
A But to answer your question, Mr. Hutchinson had a firearm. Mr. Hutchinson fired that firearm in the direction of uniformed police officers and, again, in a parking lot with a large number of innocent public. Mr. Hutchinson retained that firearm, to the best of my knowledge. Thus, he is still a lethal threat. Is still a threat to the public.
Q Do you recall the David Joseph shooting, 17-year-old African American teenager that, that ran at an officer while he was naked?
A No, sir. I do not.
Q The City of Austin following that instance specifically utilized that incident in its training subsequent to that. Were you, were you involved in any

of that training where that was an, that was an example of who was not an imminent threat?
A When did this occur, sir?
Q I don't know.
A Then I can't, I can't accurately answer it. I started --
Q About three years ago.
A I started in 2006.
Q Yeah, yeah. This was, this was probably three years ago. It was when Acevedo, Chief Acevedo and Chief Manley in that situation of the shooting of the naked individual where the police officer said that him charging at him the officer feared for his life. That was an example of what is objectionably unreasonable. Do you share that opinion?
MR. BARTON: Object to the form, hypothetical.
Q (By Mr. Ogle) A naked guy is running towards you, and can you shoot him because you find him to be an imminent danger? I think that was the, the training.
A Okay. So he -- just a naked man running at me you're asking would I shoot that individual?
Q Yeah.
A With just those facts --

Q Mm-hm.
A -- alone --
Q Mm-hm.
A -- only a naked man running at me --
Q Mm-hm.
A -- I do not believe that I would do that.
Q And you've, you've received shoot/don't shoot training at APD in training, correct?
A Yes, sir.
Q In the training does it have someone who points a gun at you and is fleeing?
A I don't remember scenarios specifically. Sir, there is training that addresses lethal threats versus nonlethal. The, the layman's jargon is shoot/no shoot.
Q Is there any specific training on when a fleeing suspect stops being an imminent danger?
A Yes, sir.
Q Okay. And what's your understanding as to when a fleeing suspect stops being a danger, imminent danger, that justifies shooting him?
A When they no longer pose a threat.
Q Okay. And in this situation did Hutchinson ever stop posing a threat?
A I believed he was still a continuous threat

because I believed he was still armed.
Q Okay. Which justifies shooting at him from the back, at him in the car.
A Who shot at him from the back?
Q Police officers.
A The autopsy didn't reflect that, so that's why I can't answer this one yes or no. The injuries that he sustained were I believe right to left through his chest, through both forearms, and in the head. None of this indicate that he was shot in the back, so I can't agree with you on that one, sir.
Q Well, in the head, you're assuming he's looking straightforward and not to the side, correct?
A No. I'm not assuming anything, sir. I'm going off --
Q Okay.
A -- the ME's report.
Q Then what is it about the autopsy that discounts your assumption that he was not shot while he was fleeing?
A It's not my assumption, sir. What's the direction?
Q Well --
A What, what's, what's --
Q -- you know what the direction was.

A What is --
Q He's right there.
A What is the wound trajectory, the direction of that wound that, that you're referring to?
Q The wound trajectory.
A If you, if you can provide me that, then I can speak to it a little more, but I can't agree with you when you say someone -- Mr. Hutchinson was shot by someone in the back when the facts of the case --
Q No.
A -- don't indicate that he was shot in the back.
Q Shot towards the back as -- because obviously the Maserati is fleeing the scene. It gets up onto I-35.
A The Maserati was sitting at an idle, standing in the lane of travel whenever the, whenever the shooting occurred, sir.
Q That's not what I'm talking about. I'm talking about as it was fleeing --
A I know --
Q -- and police officers that are stumbling over each other shooting at it from the back. As far as what part of the body Isaiah was shot on and -- I understand it was the front and the right side.

MR. BARTON: Object to the form.
A You're painting a narrative that's factually inaccurate based on the video. The vehicle was not fired on from the back, and neither was Mr. Hutchinson. Mr. Hutchinson was fired upon facing officers or quartered away, as referenced in my report -- or in my statement.
Q And you --
A Also, officers were not stumbling over each other. One tripped and fell responding to a lethal threat, having been shot at running through a crowded parking lot.
Q As they were shooting at --
A No, sir.
Q -- the Maserati.
A That's incorrect.
MR. OGLE: Can you pull up on the internet, by any chance, Amanda Estrada? Or do you have that video? I know it's been exchanged with you. I'm glad she came back.
MR. BARTON: Yeah. Are you talking about the --
MR. OGLE: The Amanda Estrada.
MR. BARTON: -- Facebook video?
MR. OGLE: Yes.

MR. BARTON: Ruth, do you have that, or we can pull it up?
MS. BLACKWELDER: I'm looking (inaudible).
MR. BARTON: And Scott, just for the sake of the record, I was thinking on this video two things: One, since the video we've shown today is the same as in Zach Woods' deposition -- is that correct?
MR. OGLE: Yes. I believe so.
MR. BARTON: I was just going to reference -- and I'll clean this up at the end of the deposition. Just going to reference that as Exhibit 1 --
MR. OGLE: Yeah.
MR. BARTON: -- or whatever, to Zach Woods' deposition. Now, this video has not been showed, and so we'll have to figure out how to reference it and incorporate it into this deposition.
MR. OGLE: Okay. I'll identify it as an Exhibit 2.
MR. BARTON: Okay.
MR. OGLE: Yeah. There it is.
(Video Played)
Q Okay. If we could, this is a video that was

shot by a member of the public that was in -- Amanda Estrada, who was in the vehicle next to Hutchinson. Have you ever seen this video before?
A Yes, sir.
Q Okay. That right there he's being shot, and then here you see as it's fleeing shots fired, correct?
A As the vehicle starts to move there's still two more shots that are fired, but it's not continuously fired upon as it's fleeing the scene under the, the highway. There's where I think we're, we're disagreeing. The number of rounds fired are accounted for before that vehicle hits the frontage road. So there's, there's not, there's not this continuous volume of fire. That's reflected in the investigator's report. I fired five rounds --
Q But you're --
A -- another officer fired four, another one fired two, another one fired one.
Q But you're --
A That's it.
Q You're --
A It wasn't, it wasn't continuous across the frontage road and northbound on the northbound frontage as you previously asked.
MS. BLACKWELDER: Play it again?

MR. OGLE: Please.
(Video Played)
Q Your previous testimony was that the police officers did not shoot at a flee- at the fleeing vehicle, correct?
A Correct.
Q Okay.
A We're shooting at Mr. Hutchinson in that vehicle.
MR. OGLE: Right now stop, please.
A Door's open, door closes, no longer shooting.
Q This police officer is shooting, stumbling over each other and they're shooting --
A Which, which police officer are you referring to, sir?
Q One of them.
A Which one? Point, please point to it on the screen so I can speak to it.
Q Okay. These officers right here as it's fleeing are shooting at him, correct?
A Pause, pause right here. That one --
Q Right, right there.
A That one that fell --
Q Right here.
A That one that fell --

Q Uh-huh.
A -- never fired a round, so no.
Q Okay. How about this guy right here?
A Real quick, sir, because you asked. Correct, no. Incorrect, the one that fell never fired a round.
MR. OGLE: Could you play it back?
A That's why --
MS. BLACKWELDER: Can't play it back (crosstalk) --
A -- you're not --
MS. BLACKWELDER: -- forward.
A -- deposing him.
Q Why I'm not deposing him? Really?
A He didn't fire. It's reflected in the, in the investigative report.
MR. OGLE: Okay. If you stop it right here.
Q This guy right here is shooting at the Maserati, correct, this officer right here.
A The one with "Police" on his back.
Q That's right.
A That's me, sir. I'm telling --
Q Now you --
A I'm telling you what I'm doing.
Q So you're shooting at the fleeing suspect.

A No. I'm shooting at the suspect in the vehicle.
Q As it's fleeing.
A No.
Q Is it driving away?
A There's not volume on this --
Q Okay.
A -- video right now, sir.
Q You see this car driving away, right?
A That's a flashlight that you're pointing at. That's -- the video does not reflect bullets. Without audio we don't know when the shots stopped, so I can't tell you yes and agree with you if I can't hear it.
Q Okay.
A And I'm telling you as the vehicle hit the frontage road, when the vehicle made it to the frontage road no further rounds were fired at that point.
Q I'm not talking about the frontage. Okay.
A The southbound frontage is right there, sir. Excuse me. I need to clarify. When the vehicle reaches the southbound frontage there are no more rounds fired. If this video has, has audio and you play it, you will know exactly whenever I stop firing. Right there, there are no more rounds fired. It hits

the southbound frontage road and there are no more --
Q You need to look at --
A -- rounds fired at that car.
Q You need to -- rather than talking I'd like you to look at this officer, at the, at the flashes coming out of his gun. Okay? Right here. As he's fleeing that's you right there, correct?
A Yes.
Q You're shooting at the -- as it's traveling down, as it's --
A I fired --
Q -- in motion.
A -- five rounds.
Q As it was in motion.
A Stopped once it was in motion. That's what I'm telling you. When it hits the frontage road there are no more rounds being fired.
Q Who's this right there?
A I don't, I don't know. This video has audio. If you play the audio, you can hear it. This, this --
Q Yeah.
A -- doesn't even need to be debated. If you listen to it, you know exactly whenever I stopped firing.
MR. OGLE: Do you have audio to

this by any chance?
Q So there's an officer comes up to his door and shoots like this. Is that you?
A No, sir. You previously asked that. I am not the one that was --
Q Okay.
A -- in the door.
Q This guy right there.
A That is not me.
Q Okay. Who is that?
A I believe that's Officer O'Neill.
Q Okay.
A As I previously stated --
Q Okay.
A -- that is me with --
Q Right here.
A -- "Police" on my back.
Q But you, you and the officer next to you are firing rounds as the car is in motion.
A No, sir. The officer next to me never fired a round.
Q There's flashes coming out of his gun.
A There are not flashes coming out of his gun.
Q So you're the only one --
A I prev- I previously told you what you're

seeing is a flashlight. It is a weapon-mounted light affixed to the bottom of the gun, and it's activated. That's what that, that glare is. We're not, we're not looking at bullets come out of the -- coming out of the gun.
Q Well, could that have been Hutchinson's flashlight on the end of his gun?
A Absolutely not. They look completely different. We can play that video too.
Q I'm still stuck on shooting at the fleeing vehicle and the flashes as opposed to a flashlight that you --
A If, if you, if you see muzzle flashes, you'll, you'll account for five, and you'll know that they stop before that vehicle finishes crossing the southbound frontage road. It was stopped at the stop, at the stop line. Okay? The frontage road is a couple of car lengths in front of that. No one continued to fire on that vehicle on the other side of the frontage road. That is factually incorrect, and it's reflected in all three videos.
Q What I see --
A I continued moving laterally.
Q Trying to stop Isaiah.
A No, sir.

Q Why --
A To improve my position for a more tactically advantageous position, and the --
Q At the back --
A -- and the vehicle left, and to get out of the street. The street is open. It's bar close, and there is just a shooting engagement. People are trying to get out of the way. It's reflected in the HALO video. People are trying to get out of the way from, from Mr. Hutchinson firing at them. People are trying to flee the scene. Standing in the street only poses a danger to myself.
Q You've got four police officers shooting in that direction from the side.
A No. Not the same direction as Mr. Hutchinson fired.
Q Right. The opposite side, correct?
A Yes. Our, our direction --
Q Mm-hm.
A -- was different than Mr. Hutchinson's.
Q Yes.
MR. OGLE: All right. If we could, can you put that as full screen?
(Video Played)
Q Now, this guy falls back because of the, the

recoil of his gun, correct?
A No, sir. Again, that officer --
MR. BARTON: Ruth (crosstalk) --
A -- never fired a round.
MR. BARTON: It looks like that's off (referencing the audio icon), and --
MS. BLACKWELDER: Yeah. But it won't let me.
MR. BARTON: Won't let you play --
MS. BLACKWELDER: No. She says it's because there's no speakers in the room. I, I see it.
Q (By Mr. Ogle) Okay. So you're pointing like this with a flashlight. That's all you're doing?
A No, sir. I'm not -- no, sir. I'm not pointing like that. That is not what I'm saying.
Q Okay. It's fleeing. You see your -- you see discharges from the gun, correct, as it's moving forward?
(At this time someone from IT entered the room.)
THE REPORTER: I'm going off the record briefly.
MR. BARTON: Yeah. Let's go off the record, take a little recess with technical issues.

VIDEOGRAPHER: Going off the record. The time is 3:43 p.m.
(At this time the proceedings went momentarily off the record.)
VIDEOGRAPHER: Going back on the record 3:44 p.m.
MS. BLACKWELDER: You want me to play?
MR. OGLE: Yes, ma'am (referencing Exhibit 2).
(Video Played)
Q (By Mr. Ogle) You heard the discharge, and the officer actually ran out of bullets, correct?
A No.
Q No? What's that little click sound after several rounds were fired?
A As the video that you asked to play just showed --
Q Mm-hm.
A -- I fired five rounds. The fifth one was fired before the vehicle finished getting across the front -- the southbound frontage road, like I previously stated.
Q But the vehicle was in motion and it was fleeing at the time you were shooting at it, correct?

A Not when I started shooting at it. Whenever I finished, yes.
Q Okay. So how many shoots were fired at the fleeing vehicle?
A I don't know. We're talking about a matter of seconds, sir. I know that I fired five rounds at Mr. Hutchinson --
Q Okay.
A -- to prevent him from shooting somebody or, or injuring somebody. As to your question about the clicking noise --
Q Mm-hm.
A -- I don't know, because I don't know where this vehicle -- where this video was filmed. It appears that it's filmed on a cellphone inside a car.
Q So what?
A It could be anything inside that car.
Q Oh, okay.
A I can't speak to an un- unknown, unknown sound.
Q Okay.
A But nobody ran out of rounds, sir. How many, how many rounds do you think that we carry in our guns?
Q I have no idea.

A How many rounds did I tell you I fired?
Q Five.
A I fired five. We carry 17 in one, sir. There's 13 rounds left in the gun.
Q Okay.
A Nobody ran dry.
Q Oh. Okay. Well, thank you for clarifying that.
MR. OGLE: Can we play it one more time?
(Video Played)
Q Those were your shots, correct?
A No. It was not, sir.
Q Okay. Some other police officer shot.
A No. It was not, sir.
Q And so was the other officer besides you appear to be shooting at the fleeing vehicle?
A No, sir.
Q No? So those shots could have been from inside her car?
A No, sir.
Q Then how do you discount the shots that you hear that are after the car is fleeing the scene?
A There are no shots after the car is fleeing the scene. I was the last one to fire. I fired five

rounds. They're accounted for. You can hear whenever I stopped firing. There's no rounds after that. The first rounds that you hear off screen, off, off screen is Mr. Hutchinson firing on the police. Then the police return fire to stop the lethal threat that Mr. Hutchinson posed by shooting at us. Then you see me fire.
Q How are you --
A I fire, I fire five rounds, and you see when I stopped firing you can count them. Five. All of the case, facts, and evidence support all of this.
Q How many rounds do you believe --
A Can I finish my answer, sir?
Q Sure.
A It may, it may clear things up for you. Maybe. We'll see. I fire five rounds, and there are no more rounds fired after me. I am the last person in this engagement to fire. If you hit -- if Ms. Ruth will hit play one more time and you count the rounds, you can count my rounds. It will be five and it's done. There are no more shots fired after that.
So beyond that, sir, speculation, hypothetical, imaginative, I can't help you, but all the case, facts, and evidence in the investigative report that you have tells you how many rounds I fired

and how many rounds the other officers fired for a total number.
Q The video is worth a thousand reports.
A If you pay attention to it.
Q How many rounds do you attribute to other police officers as the car was fleeing?
A Based on the investigative report --
Q Based on this video.
A -- a total, a total number of rounds is accounted for in the report. There are not officers firing at this fleeing vehicle.
Q Okay.
A I'm the last one to fire. I told you when I fired, where the vehicle was when my last round was fired, and our, our handguns and our magazines were collected from us. There's a total round count attributed for what we have on us and what was fired.
Q But nothing was attributed to the pedestrians or the, the peop- the members of the public that were shot. The person that was shot in the wrist, that was not attributed to a police officer in the report, correct?
A Not that I'm aware of.
MR. OGLE: Can you play it one more time?

(Video Played)
A Again, I didn't investigate this.
MR. OGLE: Right here.
A Five, no more. No more gunshots after that, sir.
Q You see the police officer next to you firing?
A No. The police officer next to me did not fire a single round. Did not fire a single round. There were five officers in that parking lot --
Q So you --
A -- four officers fired.
Q How about --
A He was targeting a lethal threat. He did not fire --
Q Target.
A -- and he fell.
Q Targeting, meaning shooting?
A No.
Q So --
A If he was shooting, I would say shooting.
Q What caused him to fall down?
A I don't know.
Q It appeared to be the recoil of his gun.
A No, it didn't.

Q Okay.
A That, that is, that is hugely speculative, sir.
Q That will be a jury question. Based on the video that you see of Gildardo Vasquez, the Monte Carlo driver, is there any probable cause to charge him with a crime or to arrest him, as an officer?
A I don't have all the facts as they exist for his, his actions and what he did.
Q You've got a video showing that he's shooting at Demarios and Hutchinson, correct?
A That video also shows that who you say is Demarios assaulted the Monte Carlo driver as soon as he approached his car.
Q Okay. And yet the police officers didn't charge either one of them with a crime. Why not?
A I don't know, sir. I didn't investigate this incident, because I was involved in it.
Q You're a detective now. Would you charge him under the circumstances if you were the person that was the gatekeeper?
A I'm not a detective anymore, sir.
Q If you were in a position to, to decide, would you charge Vasquez with a crime?
A I would investigate the case, sir, and gather

all case, facts, and evidence and make the best decision afforded to me (crosstalk) --
Q Start with a yes or a no.
A -- opportunity based on that. I can't answer that as a blanket yes or no, sir. You're not affording me the opportunity to answer that as a yes or no question by the way you're phrasing the question. It's highly speculative, and it's limiting on the information you're providing me.
Q Did you interview the Monte Carlo driver?
A Sir, I told you multiple times I didn't investigate this at all. I was involved in it and completely kept out of the loop on everything related to it.
Q You and the other three officers were sent to the grand jury, correct?
A The case was sent to the grand jury. It was no-billed.
Q Were there any reprimands among any of the officers involved in this shooting?
A Not to my knowledge.
Q Were you congratulated for what you did?
A No, sir. This isn't an achievement.
Q I understand sometimes officers boast in gym locker rooms about hurting people. Have you ever heard

of a police officer boast about hurting a homeless person?
A No, sir. I don't hang out in gym locker rooms.
Q But you work out in a gym, correct?
A No, sir. I work out of my house.
Q There's a lot of police officers that are built like coconut trees around here. The --
MR. BARTON: Object to the form.
Q (By Mr. Ogle) The Police Chief Magazine has an article that estimates steroid abuse to be as rampant as 25 percent of officers nationwide. And it's your testimony you've never heard of a police officer using steroids, correct, in order to build body mass?
A No, sir. It's my testimony that I don't know any officers that use steroids.
Q What probable cause would you find for someone that's abusing steroids?
MR. BARTON: Object to the form. I don't understand the question.
A What probable cause would I find?
Q (By Mr. Ogle) Yeah.
A I would probably need evidence of steroid use such as steroids in their possession.
Q Aren't the police officers that are on the

frontline actually encouraged to use steroids in order to keep the upper hand in, in altercations and because of the fact that they don't have time with all the overtime they're, they're, they're working to work out? You've never heard those justifications for the use of illegal steroids?
A Sir, you kind of lost me in the question. I think it started with are officers encouraged to use steroids?
Q Yeah.
A No, sir.
Q And as far as looking at someone's appearance, there is no way that you can base probable cause on just how they look as to whether they're taking steroids?
MR. BARTON: Object to the form.
A Sir, I'm not, I'm not a doctor, I'm not a health professional. I'm a police officer. So no, sir. I, I am not in a position where I can look at anybody and speculate if they're using steroids based on what their physical stature is.
Q (By Mr. Ogle) Would it be a cause of concern if you were aware of police officers that take steroids that actually cause roid rages?
MR. BARTON: Object to the form.

A Sir, I think substance abuse in any form would be a cause for concern. That's about the best way I can answer that question.

Q (By Mr. Ogle) And you've never heard of any justification for police officers using steroids?

A No, sir.

Q In an article that was published March 17th, 2019, KXAN quoted the police as saying that "two men from the Maserati walked over to the Monte Carlo and started punching the driver." Do you agree with that?

A No, sir.

Q "The driver of the Monte Carlo started firing a weapon." Do you agree with that?

A Yes, sir. That's in the video.

Q "Hitting at least one of the men."

A I have no knowledge of that and no facts to support that.

Q I'm going to hand to you what I'm going to ask be marked as Plaintiff's Exhibit No. 3. And for the record, Plaintiff's Exhibit No. 1 is the HALO video, Plaintiff Exhibit No. 2 is the, the video that was played after that, which is the video of Amanda Estrada, the driver of the vehicle next to the Maserati. Could you read what I have highlighted in the KXAN press release?

A The photocopied news article that you provided me, it says what you just stated, sir.

Q Okay. Could you read the -- do I have a highlighted portion?

A You have an underlined portion, sir.

Q Would you mind reading the underlined portion?

A Sure. It says "two men from the Maserati walked over to the Monte Carlo and started" --

THE REPORTER: Could you --

Q Could you start --

THE REPORTER: -- slow down?

THE WITNESS: Oh.

Q Could you start at the beginning where it says "the police"?

A Okay. Just to be clear to you, not being sarcastic, that wasn't underlined, but I will start with --

Q Oh.

A -- "Police." I wasn't, I wasn't trying to be funny. I was trying to do what you asked.

Q Okay.

A "Police say two men from the Maserati walked over to the Monte Carlo and started punching the driver. The driver of the Monte Carlo started firing a weapon, hitting at least one of the men, who then began firing back at the Monte Carlo."

Q Okay. Do you agree with that assessment?

A No, sir. Because the way it reads is two men walked over to the Monte Carlo and two men started punching the driver. Based on the video, I only observed one man punching the driver. And then "the driver of the Monte Carlo started firing a weapon, hitting at least one of the men," I don't know that. I don't, I don't have anything in the report that was provided to me and the case file that, that supports that. So I can't agree with that, so no, I don't agree with that statement.

Q Okay. Could I have that back?

THE REPORTER: Are you going to let me have it to mark it --

MR. OGLE: Oh, yeah.

THE REPORTER: -- before --

MR. OGLE: Sure.

THE REPORTER: Okay.

Q So you do not agree with the police statement that the Monte Carlo driver hit one of the men?

A No. I don't have anything available to me that, that supports that, or I am unaware of it if it is available to me. I haven't read that anywhere.

MR. OGLE: Could we go back to the HALO video?

Q I'm almost done by the way, which is why my questions are scattered. I want to the focus on Hutchinson and his body movements.

MS. BLACKWELDER: Fast forward?

MR. OGLE: Yes, please.

(Video Played)

MR. BARTON: What about right there, Ruth.

MS. BLACKWELDER: Yes.

Q (By Mr. Ogle) Okay. Here Demarios is punching him, and then do you see Hutchinson cradling his arm?

A When he's -- that, that was the full question, right?

Q Yeah.

A Okay. It appears when he's running away from the Monte Carlo he's holding his left arm, his gun's in his right hand.

Q So there was a lot going on with Isaiah being shot at, or either shot or at least shot at by the Monte Carlo driver as he's running back to the Maserati, correct?

A Based on the video?

Q Yeah.
A He was involved in an altercation and he's running back to his car. That's -- I, I can't speculate as to what he's got going on, sir.
Q He's got a lot going on, correct?
MR. BARTON: Object to the form.
A He was involved in a, in a violent altercation --
Q (By Mr. Ogle) Right.
A -- with another vehicle, and he's running back to, to his car.
Q Right. Amanda Estrada has stated that "While the cars were stopped at the light, the driver of the Maserati and another man got out and walked to the back of the Monte Carlo. I heard the Maserati driver politely ask for the Monte Carlo driver's insurance information." Do you have any reason to dispute that?
A Based on the video, it did not appear that they had time to engage in any sort of conversation. Just referencing the video it appears that the driver of the Maserati as he walked up to the Monte Carlo immediately struck the driver in the face. Without, without being there and, and privy to any conversation they may have had walking up to the Monte Carlo, again, I can't confirm that, agree to it.

A -- doesn't necessarily line up with what the video shows. Is it a possibility? Absolutely. But it doesn't line up with what the video shows, because the video, as we've watched multiple times now, shows the driver, who you're identifying as Demarios -- I don't know, I had no interaction with him either -- Demarios walks up to the vehicle, and as soon as he gets within arm's reach of, of the Monte Carlo strikes him twice.
Q As far as filing charges against the Monte Carlo driver or Demarios, you have no opinion on that because you're not involved, correct?
A I didn't investigate this case, sir.
Q If you did investigate, would you have enough reason to, to charge the Monte Carlo driver or Demarios?
MR. BARTON: Object to the form.
A I don't have all the case, facts, and evidence regarding that portion of this incident in order to speak as to who I would file charges on. The only thing I can speak to is, based on the video it appears that Demarios, who you're identifying as Demarios again, I don't know, Demarios is the aggressor, because he strikes him what appears to be without provocation. Based on the driver of the Monte Carlo's statements that he provided to police --

Q Well, you've got this piece of evidence. You've got Amanda Estrada, who has no dog in the fight, and she overhears, she claims to have overheard Demarios politely asking for his insurance information. Would you take that into account in your position that Demarios was the attacker?
A Coupled with the video it appears that Demarios was the primary aggressor and initiated the assault.
Q You're discounting the possibility of the, of the Mas- of the Monte Carlo driver pulling a gun on him?
A No, sir. You didn't ask that. I'm not discounting that at all. I'm going based off of the video, because that's all I have of that portion of the interaction -- of, of the incident, because I had no interaction with them.
Q So as a result of that you're, you're not willing to consider the other pieces of evidence, such as Amanda's testimony, to change your position that Demarios was the assaulter?
A No, sir. I'm not saying that at all. I'm saying that her, her statement regarding that polite conversation --
Q Mm-hm.

Q (By Mr. Ogle) Mm-hm.
A -- and the supporting documents of his injuries, he was assaulted.
Q So it's your position that he was defending himself as he was shooting at Demarios and Hutchinson.
MR. BARTON: Object to the form.
A Again, sir, I don't have a position. I can only tell you what the video shows me and what the, what the investigative file reflects, what the case file reflects.
Q (By Mr. Ogle) Have you read any statement of Amanda Estrada?
A No, sir.
Q That wasn't part of the report?
A I don't know if it's in there or not. It's a fairly voluminous report, so I didn't, I didn't read everyone's statement. Again, I was involved in this. I wasn't investigating it.
Q But you've drawn a conclusion, such as Demarios being the assaulter based on one piece of evidence.
A Because you asked me, and we've referenced that video.
Q And that is the police position. The APD position is that Demarios was the one that started the

incident, correct?

A Again, I'm not privy to the investigative course that this took, so I don't know what conclusions they drew and I don't, I don't know what stance they took. I know that the case was presented to the grand jury and the officers were no-billed. I'm unaware if there were charges filed on Demarios or the driver of the Monte Carlo or anybody else that was involved.

Q Well, we finally caught up with the Gildardo Vasquez. The process server was told by his mother that he was hiding in her bathroom the first time we tried to serve him, but we were successful in serving him the next day, and so we will have his side of things next week.

I'm sorry. I'm running out of questions. If you give me just a minute, I may be close to the end. Have I been polite and courteous up until now?

A You asking me or Mr. Barton?

Q You.

A You're doing your job, sir.

Q Could we a start with a yes or a no?

Are you aware that the Austin City Council criticized the Austin Police Department's pattern of racist behavior and outcomes in December of

2019 in a report?

A Yes, sir.

MR. BARTON: Object to the form.

Q (By Mr. Ogle) Do you agree with that?

A Broad question. Do I agree with the summarization that the police department is systemically racist? Is that what you're asking me?

Q Yes.

A I have not had that experience, sir.

Q Did Isaiah have justification to use lethal force against the Monte Carlo driver?

MR. BARTON: Object to the form.

A That question kind of starts in the middle of the incident. It's not that simple.

Q (By Mr. Ogle) It was the beginning of the incident, wasn't it?

A No, sir. The beginning of the incident was two blocks up at Neches and 7th Street when the collision occurred that was the predicate act for this event.

Q And they just casually drove to the next intersection before they got out, correct?

A No, sir.

Q Oh, tell -- what happened then? Something I'm not aware of.

A They sat in the intersection.

Q They what?

A They sat in the intersection.

Q Where the collision occurred?

A Yes, sir.

Q Okay. And what transpired there?

A After they sat there for awhile then they drove what appears to be eventually up to the frontage.

Q Okay. And so what's significant about the beginning of the incident?

A Because that's where the story starts. Your question starts at that middle, but the beginning of it was they were involved in this collision back here.

Q Yeah. Okay. From the beginning of the altercation.

A Started at the collision.

Q Okay. All right. And so they drove -- they drive up to the intersection, and what is it that leads you to believe that the Monte Carlo driver was an innocent victim?

A I haven't stated that, sir.

Q Your conclusion is that he was assaulted by the Monte Carlo driver without provocation.

A That last part I never said. I said the video reflects that the driver of the Maserati

approached the Monte Carlo and almost immediately strikes him twice. I don't know what transpired in that relationship from the moment of the collision until they, they had their encounter at the frontage.

Q Well, in hindsight you wouldn't have done anything differently, correct?

A No, sir. My job is to save lives. It's a professional obligation, and the public expects it.

Q Thank you for your service and your time.

A Thank you.

MR. BARTON: I think I'm just going to have one question, and it's going to be to show video of that initial collision. We'll give this to Sandy. Ruth, can you pull that up? So I guess this will be Exhibit No. 4, and I guess we'll reference it as video of initial collision.

MR. OGLE: Can we play that?

MR. BARTON: Yeah. We're going to play it.

MR. OGLE: Good.

MR. BARTON: And this is -- just for the record I'll state all of these videos have been produced to you, Scott, but I don't know if you've downloaded them or not. But if you need help downloading some of that, we can talk you through it,

but everything we're going to look at has been produced (crosstalk) --

MR. OGLE: Did I have a deadline on copying all of that when you sent it to me? Like, 10 days or --

MS. BLACKWELDER: It's coming up.

MR. BARTON: It's coming up now? I'm not sure.

(Video Played)

EXAMINATION

BY MR. BARTON:

Q All right. So this will be my questioning. I'm Monte Barton on behalf of the defendants. Officer Nelson, can you identify this location of this video we're watching right now?

MR. BARTON: Although this doesn't quite look right, Ruth.

MS. BLACKWELDER: It's --

MR. BARTON: Is that the right video? Okay.

Q Yeah. Okay. Sorry. Officer Nelson, can you describe this video that we're watching right now, the location and what you see?

A Yes, sir. It's a HALO video of the intersection at East 7th Street and Neches.

Q Okay.

A And on the screen right now is the black Maserati and the black Monte Carlo that were involved in this incident.

Q Okay.

MR. BARTON: I'd like to stop it right there, Ruth, and then back up and start again.

Q And maybe, Officer Nelson, have you describe the traffic signals leading up to the collision and any observations that you have that are relevant about this point of contact between the Monte Carlo and the Maserati.

(Video Played)

A So as evidenced by the traffic light, the Maserati appears to run the red light in the intersection going east on 7th, and the Monte Carlo enters the intersection presumably with the green light and is involved in a collision with the black Maserati.

Q Okay. And just any observations you have? Is that a police, like, golf cart driving by?

A Yes, sir. The black Maserati is sitting there. It appears they're sitting in the intersection still with their foot on the brake, and then right here they pull up eastbound and cut off the Monte Carlo traveling in its lane of travel. The vehicles are

stationary up here until the police vehicle went by with the red and blue overhead lights on and then moved out of the intersection.

MR. BARTON: Okay. So if you can stop it right there, Ruth, I just have a question, then we'll pick it back up.

Q So from your observation of that did it look like the Maserati was blocking the passage of the Monte Carlo and it was in some way being aggressive to the Monte Carlo?

A Based on the manner of driving, they were in I believe the northernmost lane, and as the Monte Carlo began to proceed eastbound they quickly moved left to right, what would commonly be referred to as cutting off or abruptly jumping in front of the Monte Carlo. It appeared antagonistic.

Q Okay.

MR. BARTON: And then, Ruth, I guess we'll continue playing from this point forward.

Q So this is the beginning of the collision, right, between the Monte Carlo and the Maserati?

A Yes, sir.

Q So does that look like the Maserati is cutting off the Monte Carlo at that point?

A Yes, sir. It pulls over, again, left to

right, and it stops, straddling both lanes quartered off the front left corner panel of the Monte Carlo. Pauses and then pulls into the lane in front of the Monte Carlo that the Monte Carlo was occupying, and they catch traffic or, or the next red light at the next intersection.

Q Okay. And then the next video we have, which has already been shown many times and is referenced as Exhibit 1, shows the Monte Carlo and the Maserati down at the frontage road intersection; is that correct?

A Yes, sir. It's two blocks down from where the collision occurred.

Q Okay. And then that's where we've discussed where the drivers of the Maserati and Isaiah Hutchinson get out of the car, approach the Monte Carlo, and it looks like the driver of the Maserati punches the driver of the Monte Carlo and then shots are fired from the Monte Carlo driver? Is that --

A Yes, sir.

Q -- kind of a quick recap of what we've seen? Okay. Could you tell me also, Officer, what was going on this weekend? Was there a particular event of some sort in town that had all of these numerous people moving around and about at this time of night?

A Yes, sir. It was the second weekend of South by Southwest. South by Southwest is a very large film, music, media, interactive festival hosted across 10 days in Austin, Texas. This was the second weekend, which is historically the busiest weekend. The past few years crowds in excess of 200,000 people have frequented the event. It draws people from all over the world. The second weekend, because of the live music venues, the heavy concentration of people in the downtown 6th Street entertainment district.

Q Okay. And what were y'all doing as a group of police officers on this evening? Were y'all there because of the South by Southwest kind of influx of people?

A Yes, sir. I was working that night as part of the Special Response Team of the Austin Police Department. One of the duties and, and tasks of the Special Response Team is to work large-scale events as a -- in order to augment patrol, to in a support capacity help patrol. South by Southwest is one of these events. Due to the large number of people that, that frequent the event and the crowd size, SRT is deployed within the entertainment district to support patrol functions and ensure that it's a safe and peaceful event.

Q Okay. And part of this event obviously involved this shooting in the street, and would you say that is the type of conduct that the SRT is there to protect the public against or to help handle if it comes up?

A Yes, sir. Due to the sheer size of the event, regular patrol is overly taxed from the beginning of the event all, all the way through. So SRT is there in a support role to, again, protect life and preserve the peace of the -- both the citizens of Austin and the, the travelers that are coming here from, from out of town to attend the event.

MR. BARTON: Okay. Just for the record, kind of a side -- I don't have any more questions of you, but for Ruth, can you read into the record the identifying video for video number 1, just whatever's on your system, so we'll have a record of it in the deposition transcript if we ever need to locate that specifically? And for these other two videos as well. So what I'm getting at is, just whatever your file gibberish is that it's named, if you could just read that into the record. For Exhibit No. 1?

MS. BLACKWELDER: For Exhibit No. 1 it's COA 003, "The HALO Incident."

MR. OGLE: Okay.

MS. BLACKWELDER: And then the other one is 00 -- I mean COA 001, it's also HALO 7th and Neches -- that's N-E-C-H-E-S -- "Collision Offscreen." And then COA 002 "HALO 7th and Neches Collision."

MR. OGLE: Okay. And what about the Facebook video with Amanda --

MS. BLACKWELDER: Okay.

MR. BARTON: -- Estrada?

MS. BLACKWELDER: It's COA 1561.

MR. BARTON: Okay. And that --

MS. BLACKWELDER: It's called "Facebook Video."

MR. BARTON: All right. So I think that's Exhibit No. 2, and then I think the other ones are identified -- Exhibit No. 1 is the first one, I guess, and Exhibit No. 3 [4] is the collision on 7th Street and Neches. And we'll sort all that out, so thank you, Sandy, for your patience on that.

I don't have any further questions at this time.

MR. OGLE: Okay.

MR. BARTON: Oh, one thing I will say is, the defendants reserve the right to read and sign. So Officer Nelson will want to read a copy of

the transcript.

VIDEOGRAPHER: This concludes the deposition today. We are going off the record. The time is 4:26 p.m.

(At 4:26 p.m. the proceedings adjourned.)

CHANGES AND INSERTIONS

OFFICER THOMAS BERNARD NELSON, III

July 18, 2022

PAGE	LINE	CHANGE	REASON

ACKNOWLEDGMENT OF DEPONENT

I, THOMAS BERNARD NELSON, III, do hereby certify that I have read the foregoing pages and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Changes and Signature Page (Errata).

THOMAS BERNARD NELSON, III

DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON AND BENNY HUTCHINSON, ON BEHALF OF THEMSELVES AND THE ESTATE OF ISAIAH HUTCHINSON,	$	
Plaintiffs,	$	
	$	CIVIL ACTION NO.
v.	$	
	$	1:21-CV-00221-LY
THE CITY OF AUSTIN AND DEANDRE WRIGHT AND DANE O'NEILL AND ZACHARY WOODS AND THOMAS BERNARD NELSON III,	$	
Defendants.	$	

REPORTER'S CERTIFICATION OF THE
ORAL DEPOSITION OF OFFICER THOMAS BERNARD NELSON, III
July 18, 2022

I, Sandra S. Givens, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, OFFICER THOMAS BERNARD NELSON, III, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the original deposition transcript was submitted to: OFFICER THOMAS BERNARD NELSON, III in care of his attorney, Monte L. Barton, Jr.;

That a copy of this certificate was served on all

parties and/or the witness shown herein on July 27, 2022.

I further certify that pursuant to FRCP Rule 30(f)(1) that the signature of the deponent was requested by the deponent's attorney before the completion of the deposition and that the transcript is to be returned within 30 days from the date of receipt. If returned, the attached Changes and Insertions page contains any changes and the reasons therefor:

That $ is the deposition officer's charges to the Defendants for preparing the original deposition transcript and any copies of exhibits;

That the amount of time used by each party at the deposition is as follows:

Scott Ogle - 2 hours, 46 minutes

Monte L. Barton, Jr. - 13 minutes

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

Scott Ogle - Attorney for Plaintiffs

Monte L. Barton, Jr. - Attorney for Defendants

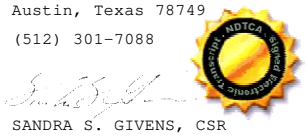
I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was

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6549 Fair Valley Trail, Austin, Texas 78749 (512) 301-7088 sgivens@austin.rr.com

taken, and further, that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this 27th day of July 2022.

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SANDRA S. GIVENS, CSR
Certification No. 5000
Certificate Expires 1/31/24

sg-1957

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Exhibit 4

1:21-CV-00221-LY

CHRISTINE SPRINGS-HUTCHINSON et al V. CITY OF AUSTIN et al

OFFICER ZACHARY WOODS

JUNE 22, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON AND BENNY HUTCHINSON, ON BEHALF OF THEMSELVES AND THE ESTATE OF ISAIAH HUTCHINSON PLAINTIFFS	*	
V.	*	CIVIL ACTION NO. 1:21-CV-00221-LY
THE CITY OF AUSTIN AND DEANDRE WRIGHT AND DANE O'NEILL AND ZACHARY WOODS AND THOMAS BERNARD NELSON, III, DEFENDANTS	*	

ORAL VIDEO DEPOSITION OF
ZACHARY WOODS
JUNE 22, 2022

TRANSCRIPTION UNDER RULE 203.6(a) by a Certified Shorthand Reporter of ANSWERS AND DEPOSITION OF ZACHARY WOODS, produced as a witness at the instance of the Plaintiffs, and duly sworn, was taken in the above styled and numbered cause on June 22, 2022, from 1:13 p.m. to 4:19 p.m., at 301 West 2nd Street, 4th Floor, Austin, Texas 78701, before Lauren C. Morris, AFE - Videographer, pursuant to the Texas Rules of Civil Procedure and agreements stated on the record.

Pursuant to information submitted to the deposition officer at the time said request for transcription was made, the following includes all parties present.

A P P E A R A N C E S

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ALSO PRESENT:
Lauren C. Morris, AFE - Videographer
Carol Smith, paralegal to Monte Barton, Jr.

I N D E X

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E X H I B I T S

NUMBER	DESCRIPTION
1	Video file labeled 3_17_201902_48_59 (UTC-05_00)
2	E-mail communication (Not admitted during deposition)

THE VIDEOGRAPHER: Good afternoon. Today is Wednesday, June 22nd, 2022. My name's Lauren Morris. I'm t videographer today for the deposition of Zachary Woods in Ca 1:21-CV-00221-LY. The time is 1:13 p.m. and we are now on t record. Would the -- will the witness please raise his righ hand. Do you solemnly swear that the testimony that you wil be giving today is the truth, the whole truth, and nothing b the truth so help you God?

THE WITNESS: Yes.

THE VIDEOGRAPHER: Thank you.

ZACHARY WOODS,

having been first duly sworn (or affirmed), testified as follows:

EXAMINATION

BY MR. OGLE:

Q. Could you state your name, please.

A. Yes. Zachary Woods.

Q. Okay. Have you ever gone by -- gone by any other names?

A. No.

Q. Have you ever given a deposition before?

A. No.

Q. I'm gonna ask you some questions, and I'd like to full and complete answers from you so that if we ask you the same question at the time of trial, you would be able to --

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would expect you to give us the same answer that you give us today; do you understand that?
A. Okay.
Q. And if you give us an answer that is different than the answer that you give us today, then we can point -- point that out to the judge and jury, and then we can talk about why your answer at that time is different than the answer that you gave us today in a deposition; is that understood?
A. Yes.
Q. Do you understand that this is our opportunity to find out as much detail as you know about the events that took place regarding the shooting of Isaiah Hutchinson?
A. Yes.
Q. So when you answer the questions that I'm gonna ask you, I ask that you give us your answers with as much detail as you can as possible; is that fair enough?
A. Okay.
Q. When I ask you a question, where appropriate, if you would please simply answer with a "Yes" or "No," or an "I don't know," and then if you feel the need to explain the answer, then you can take as long as you need to explain your response. But if you -- if -- if -- if you're able to start with either a "Yes" or "No," or "I don't know." Will you agree to that?
A. Okay.
Q. I represent the parents of Isaiah Hutchinson in the

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lawsuit that was filed as a result of the incident that occurred back in March of 2019. You understand my role?
A. Yes.
Q. If I ask you anything and you don't understand my question, answer, but ask me to repeat it or rephrase it, fair?
A. Okay.
Q. All right. Where did you grow up?
A. In Georgia.
Q. Georgia?
A. Mm-hm.
Q. Okay. And you went to high school in Georgia?
A. Yes.
Q. Were you ever in the military?
A. No.
Q. Okay. How long have you been a police officer?
A. For about five-and-a-half years. I started the police academy in 2016 and I became a commissioned officer in October of 2016.
Q. What police departments have you been employed with prior to the City of Austin?
A. I was a civilian employee of the Texas Department of Public Safety, but I've only ever been a police officer at the Austin Police Department.
Q. What did you do for the -- for DPS?
A. I was a civilian analyst in their highway safety

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operation center, so I analyzed and reviewed car crashes.
Q. From your analyzation of car accidents, what is it that you know that most people would be surprised to know?
A. Oh, I'm -- I'm not even sure.
MR. BARTON: Object to the form.
MR. OGLE: I don't --
MR. BARTON: Just general.
MR. OGLE: I don't blame you.
Q. (By Mr. Ogle) During your employment with the City of Austin, have you had any other firearm discharges while on duty?
A. Other than the March two-thousand -- or 2019 incident?
Q. Yeah.
A. No, this is the only firearm discharge.
Q. Were you involved in any disciplinary investigations
A. I'm not sure I understand.
Q. Were you disciplined in any way for what happened?
A. No.
Q. Did it go through internal affairs?
A. This incident, yes.
Q. Okay. Did you write any statements in the past regarding this?
A. I'm not sure if I've written statements. I gave ora interviews on a couple occasions.

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Q. Okay. I looked through the City's responses to request for disclosure, and I didn't find any statement that you had given. But you only know of a couple that were -- were recorded?
A. Yes.
Q. Okay. Have you ever seen it to review?
A. I have read through transcripts of those interviews.
Q. Okay. Were there any particular -- was there anything about the -- about the incident that you were reprimanded about?
A. No.
Q. In reviewing the -- the incident, was there anything that was done by you that anyone has recommended you not do or do do the next time? Anything different in regard to how you reacted?
A. No.
Q. Were there any misconduct allegations by anybody in regard to the incident regarding you?
A. Not that I'm aware of.
Q. What are your current duties with APD?
A. As of today, I'm assigned to the organized crime division and the major crimes suppression unit.
Q. Okay. What were your duties in 2019 when this incident occurred?
A. In 2019 I was a patrol officer in the central east

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area command, which we call Charlie sector, and I worked on the evening shift on a shift called the Charlie 300 shift.

Q. How many hours did you work on average?

A. 40 hours a week. Four 10-hour days are standard for me.

Q. Have there been any other divisions or duty assignments that -- that you've had with Austin Police Department?

A. Yes. I briefly trained in southwest Austin during my field training period, and then I've also previously been assigned to the downtown area command as a patrol officer.

Q. At the time of the gunfire incident which led to Isaiah Hutchinson's death, what specific division, at the time of the incident, you say that you were a patrol officer assigned to the Charlie unit at that time, correct?

A. That's correct. That was my permanent duty assignment.

Q. Okay. Who were the other officers accompanying you at the scene of the gunfire?

A. At this incident, I was working as part of, like, a secondary duty I have, or an auxiliary duty on the special response team, and I was in a group with four other officers. There was Detective Nelson, Officer Wright, Officer Aguilar, and Corporal McDonald.

Q. Okay. At one point, there was speculation there was

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five officers involved. Were you aware of...

A. Right. There were -- I was positioned in a group of five. And, as I understand it, in the course of this incident, four officers fired their weapons, but there were five officers there.

Q. Who was the fifth that's not been named?

A. I'm not sure what you mean, sir. Of -- of the officers I just listed?

Q. The four officers that are defendants.

A. Oh, oh. Okay.

Q. If you're one of the four, then there's a fifth one, right?

A. Correct.

Q. And who was that fifth one?

A. The fifth officer who was on scene but not listed in the lawsuit was Corporal McDonald.

Q. Corporal McDonald.

A. Yes, sir.

Q. Do you know why he wasn't part of the group?

A. He was part of the group that I was with that evening. As I understand it, he did not fire his duty weapon.

Q. What's his first name?

A. Dennis.

Q. Has -- do you know if mis -- if Corporal McDonald had any disciplinary history?

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A. I don't know.

Q. But the reason why he was not included was because he didn't fire his gun.

A. That's my speculation.

Q. Okay. Are any of the three other officers that are named as defendants, are any of them body builders?

A. Not to my knowledge.

Q. Do you know if any of them use steroids for purposes of bulking up?

A. No.

Q. Are you aware of police officers within APD that use steroids?

A. No, I'm not aware.

Q. Would you be surprised that 25 percent nationwide of police officers, particularly body builder officers, use steroids despite the fact that there's roid rage effects?

MR. BARTON: Object to form.

A. I'm not sure.

Q. (By Mr. Ogle) Have you ever heard of a police officer using steroids?

A. No.

Q. Are you aware that Austin Police Department does not regulate steroid abuse?

A. I wasn't aware of that.

Q. Do you know Ken Casaday?

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A. Yes.

Q. And what is his position?

A. Ken Casaday is the president of the Austin Police Association.

Q. He's retired, though, right? He's not an active police officer?

A. I'm not sure about that.

Q. Still wears the uniform, though, right? Or the insignia of Austin Police Department?

A. I believe last time I saw him that he was in a uniform.

Q. Ken Casaday told me that police officers are not regulated for steroids. Is that your understanding?

A. I understand that you're telling me that he told you that, but I'm not familiar with that topic.

Q. Are -- are you aware of what drugs are tested for -- regarding police officers?

A. Not specifically. Not a list, but I understand a police officer's subject to a drug screening to include the manner of illegal drugs.

Q. Is it your understanding that steroids sometimes escalate as opposed to deescalate aggression in people?

A. I'm not quite sure on the effects. I'm not that familiar with it.

Q. Have you discussed the gunfire incident which

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resulted in Isaiah's death with any of the other officers who were present at the scene?

A. Yes. We met up after the incident there on the street.

Q. And what'd y'all talk about? What was the subject of the conversation?

A. The -- the shooting that had just happened.

Q. Yeah. And were there any discussions about anything going wrong?

A. Not that I recall.

Q. What was the subject of the conversation, in particular?

A. I think we just grouped up in the immediate aftermath to check on each other and see what had happened and what we needed to do next.

Q. You were told pretty quickly by a supervisor not to say anything to anybody, correct?

A. That's right. I think we were sequestered pretty quickly.

Q. Did -- was the Police Monitor an active entity back then?

A. I believe there was some civilian oversight body. I'm not sure what it was called at that time.

Q. And do you -- when they -- do you know if anyone from the Police Monitor attempted to question you regarding the

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accident -- or regarding the -- the incident?

A. I don't recall whether or not. Not that I remember.

Q. If were -- if someone were to contact you from the Police Monitor, would you -- have you been instructed, or regarding talk to them?

A. I've never been contacted directly by the Police Monitor's office in any capacity. I'm not sure what the standard directive is on that. I haven't really been advised specifically on what to do.

Q. Yeah. During the, I guess, the de-funding of the police department, was the Police Monitor one of the offices that went or things to go?

A. I'm not sure.

Q. You were on duty at the time of the gunfire incident that led to Isaiah Hutchinson's death, correct?

A. Yes, I was on duty at the time of the incident.

Q. What caused you to go to the scene of the shooting which led to Hutchinson's death?

A. I was practically on the scene of the shooting when that incident started.

Q. Uh-huh.

A. I was in the parking lot of the Gulf Gas Station.

Q. Yeah.

A. -- and the incident occurred in the street at the Gulf Gas Station. So I didn't have to travel very far, just across that gas station parking lot and I was -- I was in the incident. So my response was pretty immediate and then I was already there.

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Q. Which -- which one of the officers shot Isaiah in the head?

A. I'm not sure on the specifics.

Q. Was it you?

A. I'm not sure.

Q. Did you shoot at him?

A. Yes.

Q. Who else shot at him?

A. As I understand it, all the officers listed in the affidavit shot at him.

Q. Do you think it was a justifiable killing?

A. Yes.

Q. In hindsight, is there anything that you would've done differently?

A. No.

Q. Why?

A. I'm not sure how to best answer that, but I didn't feel like I had a lot of options at that time. It was a pre immediate threat and situation that I was faced with, and I think I responded in the best and the only option that I had at the time.

Q. Was there any intel before this happened, any chat

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on the radio regarding this Maserati?

A. I'm not sure. I did not hear any.

Q. So there was no radio communications, that you know of, regarding this -- the Maserati being a suspect vehicle because it had a temporary tag?

A. Not to my recollection. I don't remember hearing anything on the radio about it.

Q. Someone posted on Reddit, that appeared to be a police supporter, that he was driving a stolen Maserati. Do you recall that being something that -- had you heard, either before or after, any allegation the Maserati was a stolen vehicle?

A. I wasn't familiar with the Maserati at all on the day of the incident. Afterwards, I heard some talk that it may have been stolen, but I never confirmed that and that was never confirmed to me.

Q. In fact, as far as you know, it was not a stolen vehicle, correct?

A. That's right. I don't have any, you know, affirmative knowledge one way or the other. That's just something that I heard.

Q. -- What about the Monte Carlo that hit the Maserati, were you -- did you see that happen?

A. No, I didn't -- I have since seen video of that collision --

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Q. Mm-hm.
A. -- but I did not see it on the night of the incident.
Q. Have... How long ago did you see the video?
A. I can't recall when I very first saw that video, but I reviewed that video today prior to this deposition.
Q. Was it the Halo video you watched?
A. I -- I have reviewed the Halo video.
Q. How many videos have you watched regarding this? How many are out there?
A. I couldn't say for certain. I think today I reviewed maybe four or five angles of video, one of which was the collision.
Q. Did you see the witness video from Amanda Estrada, who had taken the video from a car adjacent to the Maserati?
A. I'm not sure I know exactly which one you mean. Yeah, have seen a video. I have seen several videos, like I said, but I'm not sure I know this one or who recorded it.
Q. Was it from high above?
A. I've seen the video from high above, and then I have seen a video that looks like from the street level.
Q. Okay.
A. So that might be the one you're referring to.
Q. Yeah. Is there anything about the actions of the police officers shooting at the Maserati as it's driving away that you find to be unreasonable?

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A. No. There's no actions from -- from that incident that you're describing that I find to be unreasonable from the officers.
Q. What are the reason -- reasons why a police officer can discharge a firearm?
A. So those are -- those are based on our Austin Police policy and also the law in Texas, but for a police officer to discharge a firearm is for the police officer to use deadly force, and that's only authorized when faced with an immediate threat of death or serious bodily injury, and that can either be to the officer or to a third party.
Q. That's better than I could've said it. All right. So when the Maserati is driving away, do you think that the police officers were in imminent danger at that point when they were falling over each other and shooting at the car as it was driving away?
A. I can't, you know, put myself in their heads, really for -- for what they were feeling at that time. Those officers, they were making that decision on their own. I hadn't made my decision.
Q. Well, see, that's part of a police test. You see this video and you see these officers shooting as the car's driving away. And so it's a right or wrong kind of question. And would you put right or wrong when you see police officers shooting at a Maserati as it's driving away, justified or not justified?

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A. I'm sorry. I just don't -- I'm not quite sure on that situation. Never taken, like, a police test --
Q. All right.
A. -- like that, right or wrong type thing like that.
Q. Well, let's say -- I don't want to put myself in this position. Let's say a homeless guy is -- points a gun at you. Now, would you be justified to shoot him?
MR. BARTON: Object to the form.
A. If someone is pointing a gun at me, and I perceive that to be an imminent threat, which I think I would, then, yeah, based on the policy and the law I described earlier, it would be justified to use deadly force against that.
Q. (By Mr. Ogle) Okay. And if he turns and runs away would you be justified in shooting him in the back?
MR. BARTON: Object to the form. Hypothetical
A. In a situation like that, I think you would have to ask additional questions.
Q. (By Mr. Ogle) Okay. Well, you've seen the video recently, and we're gonna play it here in a minute, but the video -- you saw the video where the Maserati is driving away and the police officers are shooting at -- at the back of the

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Maserati. Did you notice that?
A. I did see that video. I wasn't paying too close attention to those positions. I was mostly focused on my actions.
Q. Well, we'll watch it again to refresh your memory. But in a situation where the suspect is fleeing the scene, in Isaiah's case, are police officers justified, in your opinion, in this situation for shooting at the vehicle as it was driving away?
MR. BARTON: Object to the form, and asked and answered.
A. Similar to the -- to the hypothetical you asked earlier, I think it's complicated, that you need additional -- you have to ask additional questions of those officers and know what they believed and why they were acting in that way. And, you know, because I wasn't in that situation, I can't really know -- know what those answers are.
Q. (By Mr. Ogle) Now, when you first heard the shots, did that excite you?
MR. BARTON: Object to the form.
A. I'm not sure I would say it -- it excited me. It startled me probably.
Q. (By Mr. Ogle) I don't mean it in a --
A. Sure.
Q. -- good way.

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A. I was -- I was -- yes, it -- it jolted me.
Q. Okay. And as a result of that jolt, you had some adrenaline going, correct?
A. Yes.
Q. Okay. And so you all are at this gas station and y'all are just talking among yourselves, right, from the beginning?
A. As I recall, we were talking to a group of other people of citizens.
Q. Okay. And so you hear the shots and you go towards the danger, correct?
A. That's right, headed toward the sound of the gunfire.
Q. Okay. Were you aware that Isaiah was being shot at?
A. At the time that I heard gunshots --
Q. Yeah.
A. -- and headed toward the sound of gunfire, I didn't know any specifics of who was shooting at who.
Q. Okay. Then what was your first observation that led to your ultimate decision to shoot him?
A. When I heard the sound of gunfire and ran toward the street --
Q. Mm-hm.
A. -- I observed the black vehicle, which I later learned was the Maserati, and I observed Isaiah running with a

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gun in his hand and he was hunched over in a way that caught my attention, that it looked like he -- it was a suspicious movement. It looked like he was running away from a gunfight or that he had just shot someone or been involved in a shooting and that he was trying to get away from it and reposition himself.
Q. Could it be that he was shot in the wrist several times or that he was nursing -- did it appear also as though he was, in hindsight, nursing a wound?
MR. BARTON: Object to the form.
A. I'm not sure. I do know at that time, during the time of the incident, when I saw him running, I perceived him -- his posture and the way he was running and that he was holding a gun to be suspicious and I believed that he had just been involved in a shooting.
Q. (By Mr. Ogle) And he was black, too, right?
A. He --
MR. BARTON: Object to the form.
A. He was a black man, yes.
Q. (By Mr. Ogle) Do you all have a heightened sense of concern when it's a black person?
A. No.
Q. Have you heard about any studies that have been done on regarding the Austin Police Department, that there's a disproportionate number of black and Hispanics that are killed

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A. I am familiar that studies have been commissioned about the statistics.
Q. And that's been incorporated into y'all's police policies, correct?
MR. BARTON: Object to the form.
A. I'm not certain about the -- the incorporation of studies of the policy.
Q. (By Mr. Ogle) Okay. Have you had any classes on ethnic equality?
A. As I know in the police academy we're trained to be unbiased, and we also go through, like, a neighborhood trai where we go into different neighborhoods that have differen like, ethnic makeups.
Q. Mm-hm.
A. I'm trying to think if I've ever seen any specifi ethnicity training. I'm not sure, but it is -- you know, b unbiased to the public is incorporated into a lot of the training.
Q. In police training you're taught to be biased aga homeless people, aren't you?
MR. BARTON: Object to the form.
A. No.
Q. (By Mr. Ogle) My understanding is in a training training instructors there was a cadette -- a female cadett that was a whistleblower and claimed that she was told by a

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supervisor -- a training supervisor that if you show compassio for a homeless person, he'll -- that you need to leave the area immediately. Were you ever told any type of generalization -- generalized instructions on how to treat homeless people?
A. No, and that's the first I'm -- I'm hearing about that.
Q. Had you received any notifications from supervisors or otherwise prior to going to the scene of the shooting -- prior to the scene -- prior to going to the scene of the shooting which led to Isaiah's death?
MR. BARTON: Object to the form.
A. I'm not sure I understand that question, sorry.
Q. (By Mr. Ogle) Was there anything other than the gunfire that -- that alerted you to the incident?
A. No.
Q. Okay.
A. Like I said earlier, it was -- it was right there next to me, so I just heard the gunfire and it was pretty much happening right next to me.
Q. Okay. In a situation where Isaiah was running away from the -- from -- you -- you say you first observed him, he was -- appeared to be crouched and it's suspicious because of the way he was running back to the car; is that correct?
A. Yes. I -- I remember that, you know, I was struck b his posture, the way he was running. He was kind of hunched

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over, bent over at the waist as if he was trying to make himself smaller. And based on that movement, it made me suspicious, and I believed that he had just been involved in some -- some manner of gun violence.

Q. And so that was a justification for you to shoot him -- shoot him, correct?

MR. BARTON: Object to the form.

A. That was part of my consideration, right, the totality of what I was observing and believed at the time.

Q. (By Mr. Ogle) Okay. So --

A. That was a factor in it.

Q. Let's -- let's -- let's list the factors that you -- that led you to what you say is a justifiable homicide. He was hunched over, running back. It appeared as though he was engaging in a gunfight.

A. That was my impression of his posture and the way he was running with a gun in his hand.

Q. Did it appear as though he was the aggressor or possibly the victim in the gunfight?

A. I don't recall making that distinction, but I do recall that the way he was moving, and his posture --

Q. Mm-hm.

A. -- and that he had a gun in his hand in such proximity, both in -- in distance and time to the gunshots that I heard --

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Q. Mm-hm.

A. -- I believed that he was involved, and that there had just been a shooting --

Q. Okay.

A. -- because I saw him running away with a gun in his hand. I'm not sure if I -- like I said, if I made any distinction in my mind. I knew that he -- you know, Officer O'Neill was not lying on the ground, right. He wasn't incapacitated. I believed that he was running from the scene of a shooting.

Q. Okay. So did that alone justify shooting him because it appeared as though he was running away with a gun in his hand?

A. No, those are not my only considerations.

Q. Okay. What other factor was involved in your decision to shoot?

A. Beyond that, beyond his proximity to those gunshots that I heard --

Q. Mm-hm.

A. -- and that he had a gun.

Q. Close proximity, okay.

A. The manner in which he was moving, which was suspicious to me.

Q. Okay.

A. His posture. And beyond that, before I fired my weapon, he engaged with Officer O'Neill, who was part of the group I was with. So he climbed into the car. The car door was open.

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Q. Let's back up.

A. Okay.

Q. He engaged with Officer O'Neill.

A. Right.

Q. Now, who had shot first, O'Neill or him?

A. I'm not sure.

Q. Could it have been O'Neill?

MR. BARTON: Object to the form.

A. I'm not sure that --

Q. (By Mr. Ogle) Okay.

A. -- Isaiah fired at Officer O'Neill. When I say, engage --

Q. Engage. Okay.

A. -- I mean that he was facing Officer O'Neill and had a gun, and I believed that he was threatening Officer O'Neill or pointing that gun --

Q. Okay.

A. -- at Officer O'Neill.

Q. So you didn't necessarily see him pointing the gun at O'Neill, you just saw him with a gun in front of O'Neill.

A. I believed that he was threatening Officer O'Neill with a gun. I did not see him -- I did not personally see him point the weapon.

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Q. You didn't see him -- you did not see him point the weapon at O'Neill but you did see him with a gun. And by engaged you mean that he had a gun -- simply had a gun.

A. What I mean by engaged is that I believe that Isaiah faced off with Officer O'Neill at a close distance and that he threatened Officer O'Neill and presented that gun to Officer O'Neill.

Q. Well, face off just means you're looking at him. And you've already said that you didn't see him point the gun at O'Neill, but you were justified in shooting him because he was -- in his hand a gun and you had seen him, and he was running away with a gun. He was hunched over. So although you didn't see him point the gun, he faced off, and add to that.

A. So I do want to be clear, right, in -- in what I was considering --

Q. Uh-huh.

A. -- to use deadly force. And like you said and like I mentioned a couple of times, his proximity to that gunfire that I heard, he did shoot in my direction.

Q. You heard shots but you don't know if it was him shooting, do you?

A. Well, I've seen the Halo video, and he -- I can see him clearly on the video as I'm running to that street shoot at and there's a large crowd behind me.

Q. But you also see shots actually come from the Monte

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Carlo driver, right?
A. In the video, yes, I did see those shots
Q. So those shots that you thought were coming from the
were coming from the Monte Carlo driver, right?
MR. BARTON: Object to the form.
A. Again, I -- I don't -- I don't mean to say that I was
sure about who had shot. I believed that Isaiah had been
involved in a shooting --
Q. (By Mr. Ogle) So you --
A. -- which is why I responded. And as I responded to
the scene, Isaiah did shoot at me and at the other officers in
our direction which included a crowded gas station parking lot,
cars, people, buildings.
Q. But that -- before then, though, you had only seen
Isaiah hunched over and then engage O'Neill without pointing
his gun, and that was enough for you to justify shooting him,
correct?
MR. BARTON: Object to the form.
A. So when I say I didn't see Isaiah point the gun, I
believed that he did point the gun based on what I was seeing.
Based on everything that I saw, I believed that he was pointing
the gun at Officer O'Neill. My -- my point of clarification is
that I couldn't see through that car door, so I didn't actually
see him pointing the gun at Officer O'Neill.
I saw him climb into the rear of the vehicle,

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saw Officer O'Neill standing at a place where I knew that he
could see Isaiah. And Officer O'Neill -- I saw Officer O'Neill
discharge his firearm at Isaiah. With all that information,
right, with all the factors I was considering, I believed that
Isaiah at that time was threatening Officer O'Neill.
Q. (By Mr. Ogle) Did you shoot first?
A. I observed --
Q. Between you and O'Neill.
A. I observed Officer O'Neill shooting, in my
recollection, before I fired.
Q. Who was right there at -- who got to the front door
and shot four -- three or four bullets point blank at him? I
mean, it's in the video, but --
A. Right. As I understand, the officer who was closest
to the vehicle was Officer O'Neill.
Q. Okay.
A. And I was positioned closer to the sidewalk or the
the edge of the street.
Q. Now, had you shot at Isaiah before O'Neill opened
the car door?
A. I don't believe so. In my memory and according to
the video, I believe that I -- I had discharged my weapon after
I had already seen Officer O'Neill fire his weapon.
Q. 'Cause according to the -- Amanda Estrada, the
witness, after O'Neill shot those shots through the passenger

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back window, Hutchinson slumped over. Are you aware of that?
A. Yes. I recall seeing Hutchinson slumped in the
front seat.
Q. Were you all -- would it -- would it be easy to
identify you and the other three as being police officers in
the clothes that you were wearing?
A. Yes.
Q. You weren't in uniforms, were you?
A. Yes. We were all in uniforms.
Q. Well, they were dark, right?
A. I was in a -- a really bright reflective jacket.
It's navy blue, but it really shines at night in headlights.
Q. But don't you have to look at the back to know
whether it says "Police" on it?
A. My uniform and the jacket both have a police badge.
And I --
Q. But you're not in the typical -- you're in plain
clothes, right?
A. No, sir.
Q. Weren't you?
A. No, sir. We were in full uniforms, including cargo
pants, a belt with handcuffs and firearm --
Q. All black --
A. -- and taser.
Q. I-- right? Sorry to interrupt.

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A. No, it's okay. The -- the belt is black but the
uniform -- is navy blue. And, like I said, that jacket I
had is very reflective, and says "Police," and has a police
badge. I think it might have shoulder patches with the police
logo as well, but I would have to reference --
Q. But from a distance...it's not as easy to identify
you guys as it would be someone in a regular officer's uniform
right?
MR. BARTON: Object to the form.
A. No, sir. I disagree. I think it would be the -- the
exact same level of distinction. And I -- you know, as -- as
police officer for -- now for about five-and-a-half years, I
very often have to, you know, look across a crowd or try to
identify other police officers on a scene, and I think given
our uniforms at the time, it would be -- I don't think it would
be difficult at all to discern that we were police.
Q. (By Mr. Ogle) This is a report from... I'm
referring to page 255 to 297 of the City of Austin's
disclosures, I believe, where someone has described what you
were wearing. It says: "I observed Officer Woods was a white
male. I observed Officer Woods was wearing a dark colored
button up uniform shirt, dark blue colored uniform trousers,
black colored lace up shoes and a black cap." Do you agree
with that?
A. I don't remember if my cap was dark blue or black,

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but it was dark colored with a police patch.
Q. "A name patch was observed on the exterior right side of the uniform shirt and the Austin Police Department patches were observed on both sleeves." That --
A. That sounds right.
Q. "A black beanie was in the left pocket of the uniform trousers." So you're a man in black, right?
MR. BARTON: Object to the form.
A. Sir, I'm -- I'm just wearing the standard police uniform.
Q. (By Mr. Ogle) Are there more distinctive type of uniforms that do -- that police officers do use or do wear?
A. I'm not sure I know what you mean. These are to these are the typical patrol uniform for the department.
Q. You would agree that having "Police" on the back of a jacket wouldn't do any good if you're facing somebody, correct?
MR. BARTON: Object to the form.
A. I'm not sure, sir. It's just the -- the way the uniforms are designed.
Q. (By Mr. Ogle) Do you know anything about the Monte Carlo driver?
A. No, sir.
Q. Can you see in hindsight that from Isaiah's perception... My understanding is, is that, and according to -- to the witness, Amanda Estrada, the Monte Carlo driver

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caused -- rear ended them. And they drove up to the next corner -- or next intersection, Neches and 7th, and she overheard the driver of the Monte Carlo, Damarious Davis, I think his name is, and -- go up to the Monte Carlo driver and politely ask for his insurance information.
Damarious claims that the Monte Carlo driver pulled a gun on him and that he then hit him. And as the Monte Carlo driver started shooting at Damarious and Isaiah, Isaiah was running away from that shooting when all of a sudden he sees four people coming up from the other side. So can you find it reasonable to believe that Isaiah would've believed that he was in an ambush by having someone shooting at him from the back and then four other people show up and point guns at him?
MR. BARTON: Object to the form.
A. I don't think so. I think that the other officers and I were pretty easily identifiable as police.
Q. (By Mr. Ogle) What should have Isaiah done he was being -- I'm sorry. Is it reasonable for you to believe that Isaiah had a right to defend himself from the -- from the Monte Carlo driver that was shooting at him?
MR. BARTON: Object to the form.
Q. (By Mr. Ogle) Does he have a right to fire back?
A. I'm not sure on the details of that interaction between Isaiah and the Monte Carlo driver. I'm not sure who

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was justified in what.
Q. Let's put you in the position of Isaiah. Someone approaches you. You -- you go back and someone pulls a gun as you're leaning into his window -- or you're at his window and he pulls a gun at you. Now, you don't -- so you don't have your gun drawn. What would you -- what's -- what's reasonable for someone who has a gun drawn to react?
MR. BARTON: Object to the form. Calls for conclusion and speculation.
A. I'm not sure I understand, sir.
Q. (By Mr. Ogle) Would it be unreasonable faced with someone in a Monte Carlo pointing a gun at you to strike him or to do something to try to keep him from shooting you?
MR. BARTON: Object to the form. Hypothetical.
A. I'm not sure, sir.
Q. (By Mr. Ogle) What would you do in a situation if you didn't have your gun drawn and you go to the back of someone's vehicle -- or you go to the windows -- the driver's window and he pulls a gun out at you. What's your instant re -- what's your instant reaction going to be?
MR. BARTON: Object to the form.
A. I'm not sure. I haven't been in that situation.
Q. (By Mr. Ogle) Is it unreasonable to try to keep someone from shooting you?
MR. BARTON: Object to the form.

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A. I don't think it's unreasonable to keep someone fro shooting you.
Q. (By Mr. Ogle) Do you believe that Isaiah was justified in shooting back at the Monte Carlo driver if he wa shot at first?
MR. BARTON: Object to the form.
A. I haven't seen any indication that Isaiah shot at t Monte Carlo driver. I have seen the video of Isaiah shooting in my direction.
Q. (By Mr. Ogle) I may have misstated, but is it reasonable -- have you seen any video where the Monte Carlo driver is shooting at Isaiah?
A. I have seen the -- the Halo camera video, I think -
Q. Uh-huh.
A. -- and it does show muzzle flash from inside the Monte Carlo --
Q. Okay.
A. -- which I believe to be the driver of the Monte Carlo --
Q. Okay.
A. -- firing a gun.
Q. What would you have done in that situation if you were Isaiah?
MR. BARTON: Object to the form.
Q. (By Mr. Ogle) Would you have run away?

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A. I'm not sure. I don't think I would put myself in that situation.
Q. What would you have done differently than what you did?
MR. BARTON: Object to the form. Hypothetical.
A. I'm not sure.
Q. (By Mr. Ogle) You saw the video of Isaiah going walking towards the Monte Carlo, correct?
A. Yes.
Q. Was there anything unreasonable about that?
A. I'm not sure to speak what was reasonable or not. I saw in the video that as he walked back to the car, he put the hood of his sweatshirt on and it looked like he reached down to -- to maybe get ahold of his handgun.
So it looked like as he walked back -- you know, again, I can't know what he was thinking at the time, but I see in the video that he put his hood on and -- and reached down to his waistband when he got to that window.
Q. You didn't see him shoot -- you didn't see him do anything other than run back to the Monte Carlo -- or run back to the Maserati, did you?
A. And in the video I saw, after those shots were fired from the Monte Carlo, I did see Isaiah run back towards the Maserati, produce that handgun, it looked like from his waistband, and then shoot in my direction.

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Q. Right. Because there was -- could it -- could he be reacting to shots being fired at him?
A. Possibly. I'm not sure what --
Q. Okay.
A. -- he was doing.
Q. And so different than your initial impression of him being in a gunfight, that would lead you to believe it was justified to shoot him. After watching the Halo video, can you see justification in Isaiah shooting back?
MR. BARTON: Object to the form.
A. No, I don't see any justification in Isaiah shooting in the direction of the Gulf Gas Station that myself, four other officers and unknown number of people walking around on business, I don't see any justification for it.
Q. (By Mr. Ogle) Did you -- did you -- was there any voice commands that any one of you said to him before you shot him?
A. I don't recall giving any commands. I do in my memory, I hear -- I think I heard "Stop. Police," which are pretty standard police commands. But I don't have any specific recollection of who or what commands, but I do think that I heard people saying, "Stop. Police."
Q. You did hear it or you think you heard it?
A. I think that I heard it.
Q. So you're not sure if you heard anybody say identify themselves, correct?

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A. I'm not sure enough to -- you know, to -- to swear to you for certain, but in my memory, which, again, is several years ago, I think I heard people giving police commands.
Q. Could it have been after he was shot that the commands were given?
A. Not certain.
Q. The video shows Isaiah retreating after he shot in your direction. Would you agree with that?
A. Not necessarily. I'm not sure -- I'm not sure what his intention was. I don't know if he was retreating.
Q. Well, he -- before he was shot, he was running back to the car and got into the seat, right?
A. He ran, and it looked like he took cover around the -- you know, He didn't run right into the door. He ran around in front of the vehicle. And at that point, according to the video, it looks like he saw the police running towards him and shot at the police, including me, and then he went into the car.
Q. Right. So after he made the shot, you see -- you see him retreating to his car, correct?
A. I see him run to the car. Again, I -- I can't know what his intention was to retreat. He was still right there in the vicinity, right in front of me, probably within ten yards.
Q. The video appears to show that he had his hands up

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when you see him with his hand up in the back seat?
A. I did not see him with his hands up.
Q. If he did have his hands up, would you believe that you would still have a justification to shoot him in the head and kill him if he had his hands up?
A. I'm not sure. I didn't see him with his hands up.
Q. If he had his hands up. If someone has their hands up after pointing a gun at you, are you still justified in shooting him?
MR. BARTON: Object to the form.
A. I'm not sure. I would have to consider other things.
Q. (By Mr. Ogle) Well, would you be in imminent danger if someone had their hands up in the back seat?
A. If --
Q. Both their hands up.
A. I think you're asking me to kind of, like, speculate here, but if someone had just shot at me --
Q. Uh-huh.
A. -- and had a gun in their hands with their hands raised and still had a gun, I would still feel like I was in imminent danger, yes.
Q. Why?
MR. BARTON: Object to the form.
Q. (By Mr. Ogle) If his hands are up, what danger do you find to be imminent?

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A. If a person's armed with a deadly weapon --
Q. Yeah.
A. They've already shot at me --
Q. Uh-huh.
A. -- and they've demonstrated they could shoot at me --
Q. Yeah.
A. They have the gun in their hands --
Q. Mm-hm.
A. -- I know, based on my training with the police department, that a person with a gun in their hands, even if their hands are like this --
Q. Mm-hm.
A. -- can shoot at me and kill me.
Q. Okay. So you'll -- in that situation next week, you see somebody and they point a gun at you and then they put their hands up, you still are justified in shooting him, right?
MR. BARTON: Object to the form.
A. Just to clarify, sir, you're putting your hands like this --
Q. (By Mr. Ogle) That's what I'm telling you --
A. What I'm saying is if someone has a gun and then they have it at me, and then they have their hands like this, it's different, right. If they drop the weapon, then it would be a different consideration.
Q. Yeah.

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A. But if they have a gun in their hands and their hands are raised, this is not necessarily safe to me, and that's based on my training.
Q. When you say he may have a gun --
A. And, to clarify, I didn't see Isaiah with his hands in the air, but you are saying if someone had their hands up, and my response is that if they have a gun and they've shot at me with that gun and they still possess it and they're holding it, then yes, that's still a threat to me.
Q. What if they've still got the gun and they're running away from you, can you still shoot them in the back?
A. That depends on the circumstance, but --
Q. This circumstance --
A. -- possibly.
Q. Okay. You see the video, you see the Maserati squealing away, running a red light, and you see the officers shooting, stumbling over each other, shooting like Keystone cops after he's fled the scene; is that justified?
MR. BARTON: Object to the form.
A. I'm not sure I can speak to --
Q. (By Mr. Ogle) Would you --
A. -- whether or not that's justified.
Q. Would you shoot at someone that had pointed a gun at you if he's flee -- if he's speeding away?
MR. BARTON: Object to the form. Argumentative.

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A. I'm not sure, but --
Q. (By Mr. Ogle) Sometimes you would?
A. -- but I will say that someone who has shot at you and is in a moving vehicle --
Q. Mm-hm.
A. -- is still perfectly capable of shooting at you. I'm sure you're familiar with, you know, the entire category of a drive by shooting, right, of people shooting out of a moving vehicle.
Q. Right.
A. So someone being in a vehicle doesn't necessarily eliminate threat that they're gonna use a weapon, especially someone that's already fired at you, that's demonstrated that they could.
Q. So in the training that you've received from the Austin Police Department, once someone points a gun at you and presents an imminent danger, that imminent danger doesn't go away?
MR. BARTON: Object to the form.
A. No, not necessarily. You have to continue to evaluate from moment to moment.
Q. (By Mr. Ogle) At what point in the shooting of Isaiah Hutchinson and the car driving away do you think that the police officers' imminent danger had stopped?
A. I would say probably when that vehicle turned the

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corner and started driving up --
Q. Driving away?
A. -- on the interstate.
Q. Oh, on the interstate.
A. Had driven, made a turn, and was getting out of sight. Until then, we were still within sight of that vehicle and still in danger of being shot by people in that car with weapons, and particularly Isaiah.
Q. Hm. And that's because he could put his hands down, grab a gun and shoot as he's driving away?
A. So --
MR. BARTON: Object to the form.
A. So, again, to circle back to clarify, when you say hands up, which, again, I didn't see Isaiah with his hands up --
Q. (By Mr. Ogle) But you saw him retreating.
A. I'm not sure what he was doing, sir. I saw him running into the vehicle.
Q. Yeah.
A. And he wasn't driving the vehicle. I'm not -- I don't know what his intention was. I know that he went to the car, which is the car he came from.
Q. Yeah.
A. And what I mean to say, when you're asking about the hands up, is that if someone has a weapon in their hands. So when you just asked your question that he could reach down a

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grab a gun, as I'm answering you and as I answered before, he would have a gun in his hands. He doesn't have to grab anything. He just has to squeeze a trigger.

Q. Right. Have you heard of tunnel vision?

A. Yes.

Q. And perception distortion?

A. Not specifically, but I think I understand it.

Q. Tell the jury what you understand from your training as to concerns over tunnel vision when it comes to being a police officer.

A. Sure. As I understand it, tunnel vision is a phenomenon in a highly stressful situation where a person can -- can focus on the threat in front of them and sometimes, you know, exclude or -- or miss the periphery because they're focused on that person or threat, or whatever event.

Q. And so is it reasonable to assume that in Isaiah's situation, now that you've seen the video, where he was being fired upon, that in that split second as he's trying to get back into the car, he perceives more people shooting at him as being adversaries?

MR. BARTON: Object to the form. Hypothetical.

A. I'm not sure what he was perceiving.

Q. (By Mr. Ogle) Well, at the -- from the point that he was at the -- from the point that he had accompanied Damarious to the Monte Carlo driver, was there anything that you found to

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be inappropriate in regard to -- to Hutchinson's behavior? He put his hoodie on, fair enough, but you saw him being fired upon, correct?

A. I mentioned earlier, but in the video, as he walks back to that Monte Carlo, he puts his hood on and it looks like he gets ahold of a weapon in his waistband, which I believe is the weapon that he used to shoot at me and the other officers.

Q. Is it unreasonable for someone that's being shot at to reach for a gun for self defense?

A. I'm not sure. I don't think so.

Q. If you're being shot at, and you're not even a police officer with immunities, if you're being shot at, do you feel -- do you feel you have a right to respond in kind by shooting at him, by shooting at someone that's shooting at you?

MR. BARTON: Object to the form.

A. Not every shooting is justified, and sometimes people are shot at and they don't -- you know, they don't have a justified right to return fire. For example, if they're committing a crime.

Q. (By Mr. Ogle) Okay.

A. But if someone has a lawful self defense against aggression -- the aggressor, you know, it's not okay for the aggressor to then kill that person.

Q. You didn't see -- you didn't see Isaiah doing anything aggressive when he went up to the Monte Carlo driver, right?

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MR. BARTON: Object to the form.

A. What I saw in the video is, like I mentioned, Isaiah puts his hood on, positions himself next to that driver's window and appears to grab at a firearm in his waist.

Q. (By Mr. Ogle) You find anything objectionable about him pulling a firearm after he was fired on himself?

A. Only in that he used that firearm to shoot at the police and into a crowd.

Q. But up until then, he was -- you didn't find -- there's nothing objectionable about him running away with a firearm and even shooting back at someone that's shooting at him?

MR. BARTON: Object to the form.

A. I'm not sure. I don't know what -- I don't know what was happening at that window.

Q. (By Mr. Ogle) Yeah.

A. If he had been committing a crime or threatening the Monte Carlo -- if the driver of the Monte Carlo felt in fear for his life -- and I did see in the video that he was being assaulted -- I'm not sure. And in that case, I don't know what the -- what the reasonable justification would be for Isaiah to pull a gun or to shoot at the Monte Carlo driver. I'm not sure what was happening. What I did see in the video was that the other guy with Isaiah was seen to be punching the Monte Carlo

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driver before that.

Q. And that was the official statement in the -- from the police department, correct, that the -- the Monte Carlo driver was -- was the victim?

A. I'm not sure I remember the official statement, but what I believe is that seems reasonable, and based on the -- the video I saw, that's what it looks like.

Q. Looks like that -- that the Monte Carlo was the victim because of Damarious punching the driver, correct?

A. Again, I'm not sure everything that transpired at the window, but based on the video that I've seen, the Maserati was at fault in that collision that occurred. And then --

Q. The Maserati was or the Monte Carlo?

A. The Maserati was.

Q. Was at fault?

A. The Maserati ran through a red light and entered the path of the Monte Carlo causing --

Q. Oh.

A. -- the collision. And then --

Q. I didn't know that. I thought the Monte Carlo drove into the back of the Maserati, a rear ender.

A. The -- the front of the Monte Carlo collided with the rear left corner panel of the Maserati, but that's because the Maserati drove through a red light and entered the path of the Monte Carlo as it was making a legal left turn.

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Q. I didn't know that.
A. Just based on the video that I saw. Like I said, I didn't see it in person. And then before the shooting incident, Isaiah and the driver of the Maserati, I did see them in the video. I mentioned a few times, but Isaiah pictured in his hoodie and seemingly grabbing a gun, and then the driver of the Maserati punching the driver of the Monte Carlo. So based on that video that I've seen, it does appear that the driver of the Monte Carlo, if there is a victim in that situation, would be the victim.
Q. Would be the Monte Carlo driver.
A. Like I said, I don't know the -- the specifics. I don't know if he was justified in shooting a gun. That's a different investigation that -- that you'd have to look into that I'm not sure of. But based on the video that I've seen, that is what appears happened.
Q. Would your opinion completely change if added to that scenario that the Monte Carlo driver pulled a gun on Damarious when he approached the window?
MR. BARTON: Object to the form.
A. I'm not sure. I think that also there'd be other factors to consider.
Q. (By Mr. Ogle) Would Damarious be justified in punching the Monte Carlo driver if the Monte Carlo driver pulled a gun on him and Damarious didn't have a gun?

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MR. BARTON: Object to the form.
A. That depends on the circumstances.
(Exhibit No. 1)
Q. (By Mr. Ogle) Okay. If we could, I'm gonna show some videos now so that we can look at them. And I will just ask you not to talk.
CAROL SMITH: Is this the one you want to watch?
MR. OGLE: Yeah, if you're able to open it. There's two of them, and I don't care which goes first.
Q. (By Mr. Ogle) Would you like to take a moment to see that from where you're at?
A. Yes.
Q. Can you describe...
A. This is the intersection of East 7th Street and the 35 frontage road. As you can tell, it's pretty busy with pedestrian traffic, vehicle traffic, people loitering in the gas station parking lot, people walking on the sidewalks. It was pretty busy.
Q. And are you in that scene as we see it?
A. I don't currently see myself. As I understand it, I'm currently standing just out of frame, next to the gas station.
MR. OGLE: There was a closer shot.
CAROL SMITH: (Indiscernible).
MR. OGLE: Okay. That's fine.

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Q. (By Mr. Ogle) What do you know about the Monte Carlo driver?
A. Not much.
Q. Was it -- did you -- was it another video you saw of that was in that video that was just shown that shows the Monte Carlo to be at fault in the collision?
MR. BARTON: Object to the form.
A. That video does not show the collision. I did see a different video that appears to show the Maserati at fault for a minor collision.
Q. (By Mr. Ogle) Do you know anything about the identity of the Monte Carlo?
A. No.
Q. Do you know why -- or do you know whether -- whether the Monte Carlo driver is some type of a confidential informant?
A. No.
Q. Did it appear as though, in the video that you saw, that the accident with the Monte Carlo driver may have been intentional on the part of the Monte Carlo driver?
A. I didn't see anything from the video that made me think it was intentional.
Q. Describe it again, the accident.
A. I recently reviewed a video of this accident. In it the Monte Carlo's driving southbound on Neches Street, and the

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Maserati is driving eastbound on East 7th Street. The angle of the video shows that the Maserati had a solid red light, which means he should stop at the red light. And the Monte Carlo was part of traffic that was turning left to travel eastbound on East 7th Street.
As the Monte Carlo was making that left turn, the video shows the Maserati drive through that red light into the intersection and into the path of the Monte Carlo, causing the front of the Monte Carlo to strike the rear left quarter panel of the Maserati. And so while the Monte Carlo did bump into the Maserati, the at fault vehicle would be that Maserati based on the traffic. And that's just based on the police academy and years of doing collision investigations.
Q. The police said in a statement to KXAN that two men from the Maserati walked over to the Monte Carlo and started punching the driver. Do you agree with that, both men walked over and started punching the driver?
A. Based on the video, it looks like only one of them had punched the driver.
Q. And that was not Hutchinson, correct?
A. That's right.
Q. The driver of the Monte Carlo started firing a weapon, hitting at least one of the men, who then began firing back at the Monte Carlo. Do you agree with that?
MR. BARTON: Object to the form.

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A. No. Based on the video, I did not see anyone shooting back at the Monte Carlo.
Q. (By Mr. Ogle) But you do agree the driver of the Monte Carlo started firing a weapon?
A. I did see in the video what looked like gunshots from the Monte Carlo.
Q. Okay. And, from your opinion, the Monte Carlo driver was justified in defending himself because the driver of the Maserati had started punching him.
MR. BARTON: Object to the form.
Q. (By Mr. Ogle) Is that your conclusion?
A. I'm not sure. I'd need to know a lot more about the situation to draw that conclusion.
Q. How would anyone know up until then that the car was a suspected stolen vehicle?
A. I'm not sure.
Q. Do you know if there was any evidence after the shooting that indicated the police department -- or somebody with the police department's position that it was a stolen vehicle?
A. Not that I know of.
Q. Are temporary tags on vehicles, does that make you -- is that probable cause for it being a stolen vehicle?
A. No, not in and of themselves.
Q. Let me see. So when are you allowed to shoot a

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fleeing suspect? Could you give me some situations in your training by APD in regard to justifiable shooting of a fleeing suspect?
MR. BARTON: Object to the form.
A. The only time officers are authorized to use deadly force, like I mentioned earlier, is when they're facing an imminent threat of death or serious bodily injury, or when they believe that the suspect is about to commit some act of violence resulting in death or serious bodily injury.
Q. (By Mr. Ogle) And, from what I gather, I'm sorry. Are you finished?
A. I just need to -- to -- to put an end on the question, if I believe that a suspect is about to cause death or serious bodily injury, then I'm authorized to use deadly force against him regardless of the direction that he's moving.
Q. Once he's become an imminent danger, that danger justifies you even when he's -- after he's fleeing?
MR. BARTON: Object to the form.
A. Yeah, I'm not sure I understand. So what I mean when I -- when I give that answer is that when I say, fleeing, just based on the direction that someone's moving, I don't know what their intention is.
I don't know if they're strictly trying to get away, if they're trying to reposition themselves, if they're headed to another victim. You know, I'm not sure what they're

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doing, so it's hard for me to know that someone is fleeing, right, that they're intentionally removing themselves from a conflict as opposed to just moving.
Q. (By Mr. Ogle) So because of the possibility of someone shooting you as he's fleeing, once he establish -- once you've established that you're in imminent danger, in this case, you were justified in shooting him all the way up -- I think you said up until he turned onto I-35, correct? So a good hundred yards.
MR. BARTON: Object to the form.
A. In my answer what I meant to say is that if I believe there was an imminent threat of death or serious bodily injury, not only to me but to a third party, that I am authorized to use deadly force, you know, up until I think there's not -- there's no longer an imminent threat. And so in that situation, you were talking about a vehicle driving away, and someone in that vehicle can still be an imminent threat of death or serious bodily injury even if that vehicle's moving.
Q. (By Mr. Ogle) Weren't you pretty sure he was dead after he slumped over after O'Neill shot him four times in the head? You saw him slumped over, right?
A. I --
MR. BARTON: Object to the form.
A. I did see him slump over, and I -- and I didn't shoot him after that.

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Q. (By Mr. Ogle) Okay. But the other officers were.
A. I'm not sure what those officers thought or what they believed or their perception of the threat, which is -- which is why I've tried to couch that in that I am confident in the actions that I took, but I would just be guessing at what other people were thinking.
So I just -- I'm just trying to answer your question the best I can, but I'm not sure what they believed, that imminent threat or when it ended, right. It's dependent on -- I point of view, your experience and what you're perceiving. So depending on your location or what you're perceiving, it could be different for different people.
Q. Well, let's take you -- put you to the side. Help me understand the reasonableness on the part of the police department in regard to the other officer's actions in shooting at him.
MR. BARTON: Object to the form.
THE VIDEOGRAPHER: Mr. Ogle, can you please replace your -- put your mic back on. I'm picking you up, just a little bit too loud. Thank you.
Q. (By Mr. Ogle) I didn't expect you to give much of an answer to that, but... What do you think the officers -- based on your understanding of him being shot already, is it reasonable to assume that the police officers that did shoot at him after he was fleeing did not have an imminent danger to do so?
MR. BARTON: Object to the form.

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A. I'm not sure. I don't think I can answer.
Q. (By Mr. Ogle) So you support -- after watching the video of the police officers shooting back at him, you support those officers' actions?
A. Based on seeing the video, I think that the officers all acted reasonably. I think the use of force was reasonable, yes.
Q. What weapon system were you using? That's a new word I learned this week.
A. Sure. People like to use that, just to mean "gun." I was using a -- my department issued Smith & Wesson M&P, and it is a 9 millimeter semiautomatic handgun.
Q. You've already told me that you never -- the officer in this incident, you've never discharged your service firearm while on duty with the Austin Police Department?
A. Correct. Not at anyone, only in -- only in training.
Q. In reviewing documents after this incident, was there anything that you saw that showed that the Maserati or the occupants of the Maserati were suspects of any kind before this incident?
A. I'm not sure I totally understand what you mean.
Q. Was there anything that alerted law enforcement, before this accident, even though you didn't know of anything, but after reviewing and talking to your fellow officers, was there any scuttlebutt, any rumors about this particular

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Maserati and it being a stolen vehicle?
A. I have not seen any evidence of that. I did hear people saying that it might've been stolen. But I mentioned earlier I haven't seen any evidence that it was stolen or that it wasn't, but I did hear people say that it might've been stolen.
Q. Do you -- is there anything about the Monte Carlo driver, assuming that he pulled a gun at Damarious, that would lead to charges, in your opinion?
A. I'm not sure. That -- the specifics of that interaction at the -- at the window of the Monte Carlo, like I said, I'd have to know everything about that. And even then, you know, I'm not a detective. I don't bring charges necessarily. But to draw a conclusion, I'd have to know more about what happened at that window. I can't know just from seeing that -- that bird's eye video.
Q. Do you know why they didn't chase -- or do you know whether they chased the Monte Carlo driver?
A. I'm not sure.
Q. Is there any particular police policy in the Austin Police Department regarding the discharge of an officer's service firearm at a fleeing suspect?
MR. BARTON: Object to the form. Asked and answered, but go ahead and answer again.
A. I -- I won't be able to recall it verbatim, but

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officers are not authorized to shoot at suspects just because they're fleeing.
Q. (By Mr. Ogle) Well, what about your situation where he presented his -- he presented himself as an imminent danger, you believe that you have a right to shoot at him from Neches to I-35, and so would that be in compliance with Austin police policy of shooting at a fleeing vehicle?
MR. BARTON: Object to the form.
Q. (By Mr. Ogle) Or fleeing suspect.
A. Like I said earlier, I think the policy -- the policy and the law requires that to use deadly force, that the officer feels there is an imminent threat, and so it depends on that officer's perception. In this case, like I told you, I believed that Isaiah was imminent threat from the time that he shot in the direction of me and my other officers and that crowd of people, as he got into the vehicle and I believed that he was threatening and pointing his weapon at Officer O'Neill. When I saw him slumped down, I shifted my attention away from him to the other occupants in the vehicle. But as far as the other officers on scene, you know, I could only guess at or imagine what they were perceiving at the time. And that perception is -- is kind of the -- the -- the question anything in -- in whether someone was just fleeing or if they're an imminent threat, right, and that -- you know, one of them is -- is forbidden by the policy and the other is -- is authorized

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by the law and by policy.
Q. Policies don't make much difference anymore anyway, right?
A. Excuse me?
Q. If you violate a policy, there's really no -- no consequences to it, is there?
MR. BARTON: Object to the form.
A. That is not my understanding of the policy as a police officer.
Q. (By Mr. Ogle) Are you authorized to chase nonviolent felons through the city and run red lights?
A. There's an explicit pursuit policy, and it depends.
Q. I represent some people that were -- that were hit by a car that was fleeing from the police in San Antonio. And there was a recent Supreme Court -- Texas Supreme Court case, Matt Sparrow versus San Antonio, where the Supreme Court said you know just a policy, that doesn't weigh police immunity. Do you think that might give a chilling effect to complying with policies if you know that there's no consequence to violating them? Is that in the Austin
MR. BARTON: Object to the form.
A. I'm not sure. I -- I believe there are consequences to violating policy.
Q. (By Mr. Ogle) Some things are regulated and some aren't, though, right, when it comes to laws involving police officer's

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officers?
A. I don't understand.
Q. Well, human rights advocates, there -- there's one extreme than the other that I'm involved in. When it comes to police officers -- as I mentioned, steroid abuse among police officers, laws are not -- even though there's laws against felony steroid abuse, I know a fellow that was arrested, delivering steroids to police officers. And so... have you heard that, for example, President Casaday uses steroids?
A. I have not.
MR. BARTON: Object to the form.
Q. (By Mr. Ogle) Have you ever -- have you ever seen -- someone that does a lot of steroids, is all bulked up, you can kind of tell. They got -- they look like coconuts. They're like --
MR. BARTON: Object to the form.
Q. (By Mr. Ogle) -- like the frontline officers. People like Casaday.
MR. BARTON: Object to the form.
A. I'm not sure.
Q. (By Mr. Ogle) Would it surprise you that Ken Casaday may or may not have used steroids in the past?
MR. BARTON: Object to the form.
A. I'm not sure what would surprise me.
Q. (By Mr. Ogle) Okay.

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A. I don't know --
Q. Would you be surprised that -- that steroid use among police officers are not regulated?
MR. BARTON: Object to the form. Asked and answered.
Q. (By Mr. Ogle) That they're actually encouraged by Austin Police Association?
A. I would be surprised --
MR. BARTON: Object to form.
A. -- to hear they're --
Q. (By Mr. Ogle) If they're --
A. -- encouraged.
Q. -- encouraged?
A. Yes.
Q. Okay. Would you be surprised if they're tolerated?
MR. BARTON: Object to the form.
Q. (By Mr. Ogle) I mean, the --
A. I'm -- I'm not sure. I haven't really considered it much --
Q. Well --
A. -- honestly.
Q. -- the other side is, is that police officers don't have time to lift weights, right, and they need to keep the upper hand when it comes to bad guys. So do you think these are justifications that some police officers use to justify

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steroids that are not prescribed?
MR. BARTON: Object to the form.
A. I -- I don't know.
Q. (By Mr. Ogle) That's one example. That's an example where I'm saying that -- that sometimes laws among police officers are not regulated. And then me, on the other hand, I -- I -- I lived with a -- with a -- with a woman that was raped by a local Pentecostal cult, kind of David Koresh and Warren Jeffs, and their leader just last week was -- was sentenced to 16 years in prison.
And they have -- they have a big ranch in Seguin called the Silver wolf Ranch. Two huge ranches. One's in California, where they rape minors, and the other one is here in Seguin, where they take children, like my ex-girlfriend that her -- they target single family mothers that have good looking women -- good looking daughters, and they offer them as virgin offerings.
And despite all the police reports, there's a policy not to regulate religion. And so I was getting death threats from this church because when I found out about it, I -- I made them shut up. But the death threats were closed by -- I called the Austin Police Department.
And they were Facebook threats, and APD says they don't have jurisdiction because I don't live in -- in Austin, and Facebook is personal. Even though it's the Law

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Office of Scott Ogle, it's personal. And so Hays County closed it and ridiculed the death threats. Have you heard of any -- just any controversy among police officers and human rights advocates?
MR. BARTON: Object to the form.
A. No, I'm not sure.
Q. (By Mr. Ogle) Human right act -- people that protest, like the George Floyd protest, police officers generally don't -- don't get along with human rights advocates; is that -- at least some police officers don't.
A. I'm not sure.
MR. BARTON: Object to the form.
Q. (By Mr. Ogle) So I end up getting charged with annoying the officer, that was -- that -- that -- that closed the -- the continued death threats that I would get from this church, in violation of Texas Penal Code 42.07. That means through, like -- if you annoy somebody more than once through electronic communications, you're guilty of harassment. Did you know that?
A. I did not.
Q. Yeah. And so apparently I annoyed her twice, and so I was arrested in the courthouse over my responses to her in reporting the death threats. So, you know, it appears as though sometimes laws are flagrantly violated among law enforcement and they're not regulated. And, on the other extreme, you can

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be charged with as little as pissing somebody off more than once through e-mails and be charged. So I've seen both sides, and I'm just wondering whether there's -- well, you've heard of being your brother's keeper, correct?

MR. BARTON: Object to the form.

A. I have heard that phrase.

Q. (By Mr. Ogle) And who do they refer to generally as brothers? Who do police officers -- when police officers say you're your brother's keeper, who are they referring to?

MR. BARTON: Object to the form.

A. In that context, I take it to mean looking out for other police officers.

Q. (By Mr. Ogle) Yeah. And you all do that, correct?

A. I can't speak for everyone.

Q. If a police officer did something wrong, would you be willing -- if there's something about this case that you think someone -- a police officer did wrong, would you be hesitant -- to -- to -- to point -- point out his failures?

A. No, I would not be hesitant.

Q. Isn't there kind of an institutional... maybe not policy, but don't police officers generally watch each other's back?

MR. BARTON: Object to the form.

A. I don't understand.

Q. (By Mr. Ogle) If you were to object to how a police

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officer is handling a situation, would you be criticized for criticizing a fellow police officer, in some circles?

A. It depends. I think part of the -- being your brother's keeper and looking out for other officers includes pointing out and criticizing and helping fix when people are doing things wrong.

Q. Yeah, but what happens to police -- whistle blowers that work in the police department generally?

A. I'm not --

MR. BARTON: Object to the form.

Q. (By Mr. Ogle) I asked a police officer if he would kill Jesus if his supervisor told him to, and he said it depends.

(By Mr. Ogle) Object to the form.

Q. (By Mr. Ogle) Do you agree with that?

A. I'm not sure.

Q. Can you think of a reason to kill Jesus?

MR. BARTON: Object to the form.

A. I don't quite understand the question, sorry.

Q. (By Mr. Ogle) Jesus was a government irritant, and look what happened to him.

MR. OGLE: I -- I withdraw the sidebar.

MR. BARTON: All right.

THE VIDEOGRAPHER: Go off the record?

MR. BARTON: No, no.

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MR. OGLE: No. Do you want to take a break?

MR. BARTON: Sure. Okay.

THE VIDEOGRAPHER: Going off the record. The time is 2:46 p.m.

(Break)

THE VIDEOGRAPHER: We are back on the record. The time is 2:59 p.m.

Q. (By Mr. Ogle) We took a brief break, and I'm getting close to the end. Do you think that if Isaiah had not been black that he may not have fit the profile that you discussed as being in imminent danger -- of you being in imminent danger?

MR. BARTON: Object to form.

A. I think that Isaiah's actions were what led me to view him as a threat, not his race.

Q. (By Mr. Ogle) Do you think his race played a part?

A. No.

Q. We have alleged in our complaint that there is an atmosphere that's been recognized by the City of Austin about overly aggressive and racist atmosphere of the Austin Police Department. Are you at least aware of those allegations about the police department?

A. Yes. I saw in the complaint and I'm vaguely aware that there was a City Council resolution or something like that.

Q. And part of that is -- of the resolution was to

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deescalate police violence, correct?

A. I'm not sure the details of the resolution.

Q. Is -- is deescalation something that is part of the new -- does -- part of the -- the re-imagined police department's policies?

A. Deescalation is -- is part of APD policy, yes.

Q. Do you think honestly whether that's observed by police officers in Austin?

A. Yes, I do. I've actually been -- received accommodations for deescalation and then called upon to help teach other officers deescalation techniques.

Q. Is there anything that you think could've been -- any practice or procedure that you can think of that could've been used to deescalate this situation?

A. No. I think this was a situation where there was not an option to deescalate. When faced with the immediacy of this threat and having been shot at, there really were no options and no time. So unfortunately this was a case where deadly force was met with deadly force from the officers.

Q. From your perspective, if there's two people at a gunfight, regardless of who started it, they're both -- they -- both of them put you in imminent danger, correct?

A. I'm not sure I understand.

Q. The Monte Carlo driver was shooting at Hutchinson. Hutchinson, you saw, was -- you used examples of hunched over

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and running away with a gun in his hand in close proximity to -- to his gun and his posture. All those things led you to believe he was a bad guy, even before he drew a gun; correct?

MR. BARTON: Object to the form.

A. In that description, part of that description is that he had a gun in his hand. And in the video he's shown shooting in my direction and in the direction of hundreds of people.

Q. (By Mr. Ogle) And from -- can you see from Isaiah's point of view running away from someone shooting at him and then four people -- four officers that he may or may not have been able to identify as police officers, do you think that put him in a no win situation?

MR. BARTON: Object to the form.

A. I'm not sure how he felt about the situation.

Q. (By Mr. Ogle) What would you have done in Isaiah's situation if someone was shooting at you?

MR. BARTON: Object to the form.

A. I'm not sure. I haven't been in that situation.

Q. (By Mr. Ogle) Well, you were in that situation and you saw, but...

A. I return -- to respond, Isaiah shot at me and the other offers and the people. He shot in my direction before officers fired back on him.

Q. How many shots did Isaiah make? One?

A. I believe one to three.

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Q. How certain are you that he identified you all as police officers?

A. I'm certain.

Q. You think he knew that you were a police officer when he shot at you?

A. I think the way that I operate in the eyes of the law, based on all my training and my experience as a police officer, all of us being in full uniform with badges and patches of our station, and a hat with a patch on it, especially on this night, wearing a bright reflective police jacket, I have testified, I've sworn to that people commit crimes based on recognizing me as a police officer in that capacity.

And in the same way that I hold everyone else to, I would hold Isaiah to, that he would recognize me as a police officer, the same way I expect anyone to when another officer's a fully uniformed officer. So I would be certain in that way that I'm certain that anyone would recognize a police officer in full uniform as an officer, I -- I'm certain of that.

Q. Now --

A. And I can't -- I can't know what -- what he perceived, and I don't know what he was thinking, but that's what I expect anyone to recognize the uniform as an officer.

Q. There are uniforms that are more identifiable, though, correct, than the black ones that you were wearing?

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A. To clarify, I was wearing a bark blue, the standard issued patrol uniform.

Q. Aren't there police uniforms that are different color, like blue and black, or brown and...

A. There are a few different uniforms in the department. One of them is a really bright blue shirt --

Q. Yeah.

A. -- and that's typically used in the downtown area.

Q. Yeah.

A. There's also, like, a really subdued green that is usually used by, like, K9 officers. The SWAT team uses, a camouflage. So there are different uniforms, but the standard patrol uniform is that dark navy blue that we were wearing.

Q. It's more identifiable to be in the -- in the.. There are more identifiable uniforms than the black ones, correct?

MR. BARTON: Object to the form.

A. Again, these are blue -- navy blue uniforms, and I think that's subjective, as far as identifiable. In my personal opinion, the very bright blue downtown uniforms look less like a police uniform, but that's my subjective opinion.

Q. (By Mr. Ogle) Why is it that they use a specific color in downtown, to make it more identifiable?

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A. As I understand it, the -- the bright blue color specifically used downtown, because there's often such a huge crowd on 6th Street, that it makes it easier to pick out the bright blue color --

Q. Yeah.

A. -- that is used more among the public.

Q. Yeah. And so if it would be more likely to identify you as a police officer, why were you wearing black?

MR. BARTON: Object to the form.

A. To clarify again, I was wearing a dark blue uniform which is issued --

Q. (By Mr. Ogle) Okay.

A. -- and I don't believe that the -- the bright blue uniform looks more like a police officer as opposed to the navy blues. It's used in the downtown setting because the downtown officers are trained to -- to associate that color with another -- in that way. I couldn't say what the public believes.

In my personal opinion, I think the bright blue downtown uniform looks less like a standard police officer to me, it looks more like a parking attendant or a security guard. I typically see that navy blue standard patrol uniform. That invokes, you know, more of a standard image of a police officer. That's what I recognize to be a standard uniform police officer, is a dark blue uniform, navy with a badge and shoulder patches.

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And in this instance, during the incident in March, I was wearing -- also wearing a ball cap with a police patch on it, too, so I was covered in police identifiers.

Q. Would you agree that there was some perception distortion that Isaiah had as he was at the heat of the moment being shot at and running around trying to get to his -- back into the vehicle and is being shot at by four officers who come out of nowhere?

MR. BARTON: Object to the form.

A. Just to clarify the timeline, Isaiah shot at the officers before any officers fired their weapons, and that's based on the video. So I'm not sure what his perception was. I also heard later that Isaiah has been involved in shootings before. I'm not sure what his sensory -- you know, there is -- there is a level at which people become, you know, conditioned to that sensory overload or the perception distortion, so I'm not sure.

MR. OGLE: I object to the responsive.

Q. (By Mr. Ogle) In regard to Isaiah's history, you didn't -- that was not a factor at -- you didn't know anything about his history at the time of the incident, correct?

A. No. I only answer that now because you're asking what I thought he was -- you know, if I thought that he was experiencing that. So in the same way, you know, you were asking me to speculate, that's all.

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Q. The study goes on to say that whether it is about grievance or misconduct, there is an overwhelming sentiment among officers involved with the police -- Austin Police Department. Regardless of rank, that an officer or civilian staff member who wishes to right a wrong or complain about improper conduct of other officers must be prepared in the present climate and culture to face almost certain retaliation for speaking out. Would you agree that that is an issue with Austin Police Department?

MR. BARTON: Object to the form.

A. I -- I don't hold that sentiment.

Q. (By Mr. Ogle) Do you think that the other officers, if determined by an objective prudent person, could be considered to have been without justification when they shot at Isaiah as the vehicle was fleeing the scene?

MR. BARTON: Object to the form.

A. I don't understand the question. I'm sorry.

Q. (By Mr. Ogle) Is it reasonable to assume that not your actions but the officers that were shooting as the vehicle fleeing the scene were not justified in shooting at him as he was driving away?

MR. BARTON: Object to the form.

A. Based on my memory of being there and seeing the video, I believe the officers were reasonable.

Q. (By Mr. Ogle) Our complaint goes on to say that

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while acting under the code of law when they shot Isaiah, the -- as Isaiah attempted to depart the scene, the police officers never identified themselves. Would you agree with that?

A. I would not agree with that in that all the officers were in full uniforms, which is an identification.

Q. There's no verbal commands that you -- that you remember as opposed to believing, correct?

MR. BARTON: Object to the form. It's been asked and answered.

A. To answer again, I think I heard police commands like "Stop. Police," but it was a loud, chaotic scene. I'm not totally confident in that, but I -- I do think I remember hearing "Stop. Police," which are police identifiers in addition to the uniforms.

Q. (By Mr. Ogle) Do you think it's Austin Police policy, at least in part, cause its police to violate the civil rights of blacks and Hispanic people, including Hutchinson?

A. No.

Q. The study's conclusions included that Austin's policing practices, and customs condone disproportionate use of disproportionate use of excessive force against people of color

A. I'm not sure I understand the question.

Q. According to the research article, its conclusions were that the policies, practices, and customs of the Austin

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Police Department include condoning, supporting disproportionate use of excessive force against people of color.

MR. BARTON: Object to the form.

A. I'm sorry, sir. I don't know what your question is. I hear that that's part of the study's conclusion, but I'm not sure what you're asking me.

Q. (By Mr. Ogle) Do you agree?

A. No, sir.

Q. Okay. Do you agree that officers are sometimes not adequately trained regarding civil rights?

A. No, sir. Not at Austin Police Department.

Q. Austin Police Department uses somewhat of a militaristic type practice in regard to policing, is that fair to say, in general?

MR. BARTON: Object to the form.

A. I'm not sure I understand.

Q. (By Mr. Ogle) Have you ever heard of the militarization of the police force?

A. I have heard that term, yes.

Q. Okay. And what does that mean to you, and do you agree with it?

MR. BARTON: Object to the form.

A. As I understand it, that term, "militarization of police," refers to the government -- state, local, federal

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government providing police departments with armored vehicles and gas masks and -- and we talked about weapon systems earlier, different types of weapon systems that more heavily arm or mechanize the police department. I -- I neither agree or disagree with it. I think those are all tools that can be used just like any other tool.

Q. (By Mr. Ogle) Do you believe the police were justified in shooting bean bags at the George Floyd protestors here in Austin?

MR. BARTON: Object to the form.

A. I'm not sure. I think it's dependent on case by case.

Q. (By Mr. Ogle) Do you think it was the police officer's fault or do you think it -- do you blame the City for having outdated police bean bag rounds?

MR. BARTON: Object to the form.

A. I'm not sure who's at fault.

Q. (By Mr. Ogle) Ken Casaday says it's the City's fault, it's not the police department's fault as to having outdated bean bags. Do you agree with that?

MR. BARTON: Object to the form.

A. I'm not sure. I don't -- I don't have an opinion on that.

Q. (By Mr. Ogle) Whose responsibility is it to check expiration date of bean bags that are used in rounds justified?

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A. I'm not sure I understand the question, sorry.

Q. Well, were you involved in the police protest -- you weren't one of the 19 police officers charged with assaulting protestors, were you?

A. No, I have not been charged with assaulting protestors.

Q. Are you aware that -- the police officers that were charged with that?

A. Yes.

Q. Do you think that they violated anybody's civil rights?

A. I'm not sure.

Q. If you think they did, would you still be reluctant to say?

A. If --

MR. BARTON: Object to the form.

A. If I thought one way or the other, I wouldn't be reluctant, but I'm not sure on the details on those cases.

Q. (By Mr. Ogle) Have you ever complained about a fellow officer's conduct or behavior to a supervisor?

A. Probably, but none that comes to mind off the bat.

Q. Have you --

A. I don't object to it. I have no issue with correct or calling out, you know.

Q. Have you ever done it? Have you ever called out a fellow police officer?

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A. Certainly.

Q. You have. Okay. For what?

A. I can't recall. It's been over five years that I've been a police officer, so -- but I know that I have corrected or tried to advise or counsel, or raised issues with any manner, but nothing criminal or no, like, civil rights violations, just usually tactics or the way that people conduct investigations, things like that.

MR. OGLE: What time is it?

MR. BARTON: It's 3:19.

MR. OGLE: Okay.

Q. (By Mr. Ogle) Would you agree that it's patently unreasonable to shoot somebody who's not in imminent danger to somebody else?

MR. BARTON: Object to the form.

A. I'm not sure I fully understand.

Q. (By Mr. Ogle) Do you find it -- do you think it's unreasonable to shoot somebody who is -- who does not present an imminent danger to somebody else?

A. I think it is unreasonable to shoot a person who is not an imminent threat of death or serious bodily injury. Yes, I agree that that's reasonable.

Q. Okay. And once you are in imminent danger, you're still justified, after he's fleeing, because of the potential that he

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may become an imminent danger again; is that a fair...

A. I'm sorry. I'm not sure I understand the -- that assessment, just if you could rephrase it.

Q. Once someone puts you in imminent danger, like Isaiah Hutchinson, the justification to shoot him based on an imminent danger doesn't stop because of the fact that he could become an imminent danger again, correct?

MR. BARTON: Object to the form.

Q. (By Mr. Ogle) If he still has his weapon system, if he puts you in imminent danger, that you're still justified in shooting him in the back because he may have a gun, correct?

MR. BARTON: Object to the form.

A. Again, I'm sorry. I'm not quite understanding what you're asking.

Q. (By Mr. Ogle) Well, let's take that from Neches to I-35. I was how many feet or yards or football fields?

A. Just to -- to clarify, this incident occurred at the 35 service road, so Neches is several blocks west.

Q. Okay.

A. So the -- the blocks go Neches, Red River Street, and then the 35 service road. And this incident happened at the 35 service road.

Q. Right. The -- the collision occurred at Neches --

A. Yes.

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Q. -- for... And so from the I-35 intersection, after -- after he put you in imminent danger, in your mind, that imminent danger continues until he's out of line of fire or line of sight?

A. In my mind, not only was I placed in imminent danger of death or serious bodily injury, but dozens and dozens of third parties as well were also faced with that threat. And Isaiah shot in my direction and then continued to possess that gun, yes, I still considered him to be an imminent threat.

I never saw Isaiah drop the gun, raise his hands or anything like that. I -- when I first saw Isaiah, he had that gun in his hand, the one that he used to shoot in my direction, and as I understand it, he -- he maintained it through this incident.

Q. Have you ever been -- have you ever been sued before?

A. Yes. Once.

Q. What was that?

A. For a police use of force.

Q. Oh, tell us about that. Something different?

A. For a different thing, yes. It is -- I think it's ongoing. It's -- I think the claim is excessive force, and it's for a guy who's in prison, and I restrained him on a domestic violence scene.

Q. Was that before or after this?

A. It was also several years ago. I believe it was

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after this.

Q. Tell me -- tell me all about that.

A. Like I said, there was a guy on a domestic violence scene who was alleged to have assaulted or started -- assaulted a girlfriend. He later did assault her with a knife, and he's serving prison time for that. But on the scene, it was dark, there was a large crowd, and this gentleman wasn't obeying my commands to control the scene and try to prevent violence.

And so when he pulled away from me and started resisting me, I had to, you know, kind of wrestle him and bring him under control. And in doing so, he fought, and fought, and didn't want to be under control. Eventually he was placed in handcuffs, and I think later officers said, and his family, that he was maybe using PCP, which can, you know, change the way people react to pain or, you know, make them really strong. Anyway, after that, he claimed that the force was excessive.

Q. What'd you do to him?

A. I wrestled with him to get his hands behind his back. So -- in the police department we call it, like, soft empty hand control. I basically just used my body to try to control his body.

Q. What does he claim that you did to him?

A. That.

Q. Did he claim you injured -- you injured him?

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A. I'm not sure. I don't recall, but I didn't injure him.

Q. In what part of the altercation are you alleged to have used excessive force?

A. I think the -- the scuffle. The -- the use -- of force.

Q. Did you knock -- knock -- his teeth out or...

A. No. I didn't --

Q. (Indiscernible) or...

A. No.

Q. Shoot him?

A. No.

Q. You know, after I was arrested for annoying Sidney Skrocki, I had -- I was taken to the Hays County correctional center. And the guard that had -- you know, was checking me out, making sure I didn't have any sharp instruments, as he was taking me to the other side, he dug his thumb up underneath my shoulder blade, and it made me flinch. And that apparently was resisting, and six officers came and jumped on top of me. Have you ever heard of, maybe in locker rooms, about putting your thumb under someone's shoulder blade to magnify or to justify excess or to justify resisting arrest?

A. No, I haven't heard that.

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Q. I hadn't either till it happened to me. Suing police makes me a government irritant. So if this happened again, as it could certainly might happen, would you act in the exact same manner as

A. To what are you referring?

Q. To the way you -- the way you acted and reacted in the Hutchinson case.

A. Okay.

Q. Would you do the same thing if that situation came up again?

A. Yes.

Q. If you were to tell the jury whether you did your job in a excellent manner, would you say that you did your job in an excellent manner?

MR. BARTON: Object to form.

A. I think that I just did my job.

Q. (By Mr. Ogle) As far as the other police officers that were shooting at him, if you were to put -- give him a grade from "A" to "F," what would you give them?

MR. BARTON: Object to form.

A. I think that all the officers did a good job on the scene.

Q. (By Mr. Ogle) Shooting -- stumbling over each other shooting him as he's fleeing the scene --

MR. BARTON: Object to form.

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Q. (By Mr. Ogle) -- perfectly fine, you'll see that and you see nothing objectionable to that, correct?

MR. BARTON: Object to form.

A. I said earlier, but I think the officers acted reasonably.

Q. (By Mr. Ogle) And you saw them shooting as the car was fleeing, correct?

A. Do you mean in the video?

Q. In the video, yeah, you saw them shooting as he was fleeing the scene.

MR. BARTON: Object to form.

A. I'm not sure, and again, we've talked about fleeing, but --

Q. (By Mr. Ogle) Well --

A. -- the officers were in different positions, and so I think an officer was -- was more toward the rear of the vehicle, whereas I was more toward the front and the side.

Q. But each of the officers, in your observation of the video, did an excellent job in their performance, correct?

A. Yes.

Q. And that -- that complies with Austin Police Department training and policy, correct?

A. Yes.

Q. Okay. If Isaiah Hutchinson had his hands up, you would you then still give them an excellent rating?

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MR. BARTON: Object to the form.

Q. (By Mr. Ogle) In shooting him.

A. I'm not sure.

Q. Okay. Anytime somebody has a gun that does not follow a command to drop it, are you allowed to shoot him?

A. I'm not sure. Not -- not as a rule.

Q. If I understand you correctly, if -- as long as there is a potential for harm, even though the imminent danger has gone away, it would still be appropriate, in your opinion, for an officer to use deadly force.

MR. BARTON: Object to form.

Q. (By Mr. Ogle) Would you agree with that?

A. I believe that an officer is authorized to use deadly force if they believe there's imminent threat of death or serious bodily injury to themselves or a third party, or if that suspect is about to commit violence that would result in those.

Q. One of the things we talked about at the beginning was, if at all possible, when I ask you a question, especially a long one --

A. Mm-hm.

Q. -- if you would start with a "Yes," "No," or --

A. Okay.

Q. -- "It depends on this."

A. Okay.

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Q. You -- you do -- you -- you -- you

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Carlo driver shoot. You saw him possibly being injured himself, running away from the Monte Carlo driver. Would he -- would that have been a justified response up until the time that he pointed the gun at you all but for him to have responded in kind to the Monte Carlo driver, would he justified under the circumstances of him being shot at by the -- by Mr. Vasquez?

MR. BARTON: Object to the form.

A. It depends. Like I said earlier, I'm not familiar with what exactly transpired at that window of the Monte Carlo. So if the Monte Carlo driver, who I'm assuming is Mr. Vasquez --

Q. Gil -- Gildardo Vasquez.

A. Okay. So if Mr. Vasquez was acting in self defense, then no, Isaiah would not be justified in shooting back at him. If Isaiah was being attacked by Mr. Vasquez, then he might be. These are all things that I would have to know more details about, but I can't just say, you know, in a blanket statement without details that yes, he was allowed to shoot back.

Q. Is there any evidence that you've reviewed that places Isaiah in a position of being the aggressor in the confrontation with the Monte Carlo driver?

MR. BARTON: Object to the form.

A. Yes. I believe in the video there's an interpretation of the video that Isaiah and the driver of the

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Maserati and the way they approached that Monte Carlo and the way Isaiah presented himself at that window, depending on the circumstances or the specifics, I think there is a scenario in which he is the aggressor.

Q. (By Mr. Ogle) And that's what the conclusion was with the police department, correct? That's the official story, correct?

A. That, I'm not sure. You -- you read a statement earlier which sounds like that, but I'm not sure on the official statement.

Q. So is there -- there's a good chance that the police department got it wrong in terms of labeling Hutchinson anything other than a victim, correct?

MR. BARTON: Object to the form.

A. I don't think that the police department was wrong in labeling Hutchinson an aggressor. If they did, it was for reason than he produced a gun and shot at police officers.

Q. (By Mr. Ogle) And, I'm sorry, up until the point from the point of approaching the Monte Carlo driver to the point where he did point the gun at the police officers, that was a matter of two or three seconds, correct?

A. I'm not sure on the exact timeline, but it was a very short amount of time between when I first heard the shots, responded, and Isaiah pointed the weapon and fired the weapon.

Q. And so from Isaiah's angle, it's your position that

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even though he was being shot at from someone from behind, that Isaiah could at that same moment be situationally aware that the officers that were coming towards him were police officers. You don't find any room for confusion on the part of Isaiah?

MR. BARTON: Object to the form.

A. It depends. I think if I -- if I have to speculate, I think it's reasonable that Isaiah would think there were police in the area. There were hundreds of police officers stationed in the downtown area. I know, based on the video, that he had just seen police -- a police vehicle with red and blue lights at the scene of that collision. And based on the fact that all the other officers were in a full uniform, I do think it's reasonable that he would know that there would be police in the area responding to a shootout.

Q. You don't think there's any room for tunnel vision on the part of Isaiah, who's being shot at from two different directions -- or being approached from two different directions either by shots or by people that he -- the police officers that came immediately at that time?

MR. BARTON: Object to the form.

A. I'm not sure what he was seeing or perceiving.

Q. (By Mr. Ogle) So police have justifications...in regard to firing at a suspect that Isaiah doesn't have, correct? The justifications that you pointed that the police have to react, do -- do those same justifications apply to

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Isaiah in the situation he was in that night?

MR. BARTON: Object to the form.

A. It depends.

Q. (By Mr. Ogle) Yeah.

A. Any citizen in Texas has a right to self defense or right to use force, and it depends on the circumstance. They are slightly than the police use of force. But, like I said earlier, I can't say, just based on the video, whether or not Isaiah did have justification to fire at that Monte Carlo. I did see in the video that the driver of the Monte Carlo fired the weapon. But, like I said earlier, without knowing the details of the circumstances of that interaction, I'm not sure who was the victim or the aggressor, or what happened.

Q. Why didn't the police shoot the Monte Carlo driver?

A. I'm not sure. I didn't shoot the Monte Carlo driver because he didn't shoot at me.

Q. He was shooting at Isaiah, though.

A. -- Apparently, from the video, he was shooting out of his window.

Q. And so if you were in Isaiah's position, as a police officer, even though you're saying Isaiah may or may not have justification, you would certainly have justification to shoot the Monte Carlo driver, correct?

MR. BARTON: Object to the form.

Q. (By Mr. Ogle) If he's shooting at you.

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A. If I'm not committing a crime against him, or you know what I mean? If I -- if I have legal reason to be there and I'm performing my official duties and --

Q. You go out --

A. -- shoot somebody --

Q. Let's just say that you, as Isaiah did, approached a vehicle. You put your hoodie on, and you crouched over and looked at the Monte Carlo driver. Regardless of what the driver and -- the Monte Carlo driver, regardless of their interaction, if you're in Isaiah's position, the Monte Carlo driver is shooting at you, just like Isaiah was being shot at, so you justify yourself in that situation as being able to shoot back and kill him, correct?

MR. BARTON: Object to the form.

A. It -- it depends.

Q. (By Mr. Ogle) He's shooting at you. What else, okay. I don't know of any other conditions that would be necessary, but in that situation, place yourself in the position of Isaiah. Would you have been justified in shooting back at the Monte Carlo driver?

MR. BARTON: Object to the form.

A. I'm not sure I can place myself in that position.

Q. (By Mr. Ogle) Why not?

A. Like I've --

Q. It's difficult, I know.

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A. I mentioned earlier I'm not sure what transpired with that Monte Carlo.

Q. But you saw the video in hindsight.

A. Yes, I did.

Q. And you saw that Isaiah didn't make any overt...actions towards the Monte Carlo driver.

A. I didn't see any overt actions but I also didn't hear what was said. I'm not sure what was happening between those people. This might help, but another hypothetical would be that if two people were robbing a store and one of them had a gun and the other person said we're robbing you, give us all the money, if the cashier shoots at them, the robbers aren't justified to shoot the cashier just because they're being shot at. Does that help clarify what I mean?

And I'm not trying to say that's the case in this incident. What I mean is that every instance of a shooting is not black and white that the person can return fire. There are cases in which a person shoots in self defense and the -- in this case, a suspect or a criminal, or the aggressor or robber is not justified to shoot back.

Q. I see.

A. So simply placing myself in Isaiah's shoes without knowing what happened at the window of the Monte Carlo, I can't say whether or not I could shoot back. In my -- in my situation as myself responding to the scene as a police officer

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who I wasn't committing a crime against anyone, I was responding to a crime scene, I was shot at and that's why I responded. But I'm not sure what I would do in that situation I just don't have enough information. I don't mean to be evasive, just sometimes it can be complicated.

Q. It certainly is convenient, from the police department's position, to make Isaiah out to be the bad guy and for the Monte Carlo driver to be the victim.

MR. BARTON: Object to the form.

Q. (By Mr. Ogle) Whether that be or may not have been the truth, would you agree with that?

MR. BARTON: Object to the form.

A. I'm not sure.

Q. (By Mr. Ogle) Well, you would agree that according to what you've heard and what I've read in the police statement, that the Monte Carlo driver was deemed to be the victim, and Damarious and Isaiah were deemed to be the aggressors in that altercation at the window. Is that a fair conclusion as to what you understand your position and the other officer's position to be?

MR. BARTON: Object to the form.

A. No, that's not my position. I'm not -- like I said, I don't know what happened there. I did hear you read that statement -- the police statement to the news, so that does sound like an accurate, you know, summary of that statement.

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understand what you're saying.

Q. (By Mr. Ogle) And we discussed the scenario where there's a very good possibility that Isaiah did nothing wrong when it comes to the altercation with the Monte Carlo driver.

A. I'm not sure what -- what conclusions you've come to --

Q. You're not sure --

A. -- but we have talked about it.

Q. You're also not... You're not confident that he was the aggressor but you agree with the assumption the police department has that he was a bad guy --

MR. BARTON: Object to the form.

A. I'm not sure I know what you mean about "bad guy."

Q. (By Mr. Ogle) Well, did he -- did he -- was he not a victim at the -- in regard to the altercation with the Monte Carlo driver?

A. It depends. I haven't reached any certain conclusion. In watching that video, I can see a scenario where that's the case, right, but I don't know because I wasn't there and I'm not privy to what happened at that window.

Q. Is your job to protect people?

A. I can't -- that's part of my job, yes.

Q. Do you think you've got a duty to protect people?

MR. BARTON: Object to the form.

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A. I'm not sure I understand.
Q. (By Mr. Ogle) Think it was New York versus something. There's a case that discusses -- a Supreme Court case that says the police have no duty to protect anybody. Would that be a surprise to you?
A. I think I've heard of that.
Q. You could just watch a guy drown in a lake and laugh at him. Would you agree with that?
MR. BARTON: Object the form.
A. I disagree. I would not do that. And I feel a personal sense of duty to protect people regardless of what the Supreme Court says.
Q. (By Mr. Ogle) After the Supreme Court made their ruling, they took off "Protect and Serve" on the side of the squad cars. Does Austin Police Department have "protect" anywhere on their squad cars anymore?
A. I'm not sure what exactly is written. I think it might be the mission statement.
Q. Main issue -- or the main reason for police is to enforce as opposed to protect anybody. Do you agree with that?
MR. BARTON: Object to the form.
A. No.
Q. (By Mr. Ogle) I think that's -- if the -- Justice Scalia says the purpose of police officers is to enforce as opposed to protect, would you disagree with his statement?

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MR. BARTON: Object to the form.
A. Yes. Personally, I would.
Q. (By Mr. Ogle) Just because -- before he died, if he said that, would you agree with him?
MR. BARTON: Object to the form.
A. I'm not sure.
Q. (By Mr. Ogle) I'm running out of questions. I think there was -- there was perception distortion among everybody that night?
A. I'm not sure. I can only speak for myself.
Q. Tunnel vision is something that is described to justify police officers' reactions. Do those same justifications apply to someone in Isaiah's position?
MR. BARTON: Object to the form.
A. I'm not sure.
Q. (By Mr. Ogle) Are you aware that Davis -- David Joseph shooting, a 17-year-old African-American that was running at -- he was naked, running at a police officer, was shot?
A. I'm vaguely familiar with it. It was from before my time with the department.
Q. Did the City of Austin follow that incident, specifically utilize that incident in its training subsequent to that?
A. I'm not sure.

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Q. Have you ever been shown that video as an example of what not to do, as an example of excessive force?
A. I don't recall -- I don't recall the specifics. I'm not sure if I've seen the video, but it was discussed.
Q. And what was the -- what was dis -- what was the -- the -- the purpose of showing that video? Was it for excessive force -- an example of excessive force?
A. I don't recall the specific objective of showing it but it was discussed.
Q. Are you aware that Chief Manley and Chief Acevedo in that situation said that...that it was objectively unreasonable to fear for your life with someone that's naked, running down the street?
MR. BARTON: Object to the form.
A. I'm -- I wasn't aware they said that.
Q. (By Mr. Ogle) Have you ever been involved in a don't shoot, don't shoot training?
A. Yes.
Q. Okay. And in those training videos that you reviewed, what were some of the situations involving fleeing suspects that were described as a don't shoot situation, or shoot situation when it comes to fleeing suspects?
A. I'm not sure. I think maybe I misinterpreted that training. When I -- when I meant don't shoot, I meant, like I think they call it target discrimination, but looking at

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different targets and, you know, one person's holding a book and another person's holding a gun pointed at you, and you have to pick the right one.
Q. Yeah.
A. That's what I meant. I didn't mean, like, different scenarios where I judge yeah, shoot; no, don't shoot. I don't think I've done that training.
Q. And there may not be a chapter in the don't shoot -- for fleeing suspects. But I guess you go into a building and there's different things that pop up, and you have to make an instant reaction?
A. Some -- sometimes something like that, yes.
Q. What have you learned, based on the outcome of this case, that you would suggest for improvement when it comes to protecting people like Isaiah?
A. I'm not sure.
Q. If Isaiah had not pointed the gun at the police officers, he still was a suspect for several reasons that put you in imminent danger, correct?
MR. BARTON: Object to the form.
A. It depends, and he didn't just point the weapon, he fired the weapon.
Q. (By Mr. Ogle) Before that, you had mentioned that he was already imminent danger to you because he was hunched over,

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he was running away with a gun in close proximity to the
gunshots, and his posture. Didn't we agree that those were
enough factors before he even showed a gun or pointed a gun
that would have led you to believe that he was -- you were in
imminent danger?

A. No, I don't think we agreed on that.

Q. Well, up until he pointed a gun, do you believe you
were in imminent danger, from your perspective?

A. I'm not sure. It happened quickly, and I saw him
point and fire the gun at me and at the other officers. So
it's difficult for me because it was the -- you know, just a
span of several seconds to -- to know, you know, when that
threshold was met, but it was met and that was because of
Isaiah's actions.

And I -- I didn't fire a weapon before he shot at me or before I believed that he was threatening Officer O'Neill, so whether or not I felt that he was imminent threat at the point I fired my weapon, I believed that he was imminent threat and that third parties on scene were in imminent risk of death or serious bodily injury. As far as when I -- when I reached that threshold before I took action, I would just be guessing, but I did believe that threat was imminent at the time I fired my weapon.

Q. Would you be surprised to know that his mother completely disagrees?

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MR. BARTON: Object to the form.

A. I'm not sure.

Q. (By Mr. Ogle) Do you think that -- would you give Isaiah the benefit of the doubt that he was suffering tunnel vision at the point that he was -- at the point he was pointing the gun at you?

MR. BARTON: Object to the form. Asked and answered.

A. I'm not sure.

Q. (By Mr. Ogle) I know you're not sure, and I know -- all -- all we have to be is more likely than not. So I'm -- do you think it's more likely than not that Isaiah had some distortion in perception when it comes to seeing these -- you all come from the side as he's being shot at from behind?

MR. BARTON: Object to the form.

A. No. I think Isaiah knew that I was a police officer.

Q. (By Mr. Ogle) I know it's easy -- it's obvious for you to believe that, but is it too much of a stretch to think that at that particular time, when Isaiah's being shot by -- and possibly injured from being shot at from behind, that in that instant reaction when he sees anybody coming from the side, that he may have missed those little bitty insignias you have on the side of your -- your -- your shirt and your cap?

MR. BARTON: Object to the form. Asked and

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answered. Calls for speculation.

A. I'm not sure if it's too much of a stretch.

Q. (By Mr. Ogle) Did you ever receive any formal training in regard to a person running away from you that you can't see necessarily having a gun -- strike that.

Have you ever had any formal training in regards to how to react to a person that -- in which you were in imminent danger that was -- that was leaving the scene or running away from the scene?

MR. BARTON: Object to the form.

A. I'm not sure.

Q. (By Mr. Ogle) Is there any training at all you can think of regarding when the imminent danger ends?

A. Yes.

Q. Okay. And is that a chapter in your training or is that a -- is that a big portion of police training, is to know when that imminent danger ends?

A. It depends. Part of firearms training involves constantly assessing a situation to determine if that imminent threat exists, and -- and again, the imminent threat is not only against the officer, it's against third parties too.

Q. Sure.

A. So there are scenarios where a suspect with a firearm, either through his words or actions, or -- or whatever the circumstances are, the officer's led to believe that that

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suspect is an imminent risk of death or serious bodily injury and is walking away from the officer. But in a scenario, suspect could be walking away from the officer and into a school or a room full of potential victims, or towards someone that he wants to shoot and kill.

So the act of walking away from the officer not necessarily fleeing, it could just be moving in a direction to either reposition himself to shoot at the officer or to victimize other people. So there is training that involves -- I'm kind of demonstrating to trainees or to cadettes that simply walking away from an officer, that doesn't necessarily mean that someone's not a threat.

To your point, it doesn't mean that they are a threat, but it demonstrates, and the point I think is meant to drive home is that every officer has to be constantly evaluating that situation and coming to their own conclusion what they believe, is the suspect an imminent threat or not. And so it's up to that person, given the circumstance. It is not as easy to say that it's always yes or it's always no.

Q. But police officers seem to be given a great latitude to decide when that imminent danger ends. Is that a fair statement?

MR. BARTON: Object to the form.

A. I'm not sure. I know that police officers are t
you know, a person is responsible for their own beliefs, r

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and their own perceptions. So, to that end, I think when asked what their belief was, I think that that's just part of determining their belief. I'm not sure about how great or small that latitude is.

Q. (By Mr. Ogle) But, according to Austin Police Department training, you could be mistaken in regard to your belief if someone's -- that you're in imminent danger and still be justified in shooting somebody. Is that fair?

A. I'm not sure I understand.

Q. A police officer can be mistaken in regard to whether or not they're in imminent danger and still not be responsible for shooting somebody, correct?

MR. BARTON: Object to the form.

A. I'm not sure what you mean by, responsible.

Q. (By Mr. Ogle) Responsible.

A. But I think, to answer your question --

Q. Liable.

A. Okay. I think that part of the... Examining the use of force involves the acknowledgement that the officer is faced with these circumstances on the scene, and they have to be judged by their perceptions at that time, at the time of the incident as opposed to -- I'm sure you're familiar with the 2020 hindsight where, you know, being able to look back with complete knowledge of every part of the incident. Their actions are judged by their perceptions at the time.

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Q. Is there anytime that you have ever been involved in a sort of exercise where you hide from... Hide from the guys and you do things -- you have to decide whether a gun can be pointed out or is -- whether a gun is pointed -- not pointed out? Do you understand the question?

MR. BARTON: Object to the form.

MR. OGLE: I don't blame you.

A. No, and I have not -- I've never done an exercise like that.

Q. (By Mr. Ogle) This was in Edward's deposition. In the same -- has nothing to do with this case. The way you and the police officers involved in shooting Isaiah, do you believe that that -- that all of y'all's actions were consistent with the training that Austin Police provided you?

A. Yes.

Q. And you've done training that's been sanctioned, at least to your knowledge, by the Austin Police Department, right?

A. Yes.

Q. And whether or not a deadly threat still exists, you still follow the training that an imminent danger doesn't cease even though someone's fleeing the scene, correct?

MR BARTON: Object to the form.

A. It depends. I feel like I've explained a bunch of times.

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Q. (By Mr. Ogle) I've asked that --

A. I don't wanna --

Q. -- several times, okay. I apologize. Have I been polite and courteous?

A. I believe so.

MR. OGLE: I pass the witness.

MR. BARTON: Okay. Before I ask any questions, let me just ask you, Scott, on the record, you made a reference earlier and actually showed some video, and the main thing I'm interested in at this point is getting that video into evidence.

MR. OGLE: Yes.

MR. BARTON: So can -- do you have any problem with us taking your excerpt? You have it, is that correct, she has it?

CAROL SMITH: Yes, I have it.

MR. BARTON: Okay. Can we attach that as an exhibit to this?

MR. OGLE: I don't know what else is on this. I have no idea what -- did you see some of the things that were on this?

CAROL SMITH: I only saw the two -- two files.

MR. OGLE: God knows. And one of them didn't work --

MR. BARTON: Yeah.

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MR. OGLE: -- but... I got it from y'all.

MR. BARTON: Yeah, I know. I mean, and if you can agree that that's what you got from us --

MR. OGLE: Yeah.

MR. BARTON: -- and attach that as an exhibit, I think that would work. But sometimes people take snippets et cetera, and I just thought since he reviewed that video that should be --

MR. OGLE: You two are aligned, right? You agree -- I'm the police --

MR. BARTON: Yeah, yeah.

MR. OGLE: Do you want to download this without...

MR. BARTON: Or is it somehow marked where we can confirm it's the video that we produced to him?

CAROL SMITH: It looks like...

MR. BARTON: If it is, then I think we could, for purposes of the record, say we're attaching whatever the Bates numbers are as an exhibit, and that would -- we'd be in agreement, right? You would --

MR. OGLE: Yes.

MR. BARTON: -- agree you got it from us.

MR. OGLE: Yes.

MR. BARTON: Okay. Then I agree that was the reference.

CAROL SMITH: It only has the two videos on it. This one appears to be based on size and the name. I beli

this is the -- a name that came from APD. So it was when we produced, it was in a -- a folder, and you drill down and you only got to that one video.

MR. BARTON: Can we make a copy then --

CAROL SMITH: Absolutely.

MR. BARTON: -- of that and give that to the court reporter?

MR. OGLE: Is there anything else on that?

CAROL SMITH: No.

MR. OGLE: If there's nothing else on it, you can have it.

CAROL SMITH: It's just these two -- two videos.

MR. OGLE: All right.

MR. BARTON: Yeah. Okay. Well, if you don't have a problem with that, Scott, we'll attach the thumb drive and that video. Can you read that identification into the record, Carol.

MR. OGLE: Here's a courtesy pen.

THE WITNESS: Thank you.

CAROL SMITH: The file is "3_17_2001902_48_59 (UTC-05_00)." It is a video of a length of 1 minute and 35 seconds.

MR. BARTON: Okay. Well, with your agreement, Scott, I'd like to mark that as Exhibit 1 to this deposition.

MR. OGLE: Sure. Will you be the custodian in

the meantime of that exhibit since we don't have a court reporter?

MR. BARTON: Well, I don't know. Do you keep up with the exhibits and stuff, or is that not something you do?

THE VIDEOGRAPHER: No.

MR. BARTON: Okay. Then if you'll entrust that to Carol, we'll keep it until --

MR. OGLE: I will entrust it to Carol.

MR. BARTON: And we'll send you a copy, how about that. Just as quickly as we can make a copy, we'll -- we will get you your original back.

CAROL SMITH: I can -- I can just copy that right onto my desktop --

MR. BARTON: Okay. Well, then, that'll be easier.

CAROL SMITH: --as Exhibit 1 and get it back to you. Would you like me to name yours Exhibit 1?

MR. OGLE: Sure. And Exhibit 2, y'all got the other one, right? The e-mail, we can't play it.

MR. BARTON: Yeah. We can go ahead and make it as Exhibit 2. Yeah, 'cause both of them were part of the deposition in some shape or form. And then I guess I'd like to go off the record for just a couple minutes and kind of consider if I'm gonna ask any questions or not.

THE VIDEOGRAPHER: Okay. Going off the record. The time is 4:13 p.m.

(Break)

THE VIDEOGRAPHER: We are back on the record. The time is 4:19 p.m.

MR. BARTON: Okay. Just for the record, Mr. Ogle, you've passed the witness; is that correct?

MR. OGLE: Yes.

MR. BARTON: And Monte Barton on behalf of the Defendants. I have no questions at this point, at this time.

THE VIDEOGRAPHER: All right. This concludes the deposition for today. Time is 4:20 p.m. and we are off the record.

(End of Non-Stenographic Deposition)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS HUTCHINSON AND BENNY HUTCHINSON, ON BEHALF OF THEMSELVES AND THE ESTATE OF ISAIAH HUTCHINSON PLAINTIFFS	* * * * *
V.	*CIVIL ACTION NO. 1:21-CV-00221-LY
THE CITY OF AUSTIN AND DEANDRE WRIGHT AND DANE O'NEILL AND ZACHARY WOODS AND THOMAS BERNARD NELSON, III, DEFENDANTS	* * * * * *

REPORTER'S CERTIFICATE
ORAL VIDEO DEPOSITION OF
ZACHARY WOODS
JUNE 22, 2022

I, Joy Quiroz-Hernandez, Certified Shorthand Reporter in and for the State of Texas, do hereby certify to the following:

That the witness, Zachary Woods, was sworn by the officer and that the transcript of the oral deposition is a true record of the testimony contained on the video;

That the transcript of the video deposition was submitted on ___July 29, 2022_____ to the attorney designated to make it;

That, based on the representations and information obtained from the video or in writing, the amount of time used by each party at the deposition is as follows:
Scott Ogle: 2 hours, 42 minutes
Monte L. Barton, Jr.: No time used

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes all parties of record:

For the Plaintiffs: Scott Ogle
For the Defendants: Monte L. Barton, Jr.

I, Joy Quiroz-Hernandez, court-approved transcriber, certify that the foregoing is a correct transcription from the video recording of the proceedings in the above-entitled matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this 29th day of July, 2021.

_____

Joy Quiroz-Hernandez, Texas CSR 8391
Expiration Date: 09/30/2022
The Legal Connection, Inc.
8656 West Highway 71, Building F, Suite 200
Austin, Texas 78735
Firm Registration No. 656
Phone: (512) 892-5700
Fax: (512) 892-5703

Exhibit 5

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON AND BENNY HUTCHINSON, ON BEHALF OF THEMSELVES AND THE ESTATE OF ISAIAH HUTCHINSON *Plaintiffs*	§	**CIVIL ACTION NO. 1:21-CV-00221-LY**
v.	§	
THE CITY OF AUSTIN AND DEANDRE WRIGHT AND DANE O'NEILL AND ZACHARY WOODS AND THOMAS BERNARD NELSON, III, *Defendants*	§	

DECLARATION OF JOSEPH CHACON

STATE OF TEXAS
COUNTY OF TRAVIS

I, Joseph Chacon, pursuant to 28 U.S.C. 1746, do hereby declare based on my own personal knowledge as follows:

1. "My name is Joseph Chacon, I am over the age of eighteen years, and I am authorized to make this declaration in support of Defendant City of Austin's Motion for Summary Judgment. I have never been convicted of a crime and am competent to make this affidavit. I am personally acquainted with the facts herein stated which are true.

2. I am currently employed as the Chief of Police for the City of Austin Police Department (APD). I have been the Chief of Police for APD since October, 2021. I am a certified Texas law enforcement officer. Overall, I have been a professional law enforcement officer with APD since 1998. Prior to becoming Chief of Police, I held numerous patrol, investigative, supervisory, and management positions with the Austin Police Department.

3. As the Chief of Police, I manage the personnel, budget, and police operations for APD. I have final responsibility for setting the operational policies ("APD Policies"), hiring standards, and training standards for APD. I also have personal knowledge of how APD (and the City of Austin) investigates complaints against officers and of the discipline of sworn APD officers. In my role as the police chief, I have final authority over internal affairs investigations and police officer discipline, subject to State of Texas Civil Service laws and the Meet and Confer Agreement between the City of Austin and the Austin Police Association (the "Agreement"). Through my employment as the APD Chief of Police, I have personal knowledge of the Agreement, APD work rules and APD policies, APD training requirements, personnel and hiring information for APD police officers, and APD investigative and disciplinary policies and procedures.

I. APD Hiring

4. The Chief of Police has final authority to hire new APD cadets. I know that all APD applicants must undergo and pass a written cognitive test, sit for an oral interview before a board of APD officers, pass a medical examination, and pass a physical fitness test. Additionally, before any new cadets are hired, APD's recruiting division conducts comprehensive employment, criminal, and military background checks. All applicants must also undergo and pass a psychological evaluation and a polygraph examination before hiring. APD does not hire any candidates whose background or psychological evaluation indicates that they pose a higher than normal risk of using excessive force, or that they are otherwise unfit for law enforcement work.

5. I know that APD conducted a comprehensive background investigation on Deandre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, before they were hired as cadets.

6. Based on the results of the extensive background investigation conducted on Deandre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, and the fact that they passed all of their pre-employment examinations, the Austin Police Department found no indication that they posed any higher than normal risk of using excessive force as police officers for the City of Austin.

II. APD Investigations and Discipline

7. APD has policies and procedures in place to ensure that officers accused of violating APD policies are investigated and, if appropriate, disciplined. APD has a set of policies that all officers must obey. The APD policies govern all manner of officer conduct, including, but not limited to, pursuit of fleeing suspects, appropriate arrest procedures, reasonable suspicion and detention, use of APD computers, officer discipline, and use of force. Every APD officer is issued a set of these policies. As the APD policies are updated or revised, they are distributed to all officers. All officers must acknowledge, in writing, receipt and understanding of any new policies.

8. At the time of this incident, March 17, 2019, APD had policies in place specifically forbidding the use of excessive force. These policies specify when an officer may use force, and, when appropriate, the level of force that may be used. APD policies also include a specific policy covering the use of a firearm. Officers who violate the APD policies with respect to use of force are subject to discipline up to, and including, termination.

9. APD's use of force reporting and investigation requirements are set forth in Policy 211. APD monitors its officers' use of force by requiring all officers who use force to report their use of force. APD conducts a review of and inquiry into every reported use of force to determine whether it comported with APD's policies. APD employs a sliding scale to determine the extensiveness of review and inquiry into each use of force – less serious uses of force (e.g., those

involving the use of chemical spray or use of a takedown technique) are reviewed by supervisors and the officer's chain of command, while more serious uses of force (e.g. use of lethal force or incidents resulting in an in-custody death) are reviewed by APD's Internal Affairs Division (IAD) and APD's Special Investigations Unit (SIU). An intermediate level of investigation is conducted for uses of force classified as "Level 2," which include weaponless blows to a subject's head. These uses of force require a detailed inquiry packet, review by the officer's chain of command, and review by the APD's Force Review Board.

10. If an incident involves different levels of force, a single review is conducted, and the incident is classified using the most serious level of force applied. For example, if an incident involves the officer using a Taser, blows to the head, and a firearm, then the incident is classified as Level 1, and receives the most stringent review.

11. Following every Level 1 use of force, the APD's Special Investigations Unit (SIU) performs a criminal investigation into the police officer's actions. Officers selected to work in SIU are all experienced investigators who have experience investigating high-profile crimes. SIU detectives have the full panoply of APD resources at their disposal for the investigation—including crime scene specialists, firearms and trajectory analysis, DNA analysis, etc. SIU detectives work closely with the Travis County District Attorney (assuming the incident occurred in Travis County) to gather and present the evidence collected to a grand jury. At the conclusion of its investigation, SIU turns its investigative materials over to the Travis County District Attorney who makes the determination whether to present cases involving an APD police officer's use of a firearm to a grand jury to consider whether to indict.

12. APD maintains an internal affairs unit (IAD). IAD is responsible for investigating any violation of general orders by APD officers—including all officer-involved shootings. IAD

investigators are all experienced law enforcement officers who hold the rank of sergeant or above. All formal complaints about APD officers, whether generated internally or externally, are investigated by IAD. IAD is responsible for producing a report on the allegation and detailing the evidence collected, which includes compelled statements given by the officer involved in the shooting (if officers refuse to give statements to IAD, they may be terminated from their employment). IAD also has complete access to all of the evidence gathered by SIU.

13. In cases of officer-involved shootings, the Chief of Police reviews the IAD report. The Chief of Police also seeks the recommendations of the officer's chain-of-command (the sergeant, lieutenant, commander, and assistant chief) regarding whether they believe the officer violated policy based on their independent review of the evidence. When appropriate, the Chief of Police will conduct a disciplinary review hearing with the officer to get his or her side of the story. Following the hearing, if one is conducted, and after hearing the recommendations of the chain of command, the Office of the Police Monitor (now known as the Office of Police Oversight (OPO)), and the Citizens Review Panel (now known as the Community Police Review Commission (CPRC)), the Chief of Police determines whether the officer violated APD policies and, if so, the appropriate discipline.

14. Under Texas civil service law, and the Agreement, the Chief of Police can discipline officers by oral reprimand, written reprimand, unpaid suspension, demotion, or indefinite suspension (termination). The APD Chief of Police uses a "disciplinary matrix" to determine the level of punishment for particular offenses. Through the matrix, which was embodied in APD policy at the time of the incident, officers are made aware that any use of deadly force that the Chief determines is unreasonable under APD's policy will result in the termination of their employment. APD has, in fact, terminated the employment of officers who were found to

have violated APD policies regarding the use of force in officer-involved shootings. A true and correct copy of APD's disciplinary matrix (APD Policy 903) is attached hereto.

15. APD maintains disciplinary records for its officers. Officers Deandre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, have never been disciplined by APD for excessive force and have never had any complaints or allegations alleging excessive force sustained against them.

16. There is considerable citizen oversight of APD and IAD. The City established the Office of Police Monitor, now known as the Office of Police Oversight (OPO) in 2002. The Community Police Review Commission (CPRC) was established in 2018 and met for the first time in October 2020. At the time of this incident in March, 2019, the OPM monitored APD in several ways. For instance, OPM staff sat in on interviews conducted by IAD investigators to ensure that they are conducted fairly and impartially. The OPM received complaints from the public and ensured that they are investigated by IAD. The OPM also reviewed IAD investigative files, reviewed disciplinary decisions made by the Chief of Police, and created reports on APD performance.

17. At the time of this incident, the CRP (Citizens Review Panel, now known as the Community Police Review Commission (CPRC)), was a panel of citizens selected by the Austin City Council to monitor APD. The CRP conducted public hearings, during which it received complaints from the public regarding APD, discussed completed IAD investigations, and it received information from APD and OPM staff. The CRP also reviewed ongoing investigations in closed sessions, and had complete access to IAD files. The CRP could vote to recommend discipline in certain cases or could request that the Austin City Manager hire an independent third-party firm to conduct a review of an IAD investigation or a specific incident.

18. In this case, SIU conducted a complete criminal investigation of the March 17, 2019 incident. The Travis County District Attorney made the decision to decline prosecution of criminal charges against Officers Deandre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III.

19. As SIU conducted its criminal investigation, IAD also conducted its investigation to determine if Officers Deandre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, violated any APD policies with respect to their use of force and otherwise. I know that OPM monitored the IAD investigation. When IAD concluded its investigation, the APD chain of command concluded that Officers Deandre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, did not violate any of APD's policies during the encounter with Isaiah Hutchinson.

20. APD has assessment tools in place that can identify officers who may pose an unusual risk for using excessive force. For example, APD uses an algorithm that will automatically send notifications to an officer's supervisors if the officer reports more than a specified number of uses of force over a specified period of time. (Supervisors may also be notified if an officer uses excessive sick leave, is the subject of a number of complaints, or is involved in a number of vehicle collisions). If such a notification occurs, the officer's supervisors must re-review each of the officer's uses of force or citizen complaints to determine if the officer acted appropriately, or if the officer needs additional training, counseling, or disciplinary action. This process is followed even though every use of force and every citizen complaint receives a thorough review when it first occurs.

21. At the time of this incident, APD never had any indication that Officers Deandre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, posed any unusually

high risk of using excessive force, or that APD police officers are not adequately trained for their jobs.

22. In support of this affidavit and Defendant City of Austin's Motion for Summary Judgment, the following Attachments are records retained in the normal course and scope of business of the City of Austin, and are true and correct copies of what they purport to be:

Attachment 1: APD Policy 200
Attachment 2: APD Policy 202
Attachment 3: APD Policy 211
Attachment 4: APD Policy 903
Attachment 5: APD Policy 412.1
Attachment 6: APD Policy 412.2
Attachment 7: APD Policy 305
Attachment 8: APD Policy 900.3.1

PURSUANT to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this, the 11th day of October, 2022.

Signed this 11th day of October, 2022.

JOSEPH CHACON

JANET D. DEATON
Notary Public, State of Texas
Notary ID# 12666105-8
My Commission Expires
MARCH 29, 2025

Janet D. Deaton

Attachment 1

Response to Resistance

200.1 PURPOSE AND SCOPE

This order recognizes that the use of force in response to resistance by law enforcement requires constant evaluation and that response to resistance is a serious responsibility. The purpose of this order is to provide officers with guidelines on objectively reasonable response to resistance. While there is no way to specify the exact amount or type of objectively reasonable force to be applied in any situation, each officer is expected to use these guidelines to make such decisions in a professional, impartial, and objectively reasonable manner.

This order is written in terms to apply to sworn officers. In incidents where civilian employees are authorized to use force, they are subject to the same policies and procedures as officers but the test of objective reasonableness is judged from the perspective of an objectively reasonable civilian employee.

Additionally, this order will provide directives and guidelines on the following:

(a) De-escalation principals and techniques.

(b) Parameters relating to the use of objectively reasonable force.

(c) Reporting requirements.

(d) Providing medical assistance to injured subjects.

200.1.1 PHILOSOPHY

The use of force by law enforcement personnel is a matter of critical concern both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied human encounters and when warranted, may exercise control over another in carrying out their duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use lawful and objectively reasonable force and to protect the public welfare requires a careful balancing of all human interests.

Officers should recognize that their conduct prior to the use of force may be a factor which can influence the level of force necessary in a situation.

200.1.2 DEFINITIONS

Bodily Injury - Physical pain, illness or any impairment of physical condition (Tex. Penal Code § 1.07(a)(8)).

Serious Bodily Injury - Bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ (Tex. Penal Code § 1.07(a)(46)).

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De-escalation - Using techniques to stabilize the situation and reduce the immediacy of the threat, so that more options and resources are available to bring about a successful resolution to an encounter with a non-compliant subject. The goal of de-escalation is to gain the voluntary compliance of subjects, when feasible, thereby eliminating the need to use force in response to resistance.

De-escalation Techniques - Communicative or other actions used by officers, when safe, and without compromising law-enforcement priorities, that are designed to increase the likelihood of gaining voluntary compliance from a non-compliant subject, and reduce the likelihood of using force in response to resistance.

Deadly Force - Force that is intended or known by the officer to cause, or in the manner of its use or intended use is capable of causing death or serious bodily injury (Tex. Penal Code § 9.01(3)).

Force - Any physical contact with a subject by an officer using the body or any object, device, or weapon, not including unresisted escorting or handcuffing a subject.

Non-Deadly Force - Any application of force other than deadly force.

Objectively Reasonable - An objective standard viewed from the perspective of a reasonable officer on the scene, without the benefit of 20/20 hindsight, and within the limitations of the totality of the circumstances presented at the time of the incident.

200.1.3 DUTY TO INTERCEDE

Any officer who observes another officer, regardless of rank, using force the officer knows or should know is not objectively reasonable shall immediately intervene to stop or prevent the use of force or further use of force if the officer has a reasonable opportunity to stop or prevent the use of force or further use of force.

(a) Officers intervening shall take effective and escalating measures to stop or prevent the use of force or further use of force. These measures may include, but are not limited to, voice commands and physical contact with the officer using force.

(b) Officers who witness the use of objectively unreasonable force by another officer must promptly make a detailed report of these observations to a supervisor. Any supervisor receiving such a report shall promptly conduct an initial fact gathering inquiry and forward all gathered information as outlined in General Order 900.2 Required Reporting of Violations.

200.1.4 NOTICE OF AUTHORITY AND IDENTITY

If it is not already reasonably known by the subject to be searched or arrested, or it is not reasonably impracticable to do so, officers should make clear their intent to arrest or search and identify themselves as a peace officer before using force (Tex. Penal Code § 9.51(a)(2)).

200.1.5 RESPONSE TO RESISTANCE RELATED ORDERS

(a) General Order 200 (Response to Resistance).

(b) General Order 202 (Firearm Discharge Situations).

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(c) General Order 204 (Leg Restraint Guidelines).

(d) General Order 206 (Control Devices and Techniques).

(e) General Order 208 (TASER® Guidelines).

(f) General Order 211 (Response to Resistance Inquiry, Reporting and Review).

(g) General Order 212 (Force Review Board).

200.2 DE-ESCALATION

When safe and reasonable under the totality of circumstances, officers shall use de-escalation techniques to reduce the likelihood for force and increase the likelihood of voluntary compliance.

Nothing in this de-escalation policy requires an officer to place themselves in harm's way to attempt to de-escalate a situation. Recognizing that circumstances may rapidly change, officers may need to abandon de-escalation efforts after they have commenced. Understanding that no policy can realistically predict every situation an officer might encounter, the Department recognizes that each officer must be entrusted with well-reasoned discretion in determining the reasonable de-escalation techniques to use in a situation. This discretion is subject to supervisory review. It is the duty of supervisors to ensure that subordinates utilize the tactics and techniques required by this order. This de-escalation order is intended to complement, not replace or supersede, other portions of the APD General Orders or specific officer training that addresses de-escalation.

200.2.1 ASSESSMENT AND DE-ESCALATION

As officers arrive on the scene, observe conditions, and interact with the persons there, they should continue to gather additional relevant information and facts. These assessments, along with reasonable inferences help to develop an understanding of the totality of the circumstances of the incident.

(a) Assessing Risks and Benefits – After an officer has gathered sufficient information to ascertain anticipated threats at the scene, they shall consider whether de-escalation is appropriate. Factors that should be considered are:

1. whether the officer believes the search, arrest or transportation must be undertaken immediately;
2. what risks and benefits may be associated with delaying immediate action;
3. what contingencies may arise;
4. whether the situation requires a supervisor's response;
5. whether other officers may be needed on the scene, including special units, such as CIT or CINT;
6. whether other resources (e.g. less-lethal weaponry, special equipment, or other emergency professionals, interpreters or other persons) are needed; and
7. whether effective communication can be achieved.
    (a) is the subject under the influence of drugs or alcohol?
    (b) does the subject have hearing or vision capabilities?

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(c) are there language barriers?

(d) are there conflicting noises or other distractions? (e.g. multiple officers giving commands at the same time, other loud noises); and

8. other factor(s) relevant to assessing risks, benefits and contingencies.

Having completed the above outlined assessment the officers shall, if reasonable, identify and employ appropriate de-escalation techniques.

(b) Use of De-escalation Techniques – Employing de-escalation techniques may involve securing additional resources, tactical repositioning, and employing verbal persuasion.

1. Securing Additional Resources -- Officers may utilize additional resources which are reasonably calculated to lessen or possibly eliminate the need to respond to resistance in a situation. To the extent possible and reasonable, in light of the totality of the circumstances, officers should avoid physical confrontation until such time as additional resources have arrived to assist. Additional resources may include:

(a) less lethal weaponry;

(b) additional officers;

(c) officers with special training, such as CIT or CINT; or

(d) any other persons whose presence may help de-escalate the situation (e.g., emergency medical professionals, interpreters, or supportive family members).

2. Tactical Repositioning -- To delay or avoid physical confrontation, officers may wish to employ any one or more of the following tactical repositioning measures, to the extent possible and reasonable in light of the totality of circumstances:

(a) maintain safe physical distance from the subject;

(b) maintain cover behind existing or assembled physical barriers; or

(c) communicate from a location that is concealed from the subject.

3. Verbal Persuasion - Communication is a crucial tool when attempting to de-escalate. Effectively communicating with the subject can lead to successful outcomes, and could be as simple as effectively communicating "why" to the subject. For example, explaining to the subject why he or she is being detained or placed under arrest. To the extent possible and reasonable under the totality of the circumstances, officers shall use one or more of the following verbal techniques when practicable to try to calm an agitated subject and promote rational decisions.

(a) Treat the subject with dignity and respect, the way the officer would wish to be treated if they stood in the subject's shoes;

(b) Listen to the subject's side of the story and permit them to express frustration;

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(c) Explain what the officer is doing, what the subject can do, and what needs to happen;

(d) Explain why the officer is taking a specific action, again permitting the subject to respond and acknowledging their perspective;

(e) If possible, provide the subject with alternatives, even though those alternatives may be limited;

(f) Advise the subject of the consequences for noncompliance;

(g) Offer reasonable, professional advice if it is expected to help; or

(h) Provide the subject with reasonably sufficient time within which to respond to directives.

200.3 RESISTANCE

In any force encounter, and regardless of the tool/weapon/tactic chosen by the officer, the officer's decision to use the tool/weapon/tactic is dependent upon the suspect's level of resistance, the threat reasonably posed by the suspect to the officer or another, and the totality of the circumstances known to the officer at that time.

(a) **Types of Resistance**

1. **No Resistance (Compliant)** - A subject who does not resist and follows all commands is compliant. Only a law enforcement officer's presence and verbal commands are required when dealing with these subjects; no coercive physical contact is necessary.

2. **Passive Resistance (Non-Compliant)** - A passively resistant subject that fails to take voluntary physical action to obey officer commands yet do not offer physical resistance when officers are forced to take physical control of them due to non-compliance.

   (a) An example would be a subject going limp during an arrest. Among other things, General Orders do not allow for the use of a Taser when the only resistance offered is passive resistance.

3. **Defensive Resistance** - Defensive resistance is voluntary physical movement and / or muscular tension resistance by a subject that attempts to prevent the officer's control.

   (a) This is the most common type of resistance encountered by officers.

   (b) The situational context (totality of the circumstances) must be considered when determining if a subject is defensively resisting or merely passively resisting. Likewise, the "totality of the circumstances" must be considered when choosing which level of force is necessary to control the situation, and prevent unnecessary harm.

   (c) Examples of defensive resistance by a subject may include pulling away from the officer's grasp, locking arms under their body, resisting handcuffing/frisk, fleeing from an officer, or evading arrest by concealment.

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4. **Aggressive Resistance** - Aggressive resistance is an offensive action by the subject who attempts to push, throw, strike, tackle, or physically harm the officer or another person.

   (a) If the officer or members of the public are threatened by the subject's actions, the officer must respond with appropriate force to stop the attack and defend himself/herself or others.

5. **Deadly Resistance** - Deadly Resistance is an offensive action by the subject that could seriously injure or kill the officer or another person if immediate action is not taken to stop the threat.

(b) **Preparatory Actions Indicating Greater Resistance** - Although, on the surface, a suspect may offer or exhibit behaviors associated with not being resistant or a lower level of resistance such as "passive resistance," or "defensive resistance," the officer may also recognize the subject is preparing to offer greater resistance or launch an attack through specific, articulable behavioral cues (verbal, non-verbal and/or physical). Depending on the circumstances, certain forms of passive resistance, such as verbal non-compliance and/or verbal threats, may be indicators the subject is preparing for a higher level of resistance than is actually being displayed. The officer must be prepared to adjust tactics and/or defend themselves from such a sudden change or attack. Officers do not need to suffer an injury or wait for a physical attack to manifest itself before taking actions to protect themselves or others.

1. Preparatory actions indicating greater resistance may be exhibited or observed during any of the preceding types of resistance. In response, the appropriate degree of objectively reasonable force would depend on the articulable and specific threat actually perceived by the officer at that time and the totality of the circumstances surrounding the interaction.

2. Officers shall articulate the specific observations and the actions displayed by the subject which would lead a reasonable officer in their position to believe the subject was preparing to offer a higher level of resistance than previously observed.

3. For example, a subject who has been told they are under arrest who then tells the officer they are not going to jail as they ball their hand into a fist and raise their arm could be perceived as displaying preparatory aggressive resistance by taking physical actions in preparation to resist arrest by striking the officer (balling their fist and raising their arm as if preparing to throw a punch).

200.4 RESPONSE TO RESISTANCE

All responses to resistance must be objectively reasonable. In other words, another reasonable officer, faced with the same circumstances, could believe that the officer's response to resistance was reasonable based on the threat, level of resistance, and totality of the circumstances.

While the type and extent of force may vary, it is the policy of this department that officers use only that amount of objectively reasonable force which appears necessary under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this order.

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(a) Assessment shall be ongoing – As the circumstances of a situation change, the force necessary to affect a detention, arrest, search, or transportation of a subject or to protect officer or other persons from imminent harm may also change. Officers will therefore need to re-evaluate their determination of the appropriate response to resistance as circumstances change.

(b) Officer Discretion - Understanding that no order can realistically predict every situation an officer might encounter, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the objectively reasonable response to resistance in each incident.

(c) Unless engaged in a lethal force encounter, officers are prohibited from using any of the following techniques: chokeholds, strangleholds, vascular neck restraints, or carotid neck restraints.

1. Chokeholds and strangleholds are defined as applying direct or indirect pressure by any means to an individual's throat, windpipe, trachea, or airway in a manner that is reasonably likely or intended to prevent, reduce, or hinder the intake of air, block the ability to breathe, or compress the airway.

2. Vascular and carotid neck restraints are defined as applying direct or indirect pressure to an individual's neck in a manner that is reasonably likely or intended to prevent, reduce, or hinder the blood flow to the brain through the vascular system or carotid arteries.

(d) Improvising Permitted - Circumstances may arise in which officers reasonably believe that it would be impracticable or ineffective to use a standard tool, weapon, or method provided by the Department. Officers may find it more effective or practicable to improvise their response to rapidly unfolding conditions they are confronting. In such circumstances, the use of any improvised device or method must still be objectively reasonable and used only to the extent which reasonably appears necessary to accomplish a legitimate law enforcement purpose.

(e) Injury to Officer Not Required - While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this order requires an officer to actually sustain physical injury before applying objectively reasonable force.

(f) Reporting Required - Any complaint by a subject that an officer caused pain or injury shall be treated as a response to resistance force incident, except complaints of minor discomfort from unresisted handcuffing.

200.4.1 DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE

Any interpretation of objective reasonableness about the amount of force that reasonably appears to be necessary in a particular situation must allow for the fact that police officers are often forced to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving, and the amount of time available to evaluate and respond to changing circumstances may influence their decisions. The question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting them.

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(a) When determining whether to apply any level of force and evaluating whether an officer has used objectively reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:

1. Reasonable opportunity for the officer to engage in de-escalation;
2. The conduct of the individual being confronted as reasonably perceived by the officer at the time;
3. Officer and subject factors such as age, size, relative strength, skill level, injury/ level of exhaustion and number of officers versus subjects;
4. Influence of drugs and alcohol or mental capacity;
5. Proximity of weapons;
6. The degree to which the subject has been effectively restrained and their ability to resist despite being restrained;
7. Time and circumstances permitting, the reasonable availability of other resources to the officer;
8. Seriousness of the suspected offense or reason for contact with the individual;
9. Training and experience of the officer;
10. Potential for injury to citizens, officers and subjects;
11. Risk of escape;
12. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others; or
13. Other exigent circumstances.

200.4.2 USE OF FORCE TO AFFECT A DETENTION, AN ARREST OR TO CONDUCT A SEARCH

An officer is justified in using reasonable force when the officer reasonably believes the use of such force is immediately necessary (Tex. Penal Code § 9.51(a)):

(a) To make or assist in a detention or an arrest, or to conduct a search that the officer reasonably believes is lawful;

(b) To prevent or assist in preventing escape after an arrest, provided the officer reasonably believes the arrest or search is lawful; or

(c) To make an arrest or conduct a search under a warrant that the officer reasonably believes is valid.

200.5 DEADLY FORCE APPLICATIONS

An officer has no duty to retreat and is only justified in using deadly force against another when and to the extent the officer reasonably believes the deadly force is immediately necessary to (Tex. Penal Code § 9.51(c) and (e)):

(a) Protect themselves or others from what they reasonably believe would be an imminent threat of death or serious bodily injury.

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(b) Make an arrest or to prevent escape after arrest when the officer has probable cause to believe that:

1. The subject has committed or intends to commit an offense involving the infliction or threatened infliction of serious bodily injury or death; or
2. The officer reasonably believes that there is an imminent or potential risk of serious bodily injury or death to any other person if the subject is not immediately apprehended.

200.6 REPORTING THE RESPONSE TO RESISTANCE

Any response to resistance by a member of this department shall be documented promptly, completely and accurately in an appropriate report as prescribed by General Order 211 (Response to Resistance Inquiry, Reporting, and Review).

200.6.1 NOTIFICATION TO SUPERVISORS

Supervisor notification shall be made as soon as practicable following any force incident or allegation of force.

200.6.2 DUTY TO GIVE AID AND MEDICAL CARE

Prior to booking or release, medical assistance shall be obtained for any subject who has sustained visible injury, expressed a complaint of injury or continuing pain or who has been rendered unconscious. Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail.

A subject who exhibits extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and impervious to pain, or who requires a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death and shall be examined by qualified medical personnel as soon practicable. Any individual exhibiting signs of distress after such an encounter shall be medically cleared prior to booking.

If any individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

200.6.3 ASSISTING MEDICAL PROFESSIONALS

(a) An officer who restrains a patient to assist medical personnel, with an amount of force which does not rise above the level of holding the patient down (e.g. arms, legs, foot, torso) is not required to report a Response to Resistance or notify their supervisor as outlined in General Orders 211 and 200.5.1.

1. Medical personnel are:

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(a) Medical staff at a medical facility (e.g. Brackenridge, Austin State Hospital, Seton)

(b) Licensed emergency medical technicians (EMT), phlebotomist, or other medical professional in performance of their official medical duties

(b) If an officer uses a level of force greater than merely holding a limb or applying bodily weight on the patient, the officer will adhere to General Orders 211 and 200.5.1 Response to Resistance by:

1. Notifying their supervisor, and
2. Completing an incident report including the title code 8400.

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Attachment 2

Firearm Discharge Situations

202.1 PURPOSE AND SCOPE

The purpose of this order is to establish procedures for the use and reporting of incidents involving the discharge of firearms. This order is for internal use only and does not increase the Department's and/or an officer's civil or criminal liability in any way. Violations of this order can only form the basis for departmental administrative actions.

202.2 POLICY

It is the policy of this department to resort to the use of a firearm when it reasonably appears to be necessary under the circumstances. Officers are reminded of the Department's Philosophy, which states: The protection of life is the primary core value and guiding principle of the Austin Police Department. As such, all employees will strive to preserve human life while recognizing that duty may require the use of deadly force, as a last resort, after other reasonable alternatives have failed or been determined impractical.

(a) An officer has no duty to retreat and is only justified in using deadly force against another when and to the extent the officer reasonably believes the deadly force is immediately necessary to (Tex. Penal Code § 9.51(c) and (e)):

1. Protect themselves or others from what they reasonably believes would be an imminent threat of death or serious bodily injury.
2. Make an arrest or to prevent escape after arrest when the officer has probable cause to believe that:
   (a) The subject has committed or intends to commit an offense involving the infliction or threatened infliction of serious bodily injury or death; or
   (b) The officer reasonably believes that there is an imminent or potential risk of serious bodily injury or death to any other person if the subject is not immediately apprehended.

(b) To stop a dangerous and aggressive animal:

1. In circumstances where officers encounter any animal which reasonably appears to pose an imminent threat of bodily injury to officers or others, officers are authorized to use objectively reasonable force up to and including deadly force (when lesser means would be impractical) to neutralize the threat. If time and distance permit, an officer may consider using the following less-lethal options:
   (a) Fire Extinguisher
   (b) Oleoresin Capsicum spray
   (c) TASER Device
   (d) Assistance of Animal Control

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2. In circumstances in which officers have sufficient advanced notice that a potentially dangerous domestic animal (e.g., dog) may be encountered, such as in the serving of a search warrant, officers should develop reasonable contingency plans for dealing with the animal without the use of deadly force (e.g., fire extinguisher, TASER Device, oleoresin capsicum (OC) spray, assistance of animal control). Nothing in this order shall prohibit any officer from resorting to deadly force to control a dangerous animal if circumstances reasonably dictate that a contingency plan has failed or becomes impracticable.
3. In the event force is used against an animal by an officer and the animal is injured or there is a reasonable belief the animal was injured, regardless of whether visible injury exists, officers shall make a reasonable attempt to ensure the animal receives care for its' injuries. This may include but is not limited to:
    (a) Contacting the owner to arrange private treatment in an appropriate time frame.
    (b) Contacting Animal Control to have the animal collected and treated
    (c) Arranging transport of the animal to a veterinary facility
    (d) Transporting the animal to a veterinary facility

(c) With the approval of a supervisor, an officer may euthanize an animal that is so badly injured that human compassion requires its removal from further suffering and where other dispositions are impracticable.

(d) For target practice or recreational shooting at an approved range or any area where firing a weapon would be safe and not a violation of law.

Where feasible, a warning should be given before an officer resorts to deadly force as outlined (a), (b) or (c) above. A specific warning that deadly force will be used is not required by this order; only that a warning be given if feasible. When feasible, warnings or orders should be given by one officer to avoid conflicting orders or talking over each other, rendering the orders incomprehensible. Warnings or orders should be given in a clear and understandable manner.

202.3 DEFINITIONS

Unintentional Discharge – The discharge of a firearm that the shooter did not intend to occur.

Preventable Discharge – An unintentional discharge that constitutes a gross deviation from Department training received prior to the incident or a discharge which exhibits a failure to exercise the care that a reasonably prudent employee would have exercised in similar circumstances.

Firearm – For the purposes of this policy, a firearm is any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use (e.g. handgun, rifle, shotgun, less lethal shotgun).

Department Used Firearm – Any firearm used by an officer, whether personally owned or owned by the Department, in the course and scope of being a peace officer.

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Personally Used Firearm – Any firearm not owned by the Department and used outside the course and scope of the duties of being a peace officer.

202.4 WARNING SHOTS

Warning shots are prohibited.

202.5 MOVING VEHICLES

This order is not intended to restrict an officer's right to use deadly force directed at the operator of a vehicle when it is reasonably perceived that the vehicle is being used as a weapon against the officer or others. Officers who utilize a firearm against a vehicle or operator of a vehicle must meet the same standards established in 202.1.1(a) above.

(a) Officers are prohibited from Discharging a firearm at a moving vehicle unless the officer reasonably believes that:

1. a person in the vehicle is immediately threatening the officer or other person with serious bodily injury or death by means other than the vehicle itself (e.g., driver firing at the officer or others with a firearm); or
2. the person operating the vehicle intends to strike the officer or other person(s), and all other reasonable means of defense have been exhausted (or are not present or practical), which includes moving out of the path of the vehicle.

(b) Officers shall exercise good judgment and will not place themselves in the path of a moving vehicle since doing so may increase the likelihood of having to resort to the use of deadly force.

(c) Unless it reasonably appears that it would endanger officers or the public, officers will make every reasonable attempt to move out of the path of any approaching vehicle.

(d) When encountering a vehicle being operated in a threatening manner, officers may leave a position of cover only:

1. to utilize an avenue of escape
2. to move to a position of better cover, or
3. if the need to apprehend the suspect or stop the threat outweighs the danger imposed to the officer or any other person.

(e) Disabling a vehicle by use of a firearm will only be attempted under extraordinary circumstances. Officers who utilize a firearm against a vehicle or operator of a vehicle must meet the same standards established in 202.1.1(a) above.

(f) Officers should be aware of the following:

1. Firearms discharged at moving motor vehicles are unlikely to stop the vehicle's movement.

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2. If the vehicle operator is incapacitated, the vehicle could crash and cause injuries to officers/ and/or other innocent bystanders.

(g) Officers shall not discharge a firearm from inside a moving vehicle unless the officer reasonably believes that:

1. deadly force is necessary to protect the officer or others from an imminent threat of death or serious bodily injury; and

2. no other reasonable alternative exists.

202.6 DISPLAY OF FIREARMS

Firearms may be readied for use in situations where it is anticipated they may be required. Firearms shall not be displayed or pointed in a threatening or intimidating fashion unless it is objectively reasonable to believe there is a substantial risk that the situation may escalate to the point where deadly force would be permitted. Firearms shall be secured or re-holstered as soon as reasonably practicable when it is determined that deadly force is no longer necessary.

202.7 REPORTING OF INTENTIONAL FIREARM DISCHARGE AGAINST A PERSON

For any intentional firearm discharge against a person, regardless of whether the person is hit, the incident shall be handled as a Level 1 Force Incident and the employee shall comply with the reporting procedures prescribed in Policy 211 (Response to Resistance Inquiry, Reporting and Review).

202.8 REPORTING OF INTENTIONAL FIREARM DISCHARGE AGAINST AN ANIMAL

This section is written to cover the reporting procedures for the following situations:

(a) The humane destruction of a seriously injured animal.

(b) In defense against an attacking or dangerous animal.

Any intentional firearm discharge which results in an injury to another person will be investigated by SIU (211.2.1).

202.8.1 REPORTING A FIREARM DISCHARGE FOR THE HUMANE DESTRUCTION OF A SERIOUSLY INJURED ANIMAL

The following reporting guidelines shall be followed for the humane destruction of a seriously injured animal or an attacking or dangerous animal.

(a) Employees who need to destroy a seriously injured animal for humane reasons shall first request approval from a supervisor.

(b) Employees shall complete an incident report entitled Injured Animal Firearm Used (Title Code 3449-7). The incident report should detail the circumstances requiring the animal's destruction. The authorizing supervisor should be identified in this report.

(c) Supervisors who approves the destruction shall:

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1. Add a comment in the CAD call notating their notification and approval.
2. Send e-mail notifications with the incident report number prior to the end of the tour of duty to the:
    (a) Involved employee's chain of command up to the lieutenant.
3. Review the primary reporting employees' incident report and add a Versadex case note to the report to document they were notified, if they responded to the scene, and whether they have reviewed the incident

(d) Each level of the chain-of-command, up to the lieutenant, shall review the incident and complete a case note to document their review. In the event the reviewing lieutenant identifies concerns with the destruction, they will notify the commander.

(e) The chain-of-command shall determine what, if any, corrective action is needed.

(f) Employees are not required to be placed on restricted duty.

202.8.2 REPORTING A FIREARM DISCHARGE AGAINST A DANGEROUS AND THREATENING ANIMAL

The following reporting guidelines will be followed for the destruction of a dangerous or attacking animal.

(a) Employees who destroy an attacking or dangerous animal will notify their supervisor or another on-duty supervisor in the absence of their immediate supervisor, as soon as practical.

(b) The supervisor, or designated acting supervisor, will respond to the scene and conduct an on-scene investigation of the incident, interview witnesses, and insure digital photographs are taken and downloaded into the Digital Crime Scene Management System.

(c) The involved employee(s) are required to complete an incident report entitled Dangerous Animal - Firearm Used (3434-7) detailing the event and the reason(s) for selecting deadly force over other force options..

(d) Investigating supervisors will complete a supplement to the incident report detailing their investigation and findings.

(e) The investigating supervisor will notify, via e-mail, each member of the involved employee's chain of command up to the assistant chief when the investigation is ready for review. This notification will include the incident report number. Each member of the chain-of-command through the assistant chief shall add a Versadex case note to the incident report indicating they have reviewed the incident.

(f) The chain-of-command will determine what, if any, corrective action is needed.

(g) Employees are not required to be placed on restricted duty.

202.9 REPORTING OF UNINTENTIONAL FIREARM DISCHARGE

This section is written to cover the reporting procedures for t unintentional firearm discharge situations.

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(a) If an unintentional discharge involves a Department used firearm and there is a possible mechanical malfunction, the firearm shall be seized and turned over to the Training Academy for inspection.

(b) Any unintentional discharge of any firearm that does not result in injury, or only injury to self, shall be reported to the involved officer's supervisor as soon as practicable. The supervisor will determine if the unintentional discharge will be handled as a Class B Investigation under General Order 902 (Administrative Investigations).

(c) Any unintentional discharge of any firearm that results in injury or death to another shall be handled as a Level 1 Force incident. The involved firearm may be seized by the investigating agency.

202.9.1 REPORTING OF UNINTENTIONAL FIREARM DISCHARGE WHILE ON-DUTY

The following reporting guidelines will be followed when an employee discharges a firearm unintentionally while on-duty.

(a) While in Training at the APD Firearms Range or at a Department Approved Training Site.

1. If the result is death or injury to another then the incident will be handled as a Level 1 force incident. Refer to General Order 211 (Response to Resistance Inquiry, Reporting and Review).

2. If there is no injury or the injury is only to self:

(a) Employees will report the discharge immediately to range personnel and request emergency medical assistance, if needed.

1. The Learned Skills sergeant will be notified immediately.

2. Employees may be immediately disqualified and placed on restricted duty depending on the severity of the incident.

(b) The Learned Skills Unit will:

1. Notify the involved employee's immediate supervisor regarding the incident.

2. The training instructor will complete a UD/PD form and forward it to the Learned Skills sergeant.

3. The Learned Skills sergeant will review the UD/PD form and make the determination on whether the firearms discharge was unintentional or preventable. The Learned Skills sergeant will prepare a memorandum addressed to the employee's immediate supervisor regarding the incident and send a copy to the Learned Skills Lieutenant.

4. The Learned Skills Lieutenant will review the prepared memorandum and complete an Internal Affairs complaint and forward it to Internal Affairs.

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(a) An unintentional or preventable discharge under this section shall be handled as a Class B investigation as outlined in General Order 902 Administrative Investigations. Internal Affairs will advise the involved officer's chain-of-command if the incident is eligible for the OFCA process.

(c) The Training commander will be notified as soon as practicable.

(b) While Not in Training

1. If the result is death or injury to another then the incident will be handled as a Level 1 force incident. Refer to General Order 211 (Response to Resistance Inquiry, Reporting and Review).

2. If there is no injury or the injury is only to self:

(a) Employees will report the situation immediately and request their immediate supervisor to respond to the scene.

(b) If the unintentional discharge did not occur at a Department/City facility, Internal Affairs will be notified immediately or as soon as practical.

(c) Employees may be placed on restricted duty.

(d) The incident will be handled as a Class B Investigation as outlined in General Order 902 (Administrative Investigations):

1. An incident report will be completed and witness statements taken. Digital photos will be taken and downloaded into the Digital Crime Scene Management System or Evidence.com.

2. The employee's immediate supervisor has investigative responsibility for the incident. If the immediate supervisor is not available, an on-duty lieutenant from the employee's assigned area will designate an on-duty supervisor to investigate the incident.

3. The employee's chain-of-command will determine what, if any, corrective action is needed.

(e) If the incident occurs out of city, the proper law enforcement authority having jurisdiction must be notified. The employee's supervisor will coordinate with the agency responsible for any outside investigation.

(f) The Training commander will be notified as soon as practical.

202.9.2 REPORTING OF UNINTENTIONAL FIREARM DISCHARGE WHILE OFF-DUTY

The following reporting guidelines will be followed when an employee discharges a firearm unintentionally while off-duty.

(a) If the result is death or injury to another then the incident will be handled as a Level 1 force incident. Refer to General Order 211 (Response to Resistance Inquiry, Reporting and Review).

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(b) If there is no injury or the injury is only to self and the unintentional discharge involves a department used firearm:

1. If the incident occurs:

   (a) Within the City of Austin - Employees will report the situation and immediately request an on-duty supervisor to respond to the scene.

   (b) Outside the City of Austin – The employee will report the situation immediately to their supervisor, and the proper law enforcement authority. The employee's supervisor will coordinate with the agency responsible for any outside investigation.

2. Internal Affairs will be notified immediately or as soon as practical.

3. The involved employee(s) may be placed on restricted duty.

4. The incident will be handled as a Class B Investigation as outlined in General Order 902 (Administrative Investigations):

   (a) An incident report will be completed and witness statements taken. Digital photos will be taken and downloaded into the Digital Crime Scene Management System or Evidence.com.

   (b) The employee's immediate supervisor has investigative responsibility for the incident.

   (c) The employee's chain-of-command will determine what, if any, corrective action is needed.

5. The Training Commander will be notified as soon as practical.

(c) If there is no injury or the injury is only to self, and the unintentional discharge involves a personally used firearm, whether inside or outside the City of Austin:

1. Employees will report the situation immediately to their supervisor.

2. The employee's supervisor shall make a determination if Internal Affairs will be notified and if the incident should be handled as a Class B Investigation as outlined in General Order 902 (Administrative Investigations).

3. If Internal Affairs is notified of the unintentional discharge of a personally used firearm the incident will be handled as a Class B Investigation as outlined in General Order 902 (Administrative Investigations):

   (a) An incident report will be completed and witness statements taken. Digital photos will be taken and downloaded into the Digital Crime Scene Management System or Evidence.com.

   (b) The employee's immediate supervisor has investigative responsibility for the incident.

   (c) The employee's chain-of-command will determine what, if any, corrective action is needed.

   (d) Employees may be placed on restricted duty.

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202.9.3 PROCEDURES FOR FIREARMS SEIZED AS THE RESULT OF AN UNINTENTIONAL DISCHARGE

If a firearm has been seized by the involved officer's chain of command, as a result of an unintentional discharge, the following procedures shall be adhered to.

(a) **Department Issued Handgun** – In the event the involved officer's department issued handgun is seized for a possible mechanical malfunction and turned over to the Training Academy for inspection, the following actions shall occur:

1. The involved officer will be placed on an Administrative Duty status with their unit.
2. The involved officer's supervisor shall send an email notification to the Learned Skills sergeant and coordinate an inspection of the handgun.
3. The Learned Skills sergeant shall confirm receipt of the email notification and ensure delivery of the firearm to the Training Academy
4. The Learned Skills sergeant shall ensure that an inspection is completed of the firearm as soon as practicable by the Learned Skills Unit at the Training Academy.
5. If the handgun passes an inspection by the Learned Skills Unit:
   (a) The Learned Skills sergeant shall facilitate the return of the firearm to the originating supervisor.
   (b) Upon receipt of the handgun, the originating supervisor shall ensure the firearm is returned to the involved officer.
   (c) The involved officer may return to Full Duty status.
6. If the handgun does not pass an inspection by the Learned Skills Unit:
   (a) The Learned Skills Unit shall replace the handgun as soon as practicable.
   (b) Once replaced, the involved officer shall qualify with the replacement handgun as soon as practicable, and prior to returning to Full Duty status.
   (c) Once the involved officer has successfully qualified with the replacement handgun, they may return to Full Duty status.

(b) **Department Rifle, Department Shotgun, or Less-Lethal Shotgun** – In the event a department rifle, department shotgun, or less-lethal shotgun is seized for a possible mechanical malfunction and turned over to the Training Academy for inspection, the following actions shall occur:

1. The involved officer's supervisor shall turn the firearm over to the Property Control Office (PCO) at their substation, noting that the firearm requires an inspection by the Training Academy.
2. The involved officer's supervisor shall send an email notification to the Learned Skills sergeant informing them of the firearm's location and that an inspection of the firearm is required.

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3. The Learned Skills sergeant shall confirm receipt of the email notification and ensure delivery of the firearm to the Training Academy.
4. The Learned Skills sergeant shall ensure that an inspection is completed of the firearm as soon as practicable by the Learned Skills Unit at the Training Academy.
5. If the firearm passes an inspection by the Learned Skills Unit:
   (a) The firearm shall be returned to the originating PCO.
   (b) The Learned Skills sergeant shall send an email notification to the originating supervisor indicating that the firearm has been returned.
   (c) The involved officer's supervisor shall ensure the returned firearm is put back into service.
6. If the firearm does not pass inspection:
   (a) The Learned Skills sergeant shall notify the originating supervisor, and the originating PCO that the firearm has not passed an inspection and is being retained at the Training Academy.
   (b) The Learned Skills Unit shall replace the retained firearm as soon as practicable.

(c) **Personally Owned Rifle or Personally Owned Shotgun** – In the event a department used, personally owned rifle or personally owned shotgun require an inspection due to a possible mechanical malfunction, the involved officer's supervisor shall take the following actions:

1. The supervisor shall down the firearm from service immediately.
2. The supervisor shall send an email notification to the Learned Skills sergeant indicating a department used, personally owned rifle or shotgun requires an inspection by the Learned Skills Unit, due to a possible mechanical malfunction.
3. The supervisor shall coordinate with the Learned Skills sergeant the transfer of the firearm to the Learned Skills Unit for inspection.
4. If the firearm passes an inspection:
   (a) The Learned Skills sergeant shall notify the involved officer's supervisor that the firearm has passed inspection and that the firearm may be returned to service by the officer. The Learned Skills sergeant and the supervisor shall coordinate the return of the firearm.
5. If the firearm does not pass inspection:
   (a) The Learned Skills sergeant shall notify the involved officer and the officer's supervisor that the firearm has not passed an inspection, and that the firearm may not be returned to service.
   (b) The Learned Skills sergeant shall notify the involved officer, and the officer's supervisor of:
      1. The measures needed to return the firearm to service, or;

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2. The necessary steps to remove and/or add a weapon to their weapons card at the Training Academy.

(c) The involved officer should coordinate picking up the weapon with the Learned Skills Unit.

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Attachment 3

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211

Austin Police Department
General Orders

Response to Resistance Inquiry, Reporting, and Review

211.1 PURPOSE AND SCOPE

This directive sets forth Department policy and procedures for inquiring, reporting, and reviewing force incidents in response to resistance involving Department personnel. The specific required inquiry, reporting, and review of these incidents is determined by the force level, as defined in this order.

Personnel may delay compliance with the provisions of this order if the scene is unstable, there is unrest, or other conditions make immediate compliance impracticable. The protection of the public, Department personnel, and maintenance of public safety shall remain a top priority. Compliance with this order shall occur as soon as practicable. The approving supervisor shall ensure the reason for the delay is documented in the supervisor's supplement or AXON Standards IRP.

211.1.1 DEFINITIONS

Inquiry: The preliminary review of the events surrounding a response to resistance incident, including the initial response to the scene and follow-up investigations.

Reporting: The process of documenting the information gathered in the inquiry of a response to resistance incident through written, oral and visual means and compiling that information into the appropriate packet for review.

Review: The process of evaluating all the given information obtained in the force incident inquiry and reporting stages to determine if the response to resistance complies with law and General Orders.

211.1.2 IDENTIFYING RESPONSE TO RESISTANCE DOCUMENTATION

The following Response to Resistance reports and forms are required as determined by the force level of the incident:

Response to Resistance Incident Report: The initial incident report written by the primary reporting employee for all force level incidents. Title Code 8400 shall be added to the incident report by the primary reporting employee to identify the incident as a response to resistance incident. The Use of Force section of the "Details" page shall also be completed.

Response to Resistance Supplement: A supplement written to the primary reporting employee's incident report.

Response to Resistance SIU Inquiry Report: A separate incident report written by the Special Investigations Unit (SIU) for all Level 1 incidents and in-custody deaths.

Incident Review Folder: An electronic folder labeled with the case number, created in the G:\Digital Incident Review Folder which contains all applicable response to resistance supporting documentation.

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Incident Review Packet (IRP): An administrative review of the incident to include response to resistance. The IRP is completed in AXON Standards by the appropriate unit (Force Review Unit (FRU) or SIU.

- Level 1 incident review packets are completed by SIU. Level 2, Level 3, and Level 4 incident review packets are completed by the FRU.

Group Reporting: The act of sharing, providing, or acquiring information with or from other officers or employees about an incident for the purpose of ensuring that officers or employees make similar reports about the incident that include information not consistent with the reporting officer's or employee's own perception or recollection of the incident. The act of reading another officer's or employee's report prior to completing a required report is considered group reporting.

211.2 DETERMINING THE CORRECT FORCE LEVEL

Force levels are broken up into four types: Level 1, Level 2, Level 3, and Level 4. Each level is defined below by the response to resistance used in the incident. These levels are established for inquiry, reporting, and review purposes only. If there is uncertainty about which level to designate a particular incident then the higher level shall be used.

211.2.1 LEVEL 1 FORCE INCIDENTS AND IN-CUSTODY DEATHS

(a) Any force resulting in death.

(b) Any force that resulted in a substantial risk of death.

(c) Any intentional firearm discharge at a person, vehicle, or structure regardless of injury.

(d) Any intentional firearm discharge at an animal that results in injury to another person.

(e) Any unintentional firearms discharge resulting in another person's injury or death.

(f) Any force that resulted in serious bodily injury requiring admittance to the hospital, beyond emergency room treatment and release (e.g., serious disfigurement, disability, or protracted loss or impairment of the functioning of any body part or organ).

(g) Use of any impact weapon, including kinetic energy projectiles, and improvised weapons, that strikes the head of a subject.

(h) **In-Custody Deaths**: For inquiry, reporting, and review purposes, all in-custody deaths occurring prior to or within 24 hours after booking shall be treated as Level 1 incidents and require concurrent inquiries conducted by SIU and IA, regardless of whether force was used on the subject.

(i) The utilization of the Precision Immobilization Technique when serious bodily injury or death occurs.

211.2.2 LEVEL 2 FORCE INCIDENTS

(a) Any strike to the head by an employee with any weaponless technique.

(b) Use of any impact weapons, including kinetic energy projectiles (other than a Taser), and improvised weapons, to strike a subject and contact is made, regardless of injury. (A strike to the head is a Level 1).

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(c) Any deployment of a police canine resulting in a bite to a subject's skin, or which results in any injury to a subject.

(d) The utilization of the Precision Immobilization Technique, unless serious bodily injury or death occurs.

211.2.3 LEVEL 3 FORCE INCIDENTS

(a) Use of Oleoresin Capsicum (OC/Pepper Spray) or other chemical agent on a subject.

(b) Any Taser application (including a Taser application that misses or does not cause NMI).

(c) Use of any impact weapon, including kinetic energy projectiles or any other similar object, in an attempt to strike a subject but no contact is made.

(d) Use of a baton for a non-striking purpose (e.g., prying limbs, moving, or controlling a subject).

(e) Any force resulting in injury or a continued complaint of pain, but not rising to a Level 1 or 2 incident.

(f) Any weaponless technique that causes an impact to the body with or without a complaint of injury or pain. (A weaponless strike to the head is a Level 2). Examples of weaponless techniques include:

1. Hand/palm/elbow strikes.
2. Kicks or leg sweeps.
3. Take-downs.

(g) Any deployment of a police canine for the purpose of biting a subject whose location is known to the handler which results in no injury to the subject.

211.2.4 LEVEL 4 FORCE INCIDENTS

(a) A level of force utilizing empty hand control techniques that does not result in injury or continued complaint of pain and does not rise to a Level 3 response to resistance. Examples include, but are not limited to:

1. Restricting a subject’s movement by strength or body weight (to include resisted escorting or handcuffing of a subject who is actively resisting arrest beyond the initial or reflexive stiffening or pulling away of a person’s arm(s) that officers commonly encounter during handcuffing).
2. Using leverage or strength to bring a subjects arms or legs together for the purposes of controlling, handcuffing, or hobbling the subject (to include resisted control, handcuffing, hobbling when the subject is actively resisting arrest beyond the initial or reflexive stiffening or pulling away of the subject’s arm(s) or leg(s) that officers commonly encounter during efforts to control, handcuff, or hobble a subject).
3. Pressure point control tactics.

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211.2.5 ELEVATION OF A FORCE LEVEL INCIDENT

If information is uncovered during a response to resistance inquiry to indicate that the original force level falls into a higher category, the force level should be elevated to conduct the appropriate inquiry.

(a) Supervisors have the discretion to elevate any Level 3 and Level 4 force incident to a Level 2 in order to conduct a more extensive inquiry and review of the incident.

(b) Any supervisor, with the approval of the commander or Duty Commander, may elevate any response to resistance incident to a Level 1 force incident.

211.3 VIOLATIONS OF LAW OR GENERAL ORDERS

Supervisors receiving a complaint regarding a response to resistance incident will review the available information regarding the incident to determine if any credible evidence of a violation of General Orders or law may have occurred.

(a) Supervisors making a determination based on objective evidence (e.g., MAV shows an allegation is false) that there is **no credible evidence** a violation of General Orders or law has occurred by the officer shall complete a *Complainant Contact Form* and forward it to IA.

1. The incident shall be closed as information and tracked in the IA database for information purposes only.
2. The force incident shall be handled based on the normal criteria as outlined in this order and the initiation of an IA investigation is not required.

(b) Supervisors discovering, during the normal course of their review or in response to a complaint, **any credible evidence** a violation of law or General Orders may have occurred concerning the officer's response to resistance shall follow the guidelines outlined below.

211.3.1 CRIMINAL MISCONDUCT

Regardless of the original force level of the incident, if there is **any credible evidence** that criminal misconduct may have occurred by the officer then the incident shall be treated as a Level 1 force incident.

(a) The supervisor shall immediately notify SIU and IA. The supervisor shall document the time and date SIU and IA were notified in the supervisor's supplement.

(b) The Chief of Police shall be notified on all credible allegations of criminal conduct.

(c) SIU and IA shall handle the concurrent investigation of criminal allegations as outlined in the Criminal Investigations and Administrative Investigations General Orders.

211.3.2 GENERAL ORDERS VIOLATION

(a) If there is **any credible evidence** a General Orders violation may have occurred by the officer relating to their response to resistance then the incident shall be handled as follows:

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1. Level 1 force incidents - If the original incident would have been handled as a Level 1 force incident, supervisors shall notify SIU and IA of the possible General Orders violation and handle the response to resistance inquiry as a Level 1 force incident. Supervisors shall document the date and time SIU and IA were notified in the supervisor's supplement.
2. Level 2, Level 3, and Level 4 force incidents - If the original incident would have been handled as a Level 2, Level 3 or a Level 4 force incident, supervisors shall notify IA of the possible General Orders violation and handle the response to resistance inquiry as a Level 2 force incident. Supervisors shall document the date and time IA was notified in the supervisor's supplement.

(b) Internal investigations of General Orders violations shall be handled as outlined in General Order 902 (Administrative Investigations).

211.4 EMPLOYEE RESPONSIBILITIES FOR ALL FORCE LEVEL INCIDENTS

The following outlines the required responsibilities of involved employees, employees that witness an incident, and employees designated to assist at the scene of any response to resistance incident. If a juvenile is in custody related to the incident, the juvenile should not be interviewed unless the juvenile has been brought before a magistrate.

(a) Involved employees shall notify their supervisor as soon as practicable of any force incident or allegation of use of force.

(b) Involved employees shall request EMS as soon as practicable when a subject complains of injury, has visible injuries, or the circumstances indicate that an injury may have occurred. For purposes of this section "Injury" does not include TASER probe marks that are not in a sensitive area of the body. Officers will comply with section 208.5 in regards to post-TASER deployment medical treatment.

(c) If a person not under arrest is transported for medical treatment as a direct result of an officer's response to resistance, an officer will accompany that person to the medical facility for monitoring unless or until a supervisor believes such monitoring is no longer necessary.

(d) Employees not involved in the force incident may be directed by a supervisor to assist at a force incident scene. This may include locating and identifying witnesses to the incident.

1. Employees shall notify a supervisor in the event a witness refuses to give a statement or provide identifying information.
2. Employees shall not detain or delay a witness who refuses to remain at the scene.
    (a) The witness' physical description, license plate, comments, or other identifiers shall be documented in the employee's supplemental report.
    (b) Any photographs or videotape containing images of a witness who refused to remain at the scene shall be saved in the incident review folder.

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211.4.1 EMPLOYEE REPORTING GUIDELINES FOR ALL FORCE LEVEL INCIDENTS
The following outlines the reporting guidelines for involved employees, employees that witness an incident and employees designated to assist at the scene of any response to resistance incident.

(a) An incident report shall be completed by the primary reporting employee and include title code 8400. This report shall be written regardless of whether a report or supplement would normally be written for the initial incident.

(b) Supplements shall be completed by:

1. All other employees who are involved in a force incident.
2. Employees who witness a force incident.
3. Employees assisting at the scene of a force incident.
4. A supervisor is required to complete a supplement to the response to resistance incident report for Level 1 incidents. They may also be required by SIU to complete a supplement to the SIU inquiry report.

(c) The following information shall be included in each report and supplement:

1. The original reason for police presence on the scene.
2. The name and employee number of the supervisor notified of the incident.
3. A detailed description of the circumstances and subject actions that resulted in the response to resistance.
4. A detailed description of the force used.
   (a) Include specific details regarding any weapon used on a subject (e.g., when OC spray is used you document the number of bursts, duration of each burst, the approximate distance from the subject, the location of spray contact).
5. Subject and witness information.
6. Reports shall not contain "boilerplate" or "pat" language (e.g., "furtive movement" or "fighting stance") without descriptive details of the action.
7. Involved employees shall also complete the force section of the "Details" page in their report/supplement.

(d) All incident reports and supplements shall be completed separately and without discussing the details of the incident with other personnel. "Group reporting" is prohibited. Debriefing after an incident and/or the necessary discussions to further the training requirements of officers enrolled in the Field Training Program (FTP) are allowed.

211.5 DESIGNATION OF SUPERVISOR TO CONDUCT INQUIRY
The supervisor of the employee involved in the force incident shall typically be the primary supervisor conducting the force inquiry. The following exceptions apply:

(a) If an incident involves multiple employees with different supervisors, those supervisors should work together to determine who will be the primary reporting supervisor. If an

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agreement cannot be reached, a Lieutenant from the area where the incident occurred or the Watch Commander shall assign one supervisor to be the primary reporting supervisor. The responding supervisor will conduct the force inquiry. Additionally, the responding supervisor will notify the other involved employees' supervisor(s) of the force incident and their employee's involvement. This notification will be made by e-mail and will include the incident report number.

(b) A supervisor involved in a force incident shall not review the incident or conduct the inquiry. An involved supervisor includes a supervisor that directs or orders force to be used. A supervisor who is at the scene and witnesses the incident, but is not directly involved in the force incident, may conduct the inquiry.

(c) If an employee the rank of sergeant or lieutenant is involved in a Level 2, Level 3, or Level 4 force incident, another supervisor the rank of the involved employee or higher shall conduct the inquiry.

(d) If an employee the rank of commander or higher is involved in a Level 2, Level 3, or Level 4 force incident, the employee will notify their immediate supervisor and the Duty Commander. At the direction of the Duty Commander, an on duty lieutenant may be designated to complete the inquiry.

(e) Corporals may be designated as the inquiry supervisor as follows:

1. Level 1 Incidents - Corporals may not act as the designated supervisor to conduct inquiries for Level 1 Force Incidents.
2. Level 2, 3, and Level 4 Incidents: Corporals may function as the designated supervisor to conduct inquiries for Level 2, 3, and Level 4 force incidents.

211.6 LEVEL 1 AND IN-CUSTODY DEATH INQUIRY, REPORTING, AND REVIEW REQUIREMENTS

Level 1 force incidents require an inquiry be conducted by SIU and may also concurrently be investigated by IA. In-custody deaths occurring prior to or within 24 hours after booking require concurrent inquiries conducted by SIU and IA, regardless of whether force was used on the subject. The following sections explain the responsibilities in Level 1 force incidents and in-custody deaths for:

(a) Supervisors,

(b) Special Investigations Unit (SIU),

(c) Lieutenants,

(d) Chain-of-command, and

(e) Internal Affairs (IA).

211.6.1 SUPERVISOR RESPONSIBILITIES IN LEVEL 1 AND IN-CUSTODY DEATH INCIDENTS

Supervisors shall respond to the scene of all Level 1 force incidents and in-custody deaths unless a hostile crowd or other conditions make such a response impracticable. In such incidents, an alternate safe location shall be designated by the supervisor.

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(a) Supervisors are responsible for managing the scene until a higher ranking supervisor or the ranking SIU supervisor arrives.

(b) Supervisors should secure and manage the scene upon arrival and:

1. Take all reasonable steps to obtain emergency medical attention for all injured individuals.
2. Ensure involved personnel, subjects, and witnesses are separated, identified and advised that communication regarding the incident with other people is prohibited.
3. Obtain a brief overview of the situation from available sources.
4. Following an officer involved shooting, the supervisor shall administer the public safety questions to the involved officers(s). If necessary, the supervisor shall administratively order any officer from this department to immediately provide public safety information to secure the scene, pursue subjects, and located any possible injured persons requiring medical attention.
    (a) The public safety questions can be found on form PD0297 located in the APD Approved Forms Folder. The information shall be limited to such things as outstanding subject information, number and direction of shots fired, perimeters of the incident scene, identity of known witnesses, and similar information.
    (b) The public safety questions shall be captured using the BWC system. When the BWC system is unavailable, the DMAV system shall be used.
5. With the exception of answering the public safety questions, involved personnel subject to a potential criminal investigation shall be able to speak with an APA union representative and/or their attorneys prior to speaking with a supervisor.
6. Ensure a crime scene is established:
    (a) Ensure a *Crime Scene Security Log* (PD0175) is maintained to record the time and identifying information of all persons entering and exiting the scene.
    (b) Ensure the *Crime Scene Security Log* is delivered to the SIU investigator.
7. Ensure an appropriate sized perimeter is established, if needed.
8. Assess the need for additional resources and notify the Watch Lieutenant and appropriate lieutenant.
9. Identify the number of subjects involved and coordinate the apprehension of subject(s)who are unaccounted for.
10. Assign employees who were not involved with the force incident to conduct a reasonable canvass in an effort to identify witnesses in the proximity of the incident. Witness information should be provided to on scene investigators as soon as practicable and shall be documented in the employee's supplement.

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11. Assign employees who were not involved with the force incident to identify any possible sources of video of the scene, such as security cameras, and determine if they contain any pertinent video. Any information regarding sources of pertinent video should be provided to on-scene investigators as soon as practicable and shall be documented in the employee's supplement.
12. Coordinate the preliminary inquiry with the SIU and IA investigators to include, but not limited to:
    (a) Identifying employees either involved in or witness to the incident.
    (b) Designating the primary reporting officer for the response to resistance incident report.
    (c) Ensuring the preservation of evidence.
    (d) Assisting investigators to ensure statements are taken.

(c) Once the scene has been cleared, supervisors shall be responsible for the following:
1. Completing a supplement to the response to resistance incident report detailing their actions. SIU may direct a supervisor to complete a supplement to the SIU inquiry report as well.
2. Identifying Department or individual equipment, training, and tactical issues, if applicable.
3. Making recommendations for corrective action when appropriate.

211.6.2 SPECIAL INVESTIGATIONS UNIT (SIU) RESPONSIBILITIES IN LEVEL 1 AND IN-CUSTODY DEATH INCIDENTS

The ranking SIU supervisor on-scene of a Level 1 incident shall assume command of the scene. SIU shall conduct a response to resistance inquiry and forward the incident review packet to the involved employee's chain-of-command within forty-five (45) calendar days, unless extended by an assistant chief. A referral to IA may be initiated if SIU or the chain-of-command discovers credible evidence of a General Orders violation during their review of a Level 1 force incident. All in-custody death incidents will have a concurrent investigation with IA. SIU is responsible for changing the 8400 title code to 8401 to indicate a Level 1 force incident.

211.6.3 LIEUTENANT RESPONSIBILITIES IN LEVEL 1 AND IN-CUSTODY DEATH INCIDENTS

On-duty lieutenants responsible for the area in which the response to resistance incident has occurred will respond to the scene to assume scene management and ensure the assigned supervisor coordinates and assists with a thorough and proper preliminary inquiry. When appropriate, lieutenants may place the involved employees on restricted duty with the approval of the employee's commander or the Duty Commander.

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211.6.4 INTERNAL AFFAIRS RESPONSIBILITIES IN LEVEL 1

(a) If an Administrative Investigation is initiated due to alleged misconduct by an APD employee, at any stage of the inquiry or review process, the process established by General Order 902 (Administrative Investigations) will be followed.

(b) Upon final disposition of the Administrative Investigation, IA will notify the involved employee's commander.

(c) For in custody deaths and officer involved shootings, IA will forward the electronic link to the Force Review Board.

211.7 LEVEL 2 INCIDENT INQUIRY, REPORTING, AND REVIEW REQUIREMENTS

The following sections explain the responsibilities in Level 2 force incidents for:

(a) Supervisors, and

(b) Chain-of-Command.

211.7.1 SUPERVISOR RESPONSIBILITIES IN LEVEL 2 FORCE INCIDENTS

Level 2 force incident inquiries are conducted by the designated inquiry supervisor. A supervisor shall respond to the scene of all Level 2 force incidents unless a hostile crowd or other conditions make such a response impracticable. In such incidents, an alternate safe location shall be designated by the supervisor.

(a) Supervisors should secure and manage the scene upon arrival and:

1. Ensure involved personnel, subjects, and witnesses are identified, separated, and advised that communication regarding the incident with other people is prohibited.
2. Verbally review the general circumstances of the incident individually with the involved personnel, subjects, and witnesses. All employee statements shall be captured using the BWC recording system. When the BWC system is unavailable, the DMAV system shall be used.
3. Ensure the reporting level is consistent with the facts and assess whether injuries, if present, are consistent with the force applied.
4. Ensure a perimeter is established if needed.
5. Locate injured subjects and ensure medical services have been requested as needed.
6. Assess the need for additional resources and make appropriate notifications.
7. Identify the number of subjects involved. Coordinate the apprehension of subject(s)outstanding.
8. Personally interview witnesses and the subjects upon whom the force was used, or alleged to have been used, and obtain a statement. The statement should be captured using a BWC or MAV recording system. If a statement is not obtained by video or audio, the supervisor shall thoroughly document the information in an email to FRU and explain the circumstances that prevented the recording.

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9. Assign employees who were not involved with the force incident to conduct a reasonable canvass in an effort to identify witnesses in the proximity of the incident. Witness information should be provided to the on-scene supervisor as soon as practicable and shall be documented in the employee's supplement.
10. Assign employees who were not involved with the force incident to identify any possible sources of video of the scene, such as security cameras, and determine if they contain any pertinent video. Any sources of pertinent video should be provided to on scene supervisor as soon as practicable and shall be documented in the employee's supplement.
11. Ensure digital images or photographs are taken of:
    (a) The physical condition of the subject and involved personnel to record the presence or lack of injuries.
    (b) The scene where the response to resistance incident occurred.
    (c) Other relevant evidence.
12. If a kinetic energy projectile is used in the force incident, all spent projectiles shall be submitted to evidence for retention.
13. Supervisors shall ensure all MAV media is properly classified if it contains any information or statements related to the incident.

(b) Once the scene has been cleared, supervisors shall be responsible for the following:
1. Using the FRU template, send an email notification to the FRU prior to the end of their tour of duty.
2. Send email notifications with the incident report number prior to the end of the tour of duty to the:
    (a) Involved employee's chain-of-command up to the commander.
    (b) Reviewing supervisor's chain-of-command up to the commander, if not already included.
    (c) Commander of the area where the incident took place, if not already included.

211.8 LEVEL 3 INCIDENT INQUIRY, REPORTING, AND REVIEW REQUIREMENTS

Level 3 force incidents require the involved employees to document the incident in a report and notify their supervisors. Supervisors shall conduct a review of Level 3 force incidents as outlined below but may upgrade any Level 3 force incident to a Level 2 force incident in order to conduct a more extensive review. Any Level 3 that is upgraded to a Level 2 shall be investigated and documented in the same manner as a Level 2.

(a) Supervisors shall respond to the scene of any Level 3 incident involving:
1. Use of OC spray or other chemical agent on a subject.
2. Any Taser application. See the "Report of Use" section of General Order 208 (TASER® Guidelines) for specific information to be included in the report.

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3. Use of an impact weapon.
4. Any incident resulting in injury or continued complaint of pain.
5. Any deployment of a police canine for the purpose of biting a subject whose location is known to the handler which results in no injury to the subject.

(b) If a hostile crowd or other conditions make such a response impracticable, an alternate safe location shall be designated by the supervisor.

(c) When required to respond, supervisors shall review the general circumstances of the incident with the involved personnel, subjects, and witnesses. If the interview is conducted by phone, the officer and supervisor will activate the speakerphone. All employee statements shall be captured using a BWC recording system. When the BWC system is unavailable, the DMAV system shall be used.

(d) Ensure the reporting level is correct based on all of the facts gathered during the response to resistance inquiry.

(e) If a TASER Device is used in the force incident, the data report shall be downloaded and a copy scanned into the image section of the Versadex incident report or submitted into evidence with the spent cartridge for retention. If a TASER 7 or newer model is used, upload the TASER log into Evidence.com. Attaching the TASER log to Versadex is not required for the TASER 7 or newer model.

(f) Once the scene has been cleared, supervisors shall be responsible for using the FRU template, send an email notification to the FRU prior to the end of their tour of duty.

211.9 LEVEL 4 INCIDENT INQUIRY, REPORTING, AND REVIEW REQUIREMENTS

Level 4 force incidents require the involved employees to document the incident in a report and notify their supervisors. Supervisors shall conduct a review of Level 4 force incidents as outlined below, but may upgrade any Level 4 force incident to a Level 3 or Level 2 force incident in order to conduct a more extensive review.

(a) Supervisors shall be briefed by the primary reporting officer to determine whether or not the Level 4 force incident should be upgraded. If the determination is made to upgrade the incident then it will be investigated in accordance with the appropriate level as determined by this General Order.

(b) Supervisors shall review the primary reporting employees' response to resistance incident report:

1. Supervisors shall review the general circumstances of the incident with the involved personnel and ensure the reporting level is correct based on all of the facts gathered during the response to resistance inquiry.

(c) Once the scene has been cleared, supervisors shall be responsible for using the FRU template to send an email notification to the FRU prior to the end of their tour of duty.

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211.10 INCIDENTS DURING SECONDARY LAW ENFORCEMENT RELATED EMPLOYMENT (LERE)

Officers involved in a force incident while working secondary law enforcement related employment (LERE) shall be required to comply with this order. Supervisors in the area where the force incident occurred shall conduct the inquiry. However, for Level 3 and Level 4 force incidents, should the LERE assignment employ two or more officers and one of the officers is a supervisor not involved in the force incident, the LERE supervisor may conduct the inquiry.

211.11 INCIDENTS OCCURRING OUTSIDE THE CITY OF AUSTIN

Employees involved in a Level 1, Level 2, Level 3, or Level 4 force incident while taking police action outside of the City of Austin shall notify the proper law enforcement authority having jurisdiction, contact their supervisor, and follow the reporting procedures outlined in this order.

211.12 FRU RESPONSIBILITIES IN LEVEL 2, 3, AND 4 INCIDENTS

(a) Once the FRU has received an R2R email notification, the FRU Lieutenant will assign an FRU Sergeant to investigate the response to resistance.

(b) The assigned FRU Sergeant will be responsible for the following:

1. The FRU Sergeant shall review the primary reporting employee's response to resistance incident report and change the 8400 title code to the appropriate 8402, 8403, or 8404 title code.
2. Complete an Incident Review Packet (IRP) in AXON Standards, filling in all applicable fields to include:
   (a) All pertinent information relating to the resistance and the officer(s) response to resistance.
   (b) The findings of the investigation, including whether the response to resistance complies with law and policy.
   (c) Any training issues, tactical concerns, equipment issues, or policy violations on the part of the involved officers(s), if applicable.
3. Add and attach all supporting documentation in the AXON Standards IRP. Supporting documentation includes but is not limited to:
   (a) Copies of private surveillance video, cell phone video, etc.
4. FRU Sergeants shall conduct a thorough review of all documents including the response to resistance incident report and any supplements to ensure completeness, accuracy, and quality.

(c) Once the FRU Sergeant has completed a level 3 or 4 review, they will mark the AXON Standards IRP as complete.

(d) Once the FRU Sergeant has completed a level 2 review, they will route the AXON Standards IRP to the FRU Lieutenant.

(e) The FRU Lieutenant will review the incident for the following:

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1. Review whether or not the response to resistance was within law and policy.
2. Review whether or not training issues or policy violations occurred.
3. Review the investigation completed by the assigned FRU Sergeant.

(f) If any training issues or potential policy violations are identified, the assigned FRU Sergeant will notify the FRU Lieutenant and route the AXON Standards IRP to the chain-of-command under which the involved employee is currently assigned, within eight (8) working days from the time the FRU was notified of the incident.

(g) The assigned FRU Lieutenant will immediately notify the FRU Commander of any potential major policy violations or criminal violations.

1. The FRU Commander will notify the subject officer's Commander of any potential major policy violations or criminal violations.
2. The Chain of Command Commander will notify SIU and IA of any potential or criminal violations.
3. The Chain of Command Commander will notify IA of any potential policy violations.
   (a) The date and time of the notifications will be documented in the AXON Standards IRP.
4. The Chief of Police will be notified of any potential criminal violations.

(h) FRU Sergeants will complete their assigned reviews in eight (8) working days, unless granted an extension by the FRU Lieutenant.

1. Requests for extensions must be based upon delays in the review process, including, but not limited to: delays in gathering evidence, staffing or scheduling issues by anyone in the review process, or other unforeseen emergency situations that may interfere with the completion of the review.
2. The reason and new deadline for extensions will be documented in the AXON Standards IRP.

(i) The FRU Lieutenant will complete their assigned reviews in eight (8) working days, unless granted an extension by the FRU Commander.

1. Requests for extensions must be based upon delays in the review process, including, but not limited to: delays in gathering evidence, staffing or scheduling issues by anyone in the review process, or other unforeseen emergency situations that may interfere with the completion of the review.
2. The reason and new deadline for extensions will be documented in the AXON Standards IRP.

211.13 CHAIN-OF-COMMAND RESPONSIBILITIES IN LEVEL 2, 3, AND 4 INCIDENTS

(a) If the FRU has routed any identified training issues or potential policy violations to an officer's chain of command, the chain of command will review the identified training

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issues or potential policy violations and take the appropriate actions according to policy.

1. All actions will be documented, within eight (8) working days in the AXON Standards IRP, to include:
   (a) Any corrective actions taken.
   (b) Any training administered.

(b) If the Chain of Command Commander disagrees with the FRU Commander on identified policy issues, the Chain of Command Commander will notify the affected Assistant Chief for final disposition of the identified issue.

211.13.1 SPECIAL CIRCUMSTANCES

Any deviation from the above reporting requirements must be approved by an assistant chief and only for special circumstances (e.g., mass arrest situations, emergency crowd control). The event must still be reviewed by the FRU and the review process must be approved by the FRU Commander.

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Attachment 4

Discipline Matrix

903.1 PURPOSE AND SCOPE

The Discipline Matrix is designed as a guide to be used in conjunction with General Order 902 (Administrative Investigations). This matrix is not an all-encompassing document, but should provide some guidance for the vast majority of investigations involving discipline. As a general rule, those violations below that are listed as IS (Indefinite Suspension), Fact Specific, or those that may include discipline greater than a 15-day suspension will be investigated by Internal Affairs.

Violation	General Order Reference	1st Occurrence	2nd Occurrence	3rd Occurrence
Insubordination	110-Organizational Structure and Responsibility 110.4.4	4-15 Days	Indefinite Suspension	
Objectively unreasonable use of deadly force	Chapter 2-Response to Resistance	Indefinite Suspension		
Objectively unreasonable use of force	Chapter 2-Response to Resistance	Fact Specific		
Preventable discharge involving serious bodily injury or death	Chapter 2-Response to Resistance	Fact Specific		
Unintentional discharge involving serious bodily injury or death	Chapter 2-Response to Resistance	Fact Specific		
Violations of pursuit general order	214-Vehicle Pursuit, 400-Officer Response to Calls, 804-Department Vehicles	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Pursuit general order, Aggravated	214-Vehicle Pursuit, 400-Officer Response to Calls, 804-Department Vehicles	1-15 Days	4-15 Days	4-15 Days to IS
Operation of police vehicle (non-collision)	214-Vehicle Pursuit, 400-Officer Response to Calls, 804-Department Vehicles	Oral Reprimand to 1-3 Days	Increased one level	Increased one level

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Discipline Matrix

Violation	General Order Reference	1st Occurrence	2nd Occurrence	3rd Occurrence
At-fault/negligent collision (not involving bodily injury or death)	214-Vehicle Pursuit, 400-Officer Response to Calls, 804-Department Vehicles	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
At-fault/negligent collision causing bodily injury or death	214-Vehicle Pursuit, 400-Officer Response to Calls, 804-Department Vehicles	Fact Specific		
Negligent/Reckless conduct resulting in SBI or death	Inclusive, but not limited to: Chapter 2 - Response to Resistance and Pursuit General Orders	Indefinite Suspension		
Violation of tactics, other than above "A".	Inclusive, but not limited to: Chapter 2 - Response to Resistance and Pursuit General Orders	Fact Specific		
Impartial Attitude and Courtesy	301- Responsibility to Community 301.2	Fact Specific		
Electronic Recording (DMAV, BWC) violation	303 & 304-Mobile Audio Video Recording Operation	Conduct Counseling Memorandum	Oral Reprimand	Written Reprimand to 1-3 Days
Intentional Electronic Recording (DMAV, MAV) violation	303 & 304-Mobile Audio Video Recording Operation	4-15 Days	Indefinite Suspension	
Intentional Electronic Recording (DMAV, MAV) violation at a criminal incident	303 & 304-Mobile Audio Video Recording Operation	Indefinite Suspension		
Inappropriate electronic messages *	305-Radio and Mobile Data Computer Use 305.2	Written Reprimand	1-3 Days	4-15 Days

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Discipline Matrix

Violation	General Order Reference	1st Occurrence	2nd Occurrence	3rd Occurrence
Biased based profiling/Racial Profiling	328-Racial or Biased Based Profiling	Fact Specific		
Failure to properly investigate	401-Preliminary Field Investigations, 403-Follow-Up Investigations	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Improper handling of evidence (not related to criminal conduct)	701-Property and Evidence	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Improper destruction of evidence	701-Property and Evidence 701.2	Written Reprimand to 4-15 Days	Increased one level	Increased one level
Violations of duty weapons general order	803-Duty Weapons	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Criminal violation while on duty or related to job duties	900-General Conduct and Responsibilities	Indefinite Suspension		
Driving While Intoxicated	900-General Conduct and Responsibilities	Indefinite Suspension		
Other criminal violations	900-General Conduct and Responsibilities	Fact Specific		
Dereliction of Duty	900-General Conduct and Responsibilities	4-15 days to Demotion	Demotion to Indefinite Suspension	
Required reporting of violations	900-General Conduct and Responsibilities 900.2	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Requirements of duty	900-General Conduct and Responsibilities 900.4	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Time and attention to duty	900-General Conduct and Responsibilities 900.4	Oral Reprimand to 1-3 Days	Increased one level	Increased one level

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Discipline Matrix

Violation	General Order Reference	1st Occurrence	2nd Occurrence	3rd Occurrence
Duty to Identify	900-General Conduct and Responsibilities 900.4.4	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Unprofessional or abusive behavior to coworkers	900-General Conduct and Responsibilities 900.5	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Confidentiality	900-General Conduct and Responsibilities 900.3.5	4-15 Days	Indefinite Suspension	
Dishonesty (false official statements)	900-General Conduct and Responsibilities 900.3.1	Indefinite Suspension		
Association with those of ill repute	900-General Conduct and Responsibilities 900.3.3	Fact Specific		
Personal Conduct	900 - General Conduct and Responsibilities 900.3.4	Fact Specific		
Duty to take action	900-General Conduct and Responsibilities 900.4.1	Fact Specific		
Neglect of duty	900-General Conduct and Responsibilities 900.4.3	Fact Specific		
Neglect of Duty (misleading statements)	900-General Conduct and Responsibilities 902.4.3	Fact Specific		
Refusing to cooperate with Internal Affairs	902-Administrative Investigations 902.6	Indefinite Suspension		

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Discipline Matrix

Violation	General Order Reference	1st Occurrence	2nd Occurrence	3rd Occurrence
Failure to properly investigate a complaint and/or forward an external complaint contact form to Internal Affairs	902.2.5-Administrative Investigations	15 days up to Indefinite Suspension	Indefinite Suspension	
Quid pro quo sexual harassment	914-Discrimination and Harassment 914.3.2	Indefinite Suspension		
Failure of Random drug test or test resulting from reasonable suspicion	916-Drug and Alcohol Free Workplace 916.2.3	Indefinite Suspension		
Missed court appearance	935-Court Appearances	Oral Counseling (documented in Field Notes)	Conduct Counseling Memorandum	Written Reprimand to 1-3 Days
Secondary employment violations	949-Secondary Employment 949	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Abuse of sick leave	955-Attendance and Leave General Order 955.7	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Improper use of city resources involving personal gain	900 - Employee Speech, Expression, and Social Networking 972.4	4-15 Days	Indefinite Suspension	
Improper use of city resources not involving personal gain	1000 - Department Technology Use 1000.3.1	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Internet/Computer violations	1000 & 1002-Department Technology Use	Written Reprimand to 1-3 Days	Increased one level	Increased one level

* If inappropriate electronic messages bring discredit to the Department, increase one level.

** If during the review of the Electronic Recording (DMAV, BWC) violation, the Chain of Command finds mitigating or aggravating circumstances, those circumstances will be taken factored into the final discipline.

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Attachment 5

Hostage, Barricaded, and Suicidal Subject Incidents

412.1 PURPOSE AND SCOPE

Hostage situations and barricaded suspects present unique problems for law enforcement. The protection of the public and law enforcement personnel is of the utmost importance. Proper planning and training will tend to reduce the risks involved with these incidents. The Critical Incident Negotiation Team's (CINT) sole purpose is to facilitate the professional resolution of hostage and/or barricaded subject incidents.

For purposes of this document, "professional resolution" means utilizing nationally recognized law enforcement negotiation techniques which focus on saving human life during critical times involving emotionally disturbed persons and/or criminal subjects. Professional resolution further means recognizing the importance of safety and inter-unit communication and cooperation with regard to the overall success of critical incident resolution.

412.1.1 DEFINITIONS

Barricaded Subject - A person who takes a position of cover or concealment or maintains a position in a structure and who resists capture by law enforcement personnel. A barricaded subject may be armed, suspected of being armed, threatening violence and/or have demonstrated the potential to commit violence against others or themselves.

Hostage - A person held by one party in a conflict as security, so that specified terms will be met by the opposing party.

Hostage Negotiator - An officer who has been selected, trained and certified by the CINT Coordinator.

"Jumper" Situations - An unarmed suicidal subject who is threatening to jump from an elevated position which is capable of causing death.

Unarmed Suicidal Subject - An unarmed suicidal subject who presents no immediately apparent danger to officers or the public.

412.2 CRITICAL INCIDENT NEGOTIATION TEAM RESPONSE

The primary function of the Austin Police Department Critical Incident Negotiation Team is to assist other members of the Austin Police Department and/or other law enforcement agencies who require assistance with the professional resolution of hostage/barricaded subject situations, and unarmed suicidal subjects.

The CINT is a direct support unit to the SWAT Team and together comprise a component of Special Operations. As such, the CINT is on the SWAT call-up trigger page. All requests for hostage negotiators or the CINT are made through the Communications supervisor.

(a) **Hostage and Barricaded Subjects**

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Attachment 6

Hostage, Barricaded, and Suicidal Subject Incidents

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(a) **Hostage and Barricaded Subjects**

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1. SWAT and CINT shall always respond to hostage/barricaded subject incidents.

(b) **"Jumper" Situations**

1. Hostage negotiators may be called to the scene of "jumper" situations. When requested, generally two (2) hostage negotiators will respond.

(c) **All Other Unarmed Suicidal Subjects Situations**

1. SWAT and CINT will not normally respond to any other type of unarmed suicidal subject. In unarmed suicidal subject situations other than a "jumper," officers may request a response from crisis intervention officers or the Crisis Intervention Team (CIT).

412.3 FIRST RESPONDER ASSESSMENT

Nothing in this order precludes an officer from making a call inside a structure to determine what is going on, or to request that a subject come outside to speak with officers.

The ranking officer may request the assistance of an on-duty hostage negotiator to aid in the initial assessment, phone call or verbal contact.

As soon as it becomes apparent that a hostage/barricaded subject incident or "jumper" situation is in progress, officers shall adhere to the notification process outlined in this order.

412.3.1 NOTIFICATION PROCESS AND RESPONSIBILITIES

(a) If the assessment determines a hostage/barricade situation exists, the first responder shall immediately request a supervisor to respond and notify Communications to request a SWAT/CINT response.

(b) If the assessment determines that a "jumper" situation exists, the ranking officer should notify Communications to request a CINT-only response.

(c) The ranking officer on the scene of an actual or potential hostage/barricade situation shall consider the following:

1. Avoid confrontation in favor of controlling and containing the situation until the arrival of trained personnel and/or trained hostage negotiation personnel.
2. Evacuation of bystanders and injured persons.
3. Provide responding officers with a safe arrival route to the location.
4. Follow Department guidelines for perimeter control, containment, and communications.

(d) The ranking officer is responsible for ensuring that personnel on scene with pertinent information are available to relay it to SWAT/CINT as soon as possible.

(e) The responsibility for the disposition of a subject who has been taken into custody for a criminal offense or mental health evaluation lies with the uniformed first responders.

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Attachment 7

Radio and Mobile Data Computer Use

305.1 PURPOSE AND SCOPE

Digital radio and data communications are extremely vital elements of effective law enforcement. These communications will be conducted in a professional, concise, and effective manner.

Employees are reminded that all digital radio and data transmissions are recorded and subject to public information requests.

305.2 MOBILE DATA COMPUTER USE GUIDELINES

(a) The mobile data computer (MDC) shall be used for official police communications only.

(b) There is no expectation of privacy concerning sending or receiving messages via the MDC system. Messages may be reviewed by supervisors at any time without prior notification.

(c) The MDC will remain docked and the docking switch will be in the locked position when the vehicle is in motion or if the MDC is left unattended unless otherwise approved by a supervisor.

(d) Employees will not intentionally disrupt the GPS signal.

(e) Employees driving vehicles equipped with an MDC shall:

1. Accept all updates to the MDC prior to logging on and while at a hot-spot; however, employees reporting to duty from a location that is not a hot-spot shall ensure the updates are downloaded as soon as practicable.
2. Log on at the start of a shift with complete and accurate information.
3. Log off at the end of the shift.

(f) Employees granted access to the Watch List should limit the number of additional sectors they are watching to two (2) unless needed for an official reason (e.g., monitoring a significant event that could impact all sectors).

(g) When an MDC is utilized in an area where the public might be able to view the screen, the user will take reasonable measures to ensure any information is not viewable by unauthorized persons (e.g., lower the screen, lock the computer).

(h) Unless Officers are utilizing dual factor authentication, Mobile Data Computers may only be removed from the vehicle for remote operation if they are used in a secure facility (substation, arrest review, etc).

305.2.1 MDC USE WHILE DRIVING

Use of the MDC by the operator should be limited to times when the vehicle is stopped. When the vehicle is in motion, the operator should only attempt to read messages that are likely to contain information that is required for immediate enforcement, investigative, or safety needs.

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Short transmissions, such as a license plate check, are permitted if it reasonably appears they can be done safely.

305.3 RADIO USE GUIDELINES

305.3.1 COMPLIANCE

(a) Employees shall comply with FCC regulations relating to the use of radio communications systems, as well as the established guidelines outlined below:

1. Communications involving the protection of life and property shall be afforded priority.
2. False calls, false or fraudulent distress signals, unnecessary and unidentified Communications and the transmission of unassigned call signals are specifically prohibited.
3. Employees shall monitor the talk-group on which they intend to transmit for a sufficient period to ensure their transmissions will not interfere with others.
4. Duration of radio transmissions must be restricted to the minimum practical transmission time.

(b) Employees shall comply with the Greater Austin/Travis County, Texas, Regional Radio System (GATRRS), Interoperability Plan when necessary, to communicate on interoperability channels that are part of the GATRRS and is related to the use of radio interoperability.

305.3.2 RADIO TRANSMISSION PROTOCOL

(a) Only English shall be spoken.

(b) Employees calling or responding to dispatch shall identify themselves by their assigned unit number. They should not continue the transmission until acknowledged by the dispatcher.

(c) The employee's primary talk-group dispatcher shall be notified before an employee changes to another talk-group (e.g., a Central West officer switching to the North West talk-group).

(d) Employees working a patrol assignment, intending to conduct a follow-up investigation or any other non-exigent police action, in another Sector, shall notify the secondary dispatch via radio of their intended destination and needed resources (if any).

(e) Employees shall not call for another employee by name unless their radio or unit number is unknown (e.g., "Baker 101 to Sgt. Doe").

(f) Long transmissions should only be done over a secondary talk-group, as an MDC message, or via a cell phone if available.

(g) Employees shall refrain from seeking advice from a dispatcher regarding a point of law, enforcement action, or Department General Orders. Employees should consult their immediate supervisor on these matters or obtain the information from their laptop computers.

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(h) Under normal circumstances, employees will not turn off or lower their in-car police radios to a volume that cannot be captured by the vehicle's DMAV equipment regardless if the employee is wearing an ear-bud listening device on their portable radio. An exception would be under circumstances when it is deemed necessary to safeguard transmissions from a prisoner seated in the patrol car during and incident.

305.3.3 REQUESTING RECORDED TRANSMISSIONS

Employees with a legitimate need to hear or copy a radio or telephone recording may do so by making a request to the Communication supervisor on duty.

305.4 ADDITIONAL GUIDELINES

305.4.1 DOCUMENTATION OF ACTIVITY

Radio and MDC transmissions are used to record an employee's daily activity. To ensure the most accurate recording of these activities, the following are required:

(a) All contacts or activity shall be documented at the time of the contact.

(b) Whenever the activity or contact is initiated by voice, it shall be entered into the Computer Aided Dispatch (CAD) system by a dispatcher.

(c) Whenever the activity or contact is not initiated by voice, the employee shall record it on the MDC.

305.4.2 STATUS CHANGES

(a) Employees shall make changes in status (e.g., arrival at scene, meal periods, in-service) through the MDC system when safe and practicable.

1. If MDC use is not safe or practical, employees shall advise the dispatcher of status changes using proper radio codes.

2. Employees responding to in-progress calls shall advise changes in status over the radio to assist other employees responding to the same incident.

(b) An employee's status shall be made Code 4 when it is determined that no other units are needed. Any additional units still responding to the incident shall change their status to available.

305.4.3 HIGH PRIORITY INCIDENTS

Transmissions regarding emergencies (e.g., high-speed pursuits, serious crimes in progress) shall be given priority over all other transmissions. Units not involved in the emergency shall stay off the air until the situation has been resolved.

Units coming in-service during an emergency shall change their status on the MDC. If unable to do so, the unit will switch to an adjoining sector talk-group, advise that dispatcher they are in-service and then switch back to their primary talk-group.

305.4.4 EMERGENCY BUTTON ACTIVATION

If the emergency button is depressed on the MDC or Radio, the dispatcher will call the unit and ask if the unit is Code 4.

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(a) If there is no emergency the employee should respond "Code 4" and all units shall resume their normal activity.

(b) If there is no response or the employee answers in some other way, the dispatcher shall send available units to assist in locating the unit that is transmitting the emergency. Available units may self-assign the call via the MDC and respond as appropriate.

1. Units shall refrain from transmitting on the radio until there is a Code 4, unless they are themselves handling an emergency.

2. When the situation is considered Code 4, all units not on-scene shall go back in service.

305.4.5 BOMB THREATS

Bombs and other explosive devices can be detonated by radio waves (e.g., mobile phones, radio, MDC) transmitted in close proximity to the device.

(a) When responding to bomb threats, employees should be conscious of the location of any suspected devices (e.g., parking lot, inside a building, open field) and park their patrol unit accordingly.

(b) When investigating reports of a bomb threat, employees shall follow General Order 414 (Bomb Threat and Explosive Device Response).

305.4.6 CLOSING THE CHANNEL

Closing a radio channel ("holding the air") is done for the safety of officers involved in a call or event that requires the radio remain silent. Events that require a channel be closed will follow these guidelines:

(a) Any supervisor (including a dispatch supervisor) may close a channel to ensure officer safety. If the dispatcher does not apply the channel marker, units involved in the event may request that it be applied.

(b) The dispatcher will broadcast the channel is closed and should enable the channel marker on that channel so that a low audible "beep" will occur every 8-10 seconds. The "beep" is a clear indication that the channel is closed to all non-emergency radio traffic.

(c) When safe and practical, the dispatcher will then broadcast the channel is open and will remove the channel marker.

305.5 RESPONSIBILITY OF SUPERVISORS

Supervisors shall:

(a) Be responsible for entering complete and accurate roster information into the current electronic system, including capability codes for all qualified personnel.

(b) Use the MDC to monitor incidents and the activity of employees when practicable.

(c) Carefully monitor and supervise the use of the radio to assist employees as needed. Supervisors may monitor additional talk-groups; however, supervisors shall remain available to their primary talk-group. Supervisors are responsible for the radio conduct of their subordinates and should immediately correct improper radio procedures.

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(d) Self-assign calls when practical and other units are not available.

(e) Respond to any scene when requested to the location by a subordinate.

(f) Inform and update the Watch Lieutenant of any significant call or critical issue.

305.6 MOBILE DATA INSPECTION

APD Risk Management will select random CAD audit dates and notify lieutenants and sergeants/ civilian supervisors via Departmental email quarterly. Any supervisor of sworn or non-sworn employees (to include Communications, Victim Services, and Crime Scene units) who use CAD messaging shall audit their employees' messages and submit an electronic report using APD Approved Form PD0128A to their next level manager for review within 10 days from the date of the notification from Risk Management. If a sergeant is unavailable during the entire 10 day time frame, the audit shall be conducted by the corporal of that shift or a sergeant from another shift.

(a) If an employee did not work on the dates to be audited, they will be audited on the next available working day. The date will be noted on the report.

(b) If the employee is on extended leave (FMLA, Light Duty, etc.) the reason of absence will be documented on the report.

The report shall be retained by the sergeant/civilian supervisor for at least 3 years in an APD group drive.

If an inappropriate CAD message is found that involves dialogue with an employee from another shift/unit, the sergeant/civilian supervisor conducting the CAD audit shall notify the other employee's sergeant/civilian supervisor via Departmental email for follow-up.

If a subordinate's message results in counseling a copy of the message and memo will be placed in the supervisor's file for the employee. If no further counseling is needed in the three years following the counseling, the CAD messages may be discarded.

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Attachment 8

2. Supervisors will immediately take action as outlined in General Order 902 (Administrative Investigations) when a violation of a directive comes to their attention, regardless of the supervisor's or violator's assignment or rank within the Department.

900.2.1 CONFIDENTIALITY

All information relating to an employee's suspected criminal act or general order violation is confidential.

(a) Except as required in reporting the incident:

1. Employees will not disclose or discuss such information with anyone except investigators assigned to the case, the employee's attorney, employee's chain-of-command or other persons specifically designated by the Chief.

2. Investigators of such cases will not disclose or discuss information about any such investigation with anyone except other investigators assigned to assist with the investigation, the investigator's chain-of-command, officers of the court, or other persons specifically designated by the Chief.

900.2.2 RETALIATION PROHIBITED

Employees will not, in any way, cause or conspire to cause retaliatory action against any individual who has been involved in any such investigation or subsequent proceeding as a defendant, complainant, witness, victim, investigator, or any other capacity. While the Department wishes to avoid reassigning an employee while a complaint or grievance is being investigated, this order does not prohibit the Department from doing so, including the complainant/victim, while the complaint or grievance is under investigation should an assistant chief determine that a reassignment is in the best interest of the Department and/or the employee.

900.3 GENERAL CONDUCT

This section contains the expectations and requirements of employee conduct, both on-duty and off-duty, and causes for disciplinary action due to employee misconduct. This is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for specific action or inaction that is detrimental to efficient Department service.

900.3.1 HONESTY

Honesty is of the utmost importance in the police profession. Employees are expected to be truthful at all times in the performance of their duties.

(a) Employees will speak the truth at all times and reflect the truth in all reports and written communications. Any statement or omission of pertinent or material information which intentionally misrepresents facts or misleads others through an official statement will be considered a false official statement. The following are examples of an "official statement":

1. Documents prepared by an officer in connection with their official duties, including but not limited to incident reports or supplements, sworn affidavits, and citations.

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2. Verbal or written statements made by an officer in connection with their official duties to:

   (a) An investigator conducting an administrative or criminal investigation of the officer or another person's conduct.

   (b) A supervisor conducting an inquiry into the officer's use of force.

   (c) A fact finder in an administrative, civil, or criminal proceeding in which the officer testifies.

(b) Employees who obtain their employment by willful misrepresentation or false statements may be dismissed from the Department.

(c) Employees will not attempt to conceal, divert, or mitigate their true culpability in a situation, nor will they engage in efforts to thwart, influence, or interfere with an internal or criminal investigation.

(d) Employees will not use any improper or dishonest means to affect the outcome of any official test, process, or procedure.

(e) Employees will not falsely report themselves ill or injured, or otherwise deceive or attempt to deceive the Department as to the condition of their health.

900.3.2 ACTS BRINGING DISCREDIT UPON THE DEPARTMENT

Since the conduct of personnel both on-duty or off-duty may reflect directly upon the Department, employees must conduct themselves at all times in a manner which does not bring reproach, discredit, or embarrassment to the Department or to the City.

(a) Employees will not commit any act which tends to destroy public confidence in, and respect for, the Department or which is prejudicial to the good order, efficiency, or discipline of the Department.

(b) Employees will refrain from being a party to any malicious gossip, rumor, report or activity, whether written or oral, that would tend to bring discredit to the Department or any member thereof.

1. "Malicious gossip, rumor, report or activity" includes statements made with knowledge of their falsity or made without regard to whether the statements are true or false.

(c) Employees will not engage in any activity in which there is a potential for conflict of interest or the appearance of a conflict of interest with the lawful duties of the employee.

1. "Conflict of interest" includes any activity which would tend to influence a decision, create a bias or prejudice, or create a gain or loss for any person or agency which would favor one side or the other in conflict with the employee's official duties, or which conflicts with the accomplishment of the Department's mission or goals.

(d) Employees will not congregate or loiter in any place or in any manner as to bring discredit to the Department.

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Exhibit 6

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON AND BENNY HUTCHINSON, ON BEHALF OF THEMSELVES AND THE ESTATE OF ISAIAH HUTCHINSON *Plaintiffs*	§	**CIVIL ACTION NO. 1:21-CV-00221-LY**
v.	§	
THE CITY OF AUSTIN AND DEANDRE WRIGHT AND DANE O'NEILL AND ZACHARY WOODS AND THOMAS BERNARD NELSON, III, *Defendants*	§	

DECLARATION OF WADE LYONS

STATE OF TEXAS
COUNTY OF Travis

I, Wade Lyons, pursuant to 28 U.S.C. 1746, do hereby declare based on my own personal knowledge as follows:

1. "My name is Wade Lyons, I am over the age of eighteen years, and I am authorized to make this affidavit in support of Defendant City of Austin's Motion for Summary Judgment. I have never been convicted of a crime and am competent to make this affidavit. I am personally acquainted with the facts herein stated which are true.

2. I am currently employed as a Commander of the Recruiting and Training Division of the City of Austin Police Department (APD). Prior to becoming a Commander, I held numerous patrol, investigative, supervisory, and management positions with APD.

3. As a Commander of the Recruiting and Training Division of the City of Austin Police Department, I have personal knowledge of APD hiring and training standards. Once an

individual is hired by APD, he or she becomes a cadet in APD's training academy. Every APD cadet must successfully complete a 32-week training course at the APD training academy before becoming an APD officer. At the academy, all APD officers receive over 800 Texas Commission on Officer Standards and Education (TCOLE) approved hours of training. (TCOLE is the Texas state agency responsible for certifying and licensing law enforcement officers in Texas). APD's training requirements far exceed the minimum 720 TCOLE hours required by the State of Texas for TCOLE certification. All APD cadets must be certified by TCOLE before they become APD officers. All APD officers must maintain their TCOLE certification to remain APD officers.

1. All APD cadets receive comprehensive training at the academy on topics including, but not limited to: Arrest, Search, and Seizure; Penal Code; Use of Force; Firearms Training; Defensive Tactics; use of the APD Motor-Vehicle Recorder; and Mental Health and Crisis Intervention Training. This training includes numerous practical skills tests, including exercises where cadets are trained on how to make the decision whether to use force, and choose the appropriate level of force, in simulated situations.

2. In particular, for at least the last several years, APD has required all cadets to undergo at least 190 hours of TCOLE approved training related to use of force and arrest techniques. This vastly exceeds the 24 hours required by TCOLE. In general, APD trains its officers and cadets using the "Dynamic Response to Resistance Model." This model and philosophy supports progressive and reasonable escalation and de-escalation of officer applied force in response to the actions and resistance posed by the subject. Officers and cadets are trained that the level of their response should correspond to the situation encountered on the scene and the actions of the subject in response to the officer's commands. This philosophy is taught through practical and classroom exercises.

3. I also know that the APD training academy includes classroom training on use of force law and policy. I know that cadets are instructed, based at least in part on the Supreme Court's decisions in *Graham v. Connor* and *Tennessee v. Garner*, that they are only permitted to use the amount of force that is reasonable under the circumstances, judged from the perspective of a reasonable officer on the scene.

4. APD officers also receive considerable training on interacting with the public. APD cadets and officers are instructed and trained on how to communicate effectively and professionally with the public.

5. I know that Deandre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, successfully completed the APD training academy by passing all of the required written and practical tests. They received over 800 TCOLE hours and received training in all facets of police work, as described above. I know that Deandre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, were licensed/certified by TCOLE as peace officers on or about the time they became a full-time APD police officers. True and correct copies of the TCOLE training records of Deandre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, are attached hereto as Attachments 1-4.

6. After officers are commissioned, TCOLE requires officers to undergo at least 40 hours of continuing education and training every two years. To ensure that its officers remain TCOLE certified, and to make sure that its officers receive the latest training, APD offers a number of continuing educational and training opportunities for its officers. Deandre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III, have satisfied this ongoing requirement and maintained their TCOLE licenses.

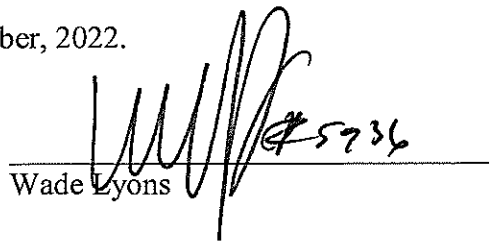
7. One of my duties as APD Commander includes participating in reviews of each officer-involved shooting. APD command staff critically reviews each incident involving an officer-involved shooting for issues related to training, policies and tactics and evaluates the need for any changes in training, policies and tactics. APD has, in fact, amended its policies and made changes to various training and tactics as a result of these reviews of officer-involved shootings and other critical incidents.

8. In support of this Declaration and Defendant City of Austin's Motion for Summary Judgment, the following attachments are records retained in the normal course and scope of business of the City of Austin, and are true and correct copies of what they purport to be:

Attachment 1: TCOLE Training Record for Deandre Wright,
Attachment 2: TCOLE Training Record for Dane O'Neill,
Attachment 3: TCOLE Training Record for Zachary Woods,
Attachment 4: TCOLE Training Record for Thomas Bernard Nelson, III,

PURSUANT to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this, the 12 day of October, 2022.



Wade Lyons #5736

Attachment 1

Texas Commission On Law Enforcement

Personal Status Report

Name	TCOLE ID (P ID)	STATUS
DEANDRE D. WRIGHT	400920	

Citizen	Race	Gender
Yes	Black	Male

Career/Professional Training

Institution	Hours	Education	From	To
MICHIGAN STATE UNIVERSITY	150	Bachelor		

Total Higher Education Hours	150
Total Higher Education Points	3000
Total MilitaryTraining Hours	0
Total	3000

Service History

Appointed As	Department	Award	Service Start Date	Service End Date	Service Time
Peace Officer (Full Time)	AUSTIN POLICE DEPARTMENT	Peace Officer License	3/21/2012		9 years, 8 months

Total Service Time

Description	Service Time
Peace Officer	9 years, 8 months
Total officer time	9 years, 8 months

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Texas Commission On Law Enforcement

Personal Status Report

Award Information

Award	Type	Action	Action Date
Peace Officer License	License		
		Granted	3/21/2012
Basic Peace Officer	Certificate		
		Certification Issued	7/3/2013
Basic Instructor Proficiency	Certificate		
		Certification Issued	1/13/2015
Intermediate Peace Officer	Certificate		
		Certification Issued	4/13/2021
Advanced Peace Officer	Certificate		
		Certification Issued	4/13/2021
Master Peace Officer	Certificate		
		Certification Issued	4/13/2021

Academy History

	Date	Institution	Course Title
Completed	2/27/2012	Austin Police Academy	Basic Peace Officer

Courses Completed

09/01/2021 - 08/31/2023

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
355	Annual Firearms Qualification 1701.355	10/21/2021	0	Austin Police Academy	
		Unit Hours	0		

09/01/2019 - 08/31/2021

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
7887	Interacting with drivers deaf or hard of hearing	4/13/2021	4	Capital Area Council of Governments	Interacting with drivers deaf or hard of hearing (Intermediate)
8815	Building Search	3/29/2021	3	Austin Police Academy	
8815	Building Search	3/22/2021	3	Austin Police Academy	
1850	Crisis Intervention Training 40hr	1/14/2021	40	Austin Police Academy	Crisis Intervention Training (Mandate) Crisis Intervention Training 40hr (Intermediate)
3344	Less Lethal Electronic Control Device Training	12/1/2020	12	Austin Police Academy	

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2019 - 08/31/2021

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3271	Advanced Human Trafficking	11/23/2020	8	TCOLE Online	Human Trafficking
3255	Asset Forfeiture	11/23/2020	2	OSS Academy	Asset Forfeiture (Intermediate)
3186	86th Legislative Session Legal Update	10/31/2020	3	Austin Police Academy	86th Session State and Federal Law Update
3322	Patrol Rifle	2/28/2020	20	Austin Police Academy	
3340	Crowd Control	2/24/2020	10	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	2/12/2020	0	Austin Police Academy	
4000	Bombs and Explosive Devices	1/6/2020	3	Austin Police Academy	
3340	Crowd Control	11/5/2019	2	Austin Police Academy	
3340	Crowd Control	11/5/2019	2	Austin Police Academy	
3713	Incident Command Simulation Training	11/1/2019	24	Austin Police Academy	
6014	Tactical Entry Training	9/26/2019	6	Austin Police Academy	
		Unit Hours	142		

09/01/2017 - 08/31/2019 *

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3717	Social Media-Networking	7/17/2019	24	Austin Police Academy	
3338	Law Enforcement Ambush Response	4/17/2019	10	Austin Police Academy	
381019	Advanced Intelligence Analysis to Prevent Terroris	2/22/2019	32	Round Rock Police Department Academy	
3517	Suicide Prevention (not 3501)	2/7/2019	4	Austin Police Academy	
2095	Use of Force (Non-Intermediate Core Course)	2/7/2019	4	Austin Police Academy	
2096	Arrest, Search & Seizure (Non-Intermediate Core Co	2/6/2019	8	Austin Police Academy	
1849	De-escalation Tech (SB 1849)	2/5/2019	8	Austin Police Academy	De-escalation Tech (SB 1849)
3940	Community Policing	2/4/2019	8	Austin Police Academy	
30418	Civilian Interaction Training	2/4/2019	2	Austin Police Academy	Civilian Interaction Training Program
6014	Tactical Entry Training	2/1/2019	20	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	1/29/2019	0	Austin Police Academy	

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2017 - 08/31/2019 *

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2055	Firearms	12/18/2018	10	Austin Police Academy	
3340	Crowd Control	11/26/2018	10	Austin Police Academy	
6030	Tactical Vehicle Traffic Stops & Extractions	10/24/2018	6	Austin Police Academy	
3305	Active Shooter Response	9/19/2018	4	Austin Police Academy	
8158	Body Worn Camera	8/7/2018	2	Austin Police Academy	
3185	85th Legislative Session Legal Update	6/25/2018	4	Austin Police Academy	85th Session State and Federal Law Update
2040	Defensive Tactics	5/24/2018	3	Austin Police Academy	
3836	Concealed Carry for Law Enforcement Officers	4/11/2018	10	Austin Police Academy	
7824	Advanced Undercover Techniques/Survival	3/15/2018	36	Austin Police Academy	
2040	Defensive Tactics	2/13/2018	3	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	2/13/2018	0	Austin Police Academy	
2055	Firearms	2/13/2018	2	Austin Police Academy	
3283	Gangs	12/6/2017	8	Texas Department of Public Safety LEA	
3340	Crowd Control	10/25/2017	6	Austin Police Academy	
3371	Criminal Intelligence Investigations	9/29/2017	16	Cedar Park Police Department	
3340	Crowd Control	9/25/2017	4	Austin Police Academy	
3305	Active Shooter Response	9/20/2017	4	Austin Police Academy	
		Unit Hours	248		

09/01/2015 - 09/30/2017

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3371	Criminal Intelligence Investigations	9/29/2017	16	Cedar Park Police Department	
3340	Crowd Control	9/25/2017	4	Austin Police Academy	
3305	Active Shooter Response	9/20/2017	4	Austin Police Academy	
3232	Special Investigative Topics	7/11/2017	8	Austin Police Academy	Special Investigative Topics (Intermediate)
4068	Child Safety Check Alert List (Intermediate/Advanc	7/11/2017	1	Austin Police Academy	Child Safety Check Alert List (Advance) Child Safety Check Alert List (Intermediate)

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2015 - 09/30/2017

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
394	Cultural Diversity Web with Exercises	7/10/2017	8	TCOLE Online	Cultural Diversity (Intermediate)
355	Annual Firearms Qualification 1701.355	6/30/2017	0	Austin Police Academy	
2055	Firearms	6/30/2017	3	Austin Police Academy	
2029	Tech. Interviewing & Interrog.	5/25/2017	30	Austin Police Academy	
2025	Organized Crime	4/27/2017	40	Austin Police Academy	
3907	MultiCultural Diversity/Awarness for L.E. Prof.	3/29/2017	10	Austin Police Academy	
3305	Active Shooter Response	2/24/2017	20	Austin Police Academy	
3316	ALERRT First Responder Operations in Rural Terrain	2/11/2017	24	Hays Co. Sheriff's Academy	
3184	84th Legislative Session Legal Update	1/18/2017	4	Austin Police Academy	84th Session State and Federal Law Update
3358	Police Bicycle	1/11/2017	24	Austin Police Academy	
3311	ALERRT	12/9/2016	16	Hays Co. Sheriff's Academy	
3907	MultiCultural Diversity/Awarness for L.E. Prof.	10/26/2016	20	Austin Police Academy	
3317	ALERRT First Responder Breaching	10/21/2016	16	Hays Co. Sheriff's Academy	
3304	Hostage and Barricade Suspect Situations	9/16/2016	5	Austin Police Academy	
3258	Racial Profiling Update	7/27/2016	2	Austin Police Academy	
3340	Crowd Control	6/25/2016	6	Austin Police Academy	
3105	Executive Protection Training	5/20/2016	30	Austin Police Academy	
2178	S.F.S.T. Practitioner Update	4/28/2016	8	Austin Police Academy	
3718	Advanced Field Training Officer	4/27/2016	32	Austin Police Academy	
2055	Firearms	2/29/2016	3	Austin Police Academy	
6014	Tactical Entry Training	2/29/2016	5	Austin Police Academy	
		Unit Hours	339		

09/01/2013 - 08/31/2015

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2055	Firearms	8/26/2015	10	Austin Police Academy	

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2013 - 08/31/2015

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3718	Advanced Field Training Officer	8/25/2015	20	Austin Police Academy	
2055	Firearms	7/7/2015	1	Austin Police Academy	
2055	Firearms	6/29/2015	1	Austin Police Academy	
3183	83rd Legislative Session Legal Update	5/18/2015	4	Austin Police Academy	83rd Session State and Federal Law Update
3513	Identification of Prison Gangs	4/30/2015	2	Austin Police Academy	
3305	Active Shooter Response	4/9/2015	20	Austin Police Academy	
6014	Tactical Entry Training	4/3/2015	40	Austin Police Academy	
782096	DPS - Interdiction for Protection of Children	2/3/2015	16	Austin Police Academy	Missing and Exploited Children (Advance) Missing and Exploited Children (Intermediate)
3305	Active Shooter Response	12/9/2014	10	Austin Police Academy	
3340	Crowd Control	11/19/2014	7	Austin Police Academy	
2055	Firearms	11/11/2014	1	Austin Police Academy	
3702	Field Training Officer	11/6/2014	40	Austin Police Academy	
1014	Basic Instructor Course	10/24/2014	40	Austin Police Academy	
3305	Active Shooter Response	10/17/2014	40	Austin Police Academy	
3283	Gangs	10/2/2014	6	Texas Attorney General's Office	
4001	Mental Health Officer Training Course	9/18/2014	40	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09
3830	General First Aid Training	9/15/2014	3	Austin Police Academy	
3835	Tactical Trauma Care	9/12/2014	4	Austin Police Academy	
2055	Firearms	9/3/2014	10	Austin Police Academy	
2055	Firearms	7/17/2014	1	Austin Police Academy	

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2013 - 08/31/2015

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2046	Driving	7/1/2014	10	Austin Police Academy	
3283	Gangs	6/26/2014	8	Williamson County Sheriff's Office	
3305	Active Shooter Response	6/12/2014	2	Austin Police Academy	
2055	Firearms	6/9/2014	1	Austin Police Academy	
3407	Highway Drug Interdiction	6/6/2014	32	Texas Municipal Police Association	
3513	Identification of Prison Gangs	5/22/2014	3	Austin Police Academy	
6030	Tactical Vehicle Traffic Stops & Extractions	5/7/2014	16	Austin Police Academy	
62040	Defensive Tactics - Canine Encounters (Proprietary	4/23/2014	4	Austin Police Academy	Canine Encounter (Intermediate) Canine Encouter (Advance)
2055	Firearms	4/17/2014	1	Austin Police Academy	
3340	Crowd Control	12/11/2013	5	Austin Police Academy	
2055	Firearms	10/25/2013	1	Austin Police Academy	
2055	Firearms	9/17/2013	1	Austin Police Academy	
		Unit Hours	400		

09/01/2011 - 08/31/2013

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2055	Firearms	8/6/2013	1	Austin Police Academy	
4100	Information Technology (General)	7/30/2013	10	Austin Police Academy	
4100	Information Technology (General)	7/29/2013	10	Austin Police Academy	
2055	Firearms	7/23/2013	1	Austin Police Academy	
4052	Hearing Disabilities	6/24/2013	2	Austin Police Academy	
3722	Peace Officer Field Training	6/23/2013	160	Austin Police Academy	Peace Officer Field Training
2055	Firearms	6/13/2013	1	Austin Police Academy	
3270	Human Trafficking	6/7/2013	4	Austin Police Academy	Human Trafficking
3408	Roadside Interview Techniques/patrol activities	5/21/2013	16	Austin Police Academy	
3182	82nd Legislative Session Legal Update	5/20/2013	4	Austin Police Academy	82nd Session State and Federal Law Update
2055	Firearms	5/6/2013	1	Austin Police Academy	

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2011 - 08/31/2013

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3322	Patrol Rifle	4/25/2013	20	Austin Police Academy	
2055	Firearms	4/10/2013	1	Austin Police Academy	
3358	Police Bicycle	4/4/2013	40	Austin Police Academy	
3200	Investigations	2/12/2013	16	Guadalupe County Sheriff's Office	
2024	Narcotics/Dangerous Drug Inv.	1/25/2013	16	Tarrant County College District LEA	
3402	DWI/DUI Detection and Enforcement	12/17/2012	8	North Richland Hills Police Department	
2055	Firearms	11/19/2012	1	Austin Police Academy	
3300	Patrol/Tactical	10/11/2012	2	Austin Police Academy	
2055	Firearms	9/21/2012	1	Austin Police Academy	
2055	Firearms	8/24/2012	1	Austin Police Academy	
2016	Collection & Pres. of Evidence	4/27/2012	10	Austin Police Academy	
3344	Less Lethal Electronic Control Device Training	4/19/2012	1	Austin Police Academy	
3277	Identity Theft	3/19/2012	3	Austin Police Academy	Identity Theft (Intermediate)
2105	Child Abuse Prevention and Investigation (Interm.)	3/15/2012	24	Austin Police Academy	Child Abuse Prevention and Investigation (Intermediate)
2106	Crime Scene Investigation (Intermediate)	3/9/2012	32	Austin Police Academy	Crime Scene Investigation (Intermediate)
2108	Arrest, Search, and Seizure (Intermediate)	3/8/2012	15	Austin Police Academy	Arrest, Search, and Seizure (Intermediate)
3939	Cultural Diversity	3/7/2012	8	Austin Police Academy	Cultural Diversity (Intermediate)
1000	Basic Peace Officer	2/27/2012	618	Austin Police Academy	82nd Session State and Federal Law Update Crisis Intervention Training (Mandate) Cultural Diversity (Mandate) S.F.S.T. NHTSA 24hour Practitioner Special Investigative Topic (Mandate)
2016	Collection & Pres. of Evidence	2/20/2012	10	Austin Police Academy	
3256	Racial Profiling	2/17/2012	4	Austin Police Academy	Racial Profiling (Intermediate)
3232	Special Investigative Topics	2/9/2012	8	Austin Police Academy	Special Investigative Topics (Intermediate)

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2011 - 08/31/2013

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3841	Crisis Intervention Training	1/31/2012	16	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09
3807	TCIC/NCIC for Less than Full Access Operators	12/29/2011	8	Austin Police Academy	
66800	FEMA National Resp Plan Intro (FEMA IS-800b)	12/14/2011	3	Austin Police Academy	
66700	FEMA National ICS (FEMA IS-700a)	12/11/2011	3	Austin Police Academy	
66094	FEMA Intro ICS Law Enf (FEMA IS-100LEb)	12/10/2011	3	Austin Police Academy	
66201	FEMA ICS Single Res/Initial Incident (FEMA IS-200b	12/7/2011	3	Austin Police Academy	
2067	S.F.S.T. Practitioner	12/2/2011	24	Austin Police Academy	
3270	Human Trafficking	11/21/2011	4	Austin Police Academy	Human Trafficking
2107	Use of Force (Intermediate)	10/21/2011	13	Austin Police Academy	Use of Force (Intermediate)
2109	Spanish for Law Enforcement (Intermediate)	9/23/2011	20	Austin Police Academy	Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate)

Unit Hours 1146

09/01/2009 - 08/31/2011

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3910	Sexual Harassment Recognition	8/16/2011	2	Austin Police Academy	

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2009 - 08/31/2011

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
1999	Personnel Orientation by Dept. Basic Proficiency	8/15/2011	0	Austin Police Academy	Personnel Orientation
		Unit Hours	2		
		Total Hours	2277		

Total Hours

Total Career/Professional Hours	3000
Total TCOLE Course Hours	2277
Total Hours	5277

*Courses submitted between 09/01/2017 and 09/30/2017 will be credited to the 2015-2017 and 2017-2019 training unit, but will only count once toward total training hours.

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Attachment 2

Texas Commission On Law Enforcement

Personal Status Report

Name	TCOLE ID (P ID)	STATUS
DANE T. ONEILL	400909	

Citizen	Race	Gender
Yes	White	Male

Career/Professional Training

Institution	Hours	Education	From	To
	0	High School		
UNIVERSITY OF TEXAS EL PASO	130	Bachelor		
Total Higher Education Hours	130			
Total Higher Education Points	2600			
Total MilitaryTraining Hours	0			
Total	2600			

Service History

Appointed As	Department	Award	Service Start Date	Service End Date	Service Time
Peace Officer (Full Time)	AUSTIN POLICE DEPARTMENT	Peace Officer License	3/21/2012		9 years, 8 months

Total Service Time

Description	Service Time
Peace Officer	9 years, 8 months
Total officer time	9 years, 8 months

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Texas Commission On Law Enforcement

Personal Status Report

Award Information

Award	Type	Action	Action Date
Peace Officer License	License		
		Granted	3/21/2012
Basic Peace Officer	Certificate		
		Certification Issued	7/3/2013
Intermediate Peace Officer	Certificate		
		Certification Issued	3/6/2014
Advanced Peace Officer	Certificate		
		Certification Issued	8/27/2021
Master Peace Officer	Certificate		
		Certification Issued	8/27/2021
Basic Instructor Proficiency	Certificate		
		Certification Issued	11/1/2021

Academy History

	Date	Institution	Course Title
Completed	2/27/2012	Austin Police Academy	Basic Peace Officer

Courses Completed

09/01/2019 - 08/31/2021

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
4068	Child Safety Check Alert List (Intermediate/Advanc	8/26/2021	1	OSS Academy	Child Safety Check Alert List (Advance) Child Safety Check Alert List (Intermediate)
1014	Basic Instructor Course	7/9/2021	40	Austin Police Academy	
3271	Advanced Human Trafficking	6/28/2021	8	MyTCOLE 3 online	Human Trafficking
3342	Tactical Firearms Training	6/3/2021	2	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	5/6/2021	0	Austin Police Academy	
8815	Building Search	3/29/2021	3	Austin Police Academy	
3344	Less Lethal Electronic Control Device Training	12/7/2020	12	Austin Police Academy	
3186	86th Legislative Session Legal Update	9/15/2020	3	Austin Police Academy	86th Session State and Federal Law Update
355	Annual Firearms Qualification 1701.355	1/28/2020	0	Austin Police Academy	

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2019 - 08/31/2021

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
1850	Crisis Intervention Training 40hr	1/16/2020	40	Austin Police Academy	Crisis Intervention Training (Mandate) Crisis Intervention Training 40hr (Intermediate)
		Unit Hours	109		

09/01/2017 - 08/31/2019 *

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3038	Agency Operations (General)	8/15/2019	4	Austin Police Academy	
2096	Arrest, Search & Seizure (Non-Intermediate Core Co	8/14/2019	8	Austin Police Academy	
30418	Civilian Interaction Training	8/13/2019	2	Austin Police Academy	Civilian Interaction Training Program
3940	Community Policing	8/13/2019	8	Austin Police Academy	
1849	De-escalation Tech (SB 1849)	8/12/2019	8	Austin Police Academy	De-escalation Tech (SB 1849)
3105	Executive Protection Training	5/10/2019	30	Austin Police Academy	
6030	Tactical Vehicle Traffic Stops & Extractions	2/22/2019	7	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	1/30/2019	0	Austin Police Academy	
6014	Tactical Entry Training	1/29/2019	20	Austin Police Academy	
2047	Officer Survival/Weapon Retent	1/15/2019	20	Austin Police Academy	
6014	Tactical Entry Training	11/19/2018	8	Austin Police Academy	
2040	Defensive Tactics	10/4/2018	10	Austin Police Academy	
8158	Body Worn Camera	10/2/2018	2	Austin Police Academy	
3185	85th Legislative Session Legal Update	10/2/2018	4	Austin Police Academy	85th Session State and Federal Law Update
3305	Active Shooter Response	9/25/2018	4	Austin Police Academy	
3283	Gangs	9/5/2018	5	Office of the Inspector General - TBCJ	
2040	Defensive Tactics	5/7/2018	3	Austin Police Academy	
6014	Tactical Entry Training	4/25/2018	27	Austin Police Academy	
3717	Social Media-Networking	4/5/2018	24	Austin Police Academy	

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2017 - 08/31/2019 *

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3836	Concealed Carry for Law Enforcement Officers	3/27/2018	5	Austin Police Academy	
2040	Defensive Tactics	2/22/2018	3	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	2/19/2018	0	Austin Police Academy	
2055	Firearms	2/19/2018	2	Austin Police Academy	
3283	Gangs	12/11/2017	8	Texas Attorney General's Office	
3283	Gangs	12/6/2017	8	Texas Department of Public Safety LEA	
3303	Law Enforcement Officer Flying Armed - (FAA)	10/9/2017	2	Austin Police Academy	
3305	Active Shooter Response	9/20/2017	4	Austin Police Academy	
		Unit Hours	226		

09/01/2015 - 09/30/2017

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3305	Active Shooter Response	9/20/2017	4	Austin Police Academy	
3311	ALERRT	8/18/2017	40	Hays Co. Sheriff's Academy	
3907	MultiCultural Diversity/Awarness for L.E. Prof.	8/9/2017	10	Austin Police Academy	
3150	Law Update	7/24/2017	10	Austin Police Academy	
3311	ALERRT	6/16/2017	40	Hays Co. Sheriff's Academy	
355	Annual Firearms Qualification 1701.355	6/6/2017	0	Austin Police Academy	
2055	Firearms	6/6/2017	3	Austin Police Academy	
2029	Tech. Interviewing & Interrog.	5/25/2017	30	Austin Police Academy	
2055	Firearms	5/15/2017	4	Austin Police Academy	
3310	SWAT Inservice Training	4/23/2017	4	Texas Tactical Police Officers Association	
3310	SWAT Inservice Training	4/23/2017	4	Texas Tactical Police Officers Association	
6030	Tactical Vehicle Traffic Stops & Extractions	4/22/2017	8	Texas Tactical Police Officers Association	
3823	Tactical Operators Training	4/22/2017	8	Texas Tactical Police Officers Association	

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2015 - 09/30/2017

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3342	Tactical Firearms Training	4/21/2017	4	Texas Tactical Police Officers Association	
3184	84th Legislative Session Legal Update	4/5/2017	4	Austin Police Academy	84th Session State and Federal Law Update
6014	Tactical Entry Training	3/27/2017	6	Austin Police Academy	
3329	SWAT-Use of Distraction Devices	1/12/2017	8	Austin Police Academy	
3326	Patrol Rifle Inservice Training (Not 3322)	10/19/2016	5	Austin Police Academy	
3342	Tactical Firearms Training	10/19/2016	5	Austin Police Academy	
3342	Tactical Firearms Training	9/26/2016	4	Austin Police Academy	
6014	Tactical Entry Training	9/20/2016	20	Austin Police Academy	
3404	Traffic Stops	8/21/2016	1	Austin Police Academy	
6014	Tactical Entry Training	8/8/2016	6	Austin Police Academy	
3258	Racial Profiling Update	7/29/2016	2	Austin Police Academy	
3326	Patrol Rifle Inservice Training (Not 3322)	5/17/2016	4	Austin Police Academy	
6014	Tactical Entry Training	5/9/2016	8	Austin Police Academy	
2025	Organized Crime	5/5/2016	40	Austin Police Academy	
3305	Active Shooter Response	4/25/2016	4	Austin Police Academy	
3836	Concealed Carry for Law Enforcement Officers	4/5/2016	10	Austin Police Academy	
6014	Tactical Entry Training	4/1/2016	40	Austin Police Academy	
6030	Tactical Vehicle Traffic Stops & Extractions	2/9/2016	20	Austin Police Academy	
6014	Tactical Entry Training	1/25/2016	6	Austin Police Academy	
6014	Tactical Entry Training	10/26/2015	8	Austin Police Academy	
3010	Leadership Styles	10/14/2015	20	Austin Police Academy	
3312	ALERRT Update	9/25/2015	16	Hays Co. Sheriff's Academy	
		Unit Hours	406		

09/01/2013 - 08/31/2015

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2046	Driving	7/20/2015	10	Austin Police Academy	
3183	83rd Legislative Session Legal Update	7/12/2015	4	Austin Police Academy	83rd Session State and Federal Law Update

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2013 - 08/31/2015

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2055	Firearms	7/7/2015	1	Austin Police Academy	
3305	Active Shooter Response	6/25/2015	20	Austin Police Academy	
2047	Officer Survival/Weapon Retent	6/16/2015	10	Austin Police Academy	
3280	Criminal Investigation - General	6/10/2015	8	Williamson County Sheriff's Office	
2055	Firearms	6/8/2015	1	Austin Police Academy	
3322	Patrol Rifle	5/28/2015	40	Austin Police Academy	
2055	Firearms	5/22/2015	1	Austin Police Academy	
3305	Active Shooter Response	5/14/2015	20	Austin Police Academy	
3342	Tactical Firearms Training	4/12/2015	8	Texas Tactical Police Officers Association	
3342	Tactical Firearms Training	4/11/2015	8	Texas Tactical Police Officers Association	
782096	DPS - Interdiction for Protection of Children	3/25/2015	16	Austin Police Academy	Missing and Exploited Children (Advance) Missing and Exploited Children (Intermediate)
2096	Arrest, Search & Seizure (Non-Intermediate Core Co	2/23/2015	10	Austin Police Academy	
2056	Toxic Chem/Radioactive Mat	1/22/2015	2	Austin Police Academy	
4100	Information Technology (General)	12/12/2014	20	Austin Police Academy	
3305	Active Shooter Response	12/9/2014	10	Austin Police Academy	
3301	Basic S.W.A.T. Course	11/11/2014	60	Austin Police Academy	
3835	Tactical Trauma Care	8/25/2014	4	Austin Police Academy	
3342	Tactical Firearms Training	8/13/2014	10	Austin Police Academy	
2055	Firearms	7/17/2014	1	Austin Police Academy	
3305	Active Shooter Response	7/4/2014	40	Austin Police Academy	
2055	Firearms	6/3/2014	1	Austin Police Academy	
3317	ALERRT First Responder Breaching	5/6/2014	16	Hays Co. Sheriff's Academy	
2055	Firearms	5/2/2014	1	Austin Police Academy	
3327	Low light tactical operations training	4/27/2014	8	Texas Tactical Police Officers Association	
3865	Ballistic Breaching	4/26/2014	8	Texas Tactical Police Officers Association	
3896	Technical/Specialized Seminar	4/25/2014	4	Texas Tactical Police Officers Association	

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2013 - 08/31/2015

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2055	Firearms	4/15/2014	1	Austin Police Academy	
3308	Officer Safety/Survival	4/1/2014	10	Austin Police Academy	
62040	Defensive Tactics - Canine Encounters (Proprietary	3/14/2014	4	Austin Police Academy	Canine Encounter (Intermediate) Canine Encouter (Advance)
2055	Firearms	11/25/2013	1	Austin Police Academy	
2055	Firearms	10/23/2013	1	Austin Police Academy	
2055	Firearms	9/26/2013	1	Austin Police Academy	
		Unit Hours	360		

09/01/2011 - 08/31/2013

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2055	Firearms	8/29/2013	1	Austin Police Academy	
2055	Firearms	7/9/2013	1	Austin Police Academy	
4052	Hearing Disabilities	6/24/2013	2	Austin Police Academy	
3722	Peace Officer Field Training	6/23/2013	160	Austin Police Academy	Peace Officer Field Training
2055	Firearms	6/14/2013	1	Austin Police Academy	
3182	82nd Legislative Session Legal Update	5/12/2013	4	Austin Police Academy	82nd Session State and Federal Law Update
2055	Firearms	5/9/2013	1	Austin Police Academy	
3322	Patrol Rifle	4/25/2013	20	Austin Police Academy	
2055	Firearms	4/15/2013	1	Austin Police Academy	
2040	Defensive Tactics	4/11/2013	10	Austin Police Academy	
6014	Tactical Entry Training	4/7/2013	8	Texas Tactical Police Officers Association	
3342	Tactical Firearms Training	4/6/2013	8	Texas Tactical Police Officers Association	
3896	Technical/Specialized Seminar	4/5/2013	8	Texas Tactical Police Officers Association	
5102	Effective Commun. in Crisis or Conflict Situations	3/7/2013	10	Austin Police Academy	
2055	Firearms	11/28/2012	1	Austin Police Academy	
2055	Firearms	10/19/2012	1	Austin Police Academy	
3270	Human Trafficking	10/12/2012	4	Austin Police Academy	Human Trafficking
4041	Cartel Operations/Investigations	10/12/2012	16	Austin Police Academy	

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2011 - 08/31/2013

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2055	Firearms	8/31/2012	1	Austin Police Academy	
3277	Identity Theft	3/19/2012	3	Austin Police Academy	Identity Theft (Intermediate)
2105	Child Abuse Prevention and Investigation (Interm.)	3/15/2012	24	Austin Police Academy	Child Abuse Prevention and Investigation (Intermediate)
3255	Asset Forfeiture	3/15/2012	2	Austin Police Academy	Asset Forfeiture (Intermediate)
2106	Crime Scene Investigation (Intermediate)	3/9/2012	32	Austin Police Academy	Crime Scene Investigation (Intermediate)
2108	Arrest, Search, and Seizure (Intermediate)	3/8/2012	15	Austin Police Academy	Arrest, Search, and Seizure (Intermediate)
3939	Cultural Diversity	3/7/2012	8	Austin Police Academy	Cultural Diversity (Intermediate)
1000	Basic Peace Officer	2/27/2012	618	Austin Police Academy	82nd Session State and Federal Law Update Crisis Intervention Training (Mandate) Cultural Diversity (Mandate) S.F.S.T. NHTSA24hour Practitioner Special Investigative Topic (Mandate)
2016	Collection & Pres. of Evidence	2/20/2012	10	Austin Police Academy	
3256	Racial Profiling	2/17/2012	4	Austin Police Academy	Racial Profiling (Intermediate)
3232	Special Investigative Topics	2/9/2012	8	Austin Police Academy	Special Investigative Topics (Intermediate)
3841	Crisis Intervention Training	1/31/2012	16	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09
3807	TCIC/NCIC for Less than Full Access Operators	12/29/2011	8	Austin Police Academy	
66094	FEMA Intro ICS Law Enf (FEMA IS-100LEb)	12/19/2011	3	Austin Police Academy	

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2011 - 08/31/2013

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
66800	FEMA National Resp Plan Intro (FEMA IS-800b)	12/19/2011	3	Austin Police Academy	
66201	FEMA ICS Single Res/Initial Incident (FEMA IS-200b	12/16/2011	3	Austin Police Academy	
66700	FEMA National ICS (FEMA IS-700a)	12/12/2011	3	Austin Police Academy	
2067	S.F.S.T. Practitioner	12/2/2011	24	Austin Police Academy	
3270	Human Trafficking	11/21/2011	4	Austin Police Academy	Human Trafficking
2107	Use of Force (Intermediate)	10/21/2011	13	Austin Police Academy	Use of Force (Intermediate)
2109	Spanish for Law Enforcement (Intermediate)	9/30/2011	20	Austin Police Academy	Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate)
		Unit Hours	1079		

09/01/2009 - 08/31/2011

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3910	Sexual Harassment Recognition	8/16/2011	2	Austin Police Academy	
1999	Personnel Orientation by Dept. Basic Proficiency	8/15/2011	0	Austin Police Academy	Personnel Orientation
		Unit Hours	2		
		Total Hours	2182		

Total Hours

Total Career/Professional Hours	2600
Total TCOLE Course Hours	2182
Total Hours	4782

*Courses submitted between 09/01/2017 and 09/30/2017 will be credited to the 2015-2017 and 2017-2019 training unit, but will only count once toward total training hours.

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Attachment 3

Texas Commission On Law Enforcement

Personal Status Report

Name	TCOLE ID (P ID)	STATUS
ZACHARY D. WOODS	448145	

Citizen	Race	Gender
Yes	White	Male

Career/Professional Training

Institution	Hours	Education	From	To
	0	High School		
MARSHALL UNIVERSITY	139	Bachelor		
THE CATHOLIC UNIVERSITY OF AMERICA	33	College Credits		
Total Higher Education Hours	172			
Total Higher Education Points	3440			
Total MilitaryTraining Hours	0			
Total	3440			

Service History

Appointed As	Department	Award	Service Start Date	Service End Date	Service Time
Peace Officer (Full Time)	AUSTIN POLICE DEPARTMENT	Peace Officer License	10/24/2016		5 years, 0 months

Total Service Time

Description	Service Time
Peace Officer	5 years, 0 months
Total officer time	5 years, 0 months

Award Information

Award	Type	Action	Action Date
Peace Officer License	License		
		Granted	10/24/2016
Basic Peace Officer	Certificate		
		Certification Issued	2/15/2018
Intermediate Peace Officer	Certificate		
		Certification Issued	1/30/2019
Advanced Peace Officer	Certificate		
		Certification Issued	10/22/2021

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Texas Commission On Law Enforcement

Personal Status Report

Academy History

	Date	Institution	Course Title
Completed	10/10/2016	Austin Police Academy	Basic Peace Officer Course (643)

Courses Completed

09/01/2019 - 08/31/2021

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
6030	Tactical Vehicle Traffic Stops & Extractions	5/20/2021	2	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	4/6/2021	0	Austin Police Academy	
8815	Building Search	3/30/2021	4	Austin Police Academy	
2040	Defensive Tactics	2/25/2021	40	Austin Police Academy	
3344	Less Lethal Electronic Control Device Training	11/30/2020	12	Austin Police Academy	
3925	Ethics for Law Enforcement Distance	11/20/2020	4	TCOLE Online	Ethics in Law Enforcement
3271	Advanced Human Trafficking	11/20/2020	8	TCOLE Online	Human Trafficking
3271	Advanced Human Trafficking	11/19/2020	4	TCOLE Online	Human Trafficking
3358	Police Bicycle	10/29/2020	40	Austin Police Academy	
3186	86th Legislative Session Legal Update	5/12/2020	3	Austin Police Academy	86th Session State and Federal Law Update
3891	Water Rescue	4/9/2020	2	Texas A & M Engineering Extension Service Criminal	
78004	AWR168 Cyber Law and White Collar Crime (online)	3/30/2020	10	Texas A & M Engineering Extension Service Criminal	
3312	ALERRT Update	3/30/2020	4	Texas A & M Engineering Extension Service Criminal	
78052	TEEX Active Attack Emer Communications	3/30/2020	3	Texas A & M Engineering Extension Service Criminal	
8815	Building Search	2/10/2020	7	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	1/23/2020	0	Austin Police Academy	
2029	Tech. Interviewing & Interrog.	1/20/2020	5	Austin Police Academy	
4000	Bombs and Explosive Devices	1/6/2020	3	Austin Police Academy	
2025	Organized Crime	12/12/2019	40	Austin Police Academy	
3305	Active Shooter Response	9/23/2019	10	Austin Police Academy	
3381	ALERRT AAIR	9/22/2019	10	Austin Police Academy	
3835	Tactical Trauma Care	9/21/2019	4	Austin Police Academy	
3342	Tactical Firearms Training	9/21/2019	6	Austin Police Academy	

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Texas Commission On Law Enforcement

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Courses Completed

09/01/2019 - 08/31/2021

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3316	ALERRT First Responder Operations in Rural Terrain	9/20/2019	10	Austin Police Academy	
		Unit Hours	231		

09/01/2017 - 08/31/2019 *

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
6035	Crime Analysis Course	8/20/2019	8	Austin Police Academy	
2053	Baton (All)	7/25/2019	24	Austin Police Academy	
2040	Defensive Tactics	6/27/2019	40	Austin Police Academy	
2047	Officer Survival/Weapon Retent	6/12/2019	20	Austin Police Academy	
3338	Law Enforcement Ambush Response	4/18/2019	10	Austin Police Academy	
3358	Police Bicycle	2/4/2019	10	Austin Police Academy	
2045	Patrol Procedures	1/31/2019	4	Austin Police Academy	
3517	Suicide Prevention (not 3501)	1/31/2019	4	Austin Police Academy	
2096	Arrest, Search & Seizure (Non-Intermediate Core Co	1/30/2019	8	Austin Police Academy	
30418	Civilian Interaction Training	1/29/2019	2	Austin Police Academy	Civilian Interaction Training Program
3940	Community Policing	1/29/2019	8	Austin Police Academy	
1849	De-escalation Tech (SB 1849)	1/28/2019	8	Austin Police Academy	De-escalation Tech (SB 1849)
355	Annual Firearms Qualification 1701.355	1/9/2019	0	Austin Police Academy	
3301	Basic S.W.A.T. Course	11/14/2018	80	Austin Police Academy	
7809	Patron Saints of the Mexican Underworld TNOA	9/27/2018	8	Bexar Co. Sheriff's Academy	
3305	Active Shooter Response	9/25/2018	4	Austin Police Academy	
1850	Crisis Intervention Training 40hr	9/7/2018	40	Austin Police Academy	Crisis Intervention Training (Mandate) Crisis Intervention Training 40hr (Intermediate)
8158	Body Worn Camera	8/3/2018	2	Austin Police Academy	
2047	Officer Survival/Weapon Retent	7/12/2018	10	Austin Police Academy	

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Courses Completed

09/01/2017 - 08/31/2019 *

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2040	Defensive Tactics	7/9/2018	10	Austin Police Academy	
3185	85th Legislative Session Legal Update	6/26/2018	4	Austin Police Academy	85th Session State and Federal Law Update
6030	Tactical Vehicle Traffic Stops & Extractions	5/24/2018	3	Austin Police Academy	
2040	Defensive Tactics	5/21/2018	3	Austin Police Academy	
3322	Patrol Rifle	4/6/2018	40	Austin Police Academy	
2040	Defensive Tactics	2/8/2018	3	Austin Police Academy	
3722	Peace Officer Field Training	1/28/2018	160	Austin Police Academy	Peace Officer Field Training
355	Annual Firearms Qualification 1701.355	1/9/2018	0	Austin Police Academy	
2055	Firearms	1/9/2018	2	Austin Police Academy	
2055	Firearms	10/6/2017	10	Austin Police Academy	
2055	Firearms	9/18/2017	10	Austin Police Academy	
		Unit Hours	535		

09/01/2015 - 09/30/2017

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2055	Firearms	9/18/2017	10	Austin Police Academy	
54011	Incident Resp. Terror Bombing NMTech	8/9/2017	8	Austin Police Academy	
3316	ALERRT First Responder Operations in Rural Terrain	8/4/2017	24	Hays Co. Sheriff's Academy	
355	Annual Firearms Qualification 1701.355	6/30/2017	0	Austin Police Academy	
2055	Firearms	6/30/2017	3	Austin Police Academy	
3313	ALERRT Terrorism Response Tactics Active Shooter L	6/23/2017	16	Hays Co. Sheriff's Academy	
3308	Officer Safety/Survival	6/14/2017	10	Austin Police Academy	
3907	MultiCultural Diversity/Awarness for L.E. Prof.	4/26/2017	10	Austin Police Academy	
3184	84th Legislative Session Legal Update	2/28/2017	4	Austin Police Academy	84th Session State and Federal Law Update
3304	Hostage and Barricade Suspect Situations	2/24/2017	5	Austin Police Academy	
2040	Defensive Tactics	11/16/2016	10	Austin Police Academy	

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Courses Completed

09/01/2015 - 09/30/2017

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3270	Human Trafficking	10/26/2016	4	Austin Police Academy	Human Trafficking
4068	Child Safety Check Alert List (Intermediate/Advanc	10/25/2016	1	Austin Police Academy	Child Safety Check Alert List (Advance) Child Safety Check Alert List (Intermediate)
2105	Child Abuse Prevention and Investigation (Interm.)	10/20/2016	24	Austin Police Academy	Child Abuse Prevention and Investigation (Intermediate)
4065	Canine Encounters (Intermediate/Advance)	10/17/2016	4	Austin Police Academy	Canine Encounter (Intermediate) Canine Encouter (Advance)
2106	Crime Scene Investigation (Intermediate)	10/13/2016	32	Austin Police Academy	Crime Scene Investigation (Intermediate)
2108	Arrest, Search, and Seizure (Intermediate)	10/11/2016	15	Austin Police Academy	Arrest, Search, and Seizure (Intermediate)
1000643	Basic Peace Officer Course (643)	10/10/2016	643	Austin Police Academy	82nd Session State and Federal Law Update 83rd Session State and Federal Law Update 84th Session State and Federal Law Update 85th Session State and Federal Law Update Asset Forfeiture (Intermediate) Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Cultural Diversity (Mandate) Identity Theft (Intermediate) Racial Profiling (Intermediate) S.F.S.T. NHTSA24hour Practitioner Special Investigative Topic (Mandate) State and Federal Law Update TCIC/NCIC for Less than Full Access Operators
1033	Chapter 33 Rule Overview Exam	10/8/2016	0	TCOLE Online	
3275	Missing and Exploited Children	10/3/2016	4	Austin Police Academy	Missing and Exploited Children Missing and Exploited Children (Advance) Missing and Exploited Children (Intermediate)
4043	Mobile Video Training	9/30/2016	7	Austin Police Academy	

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Courses Completed

09/01/2015 - 09/30/2017

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3939	Cultural Diversity	9/27/2016	8	Austin Police Academy	Cultural Diversity (Intermediate)
3232	Special Investigative Topics	9/22/2016	8	Austin Police Academy	Special Investigative Topics (Intermediate)
3841	Crisis Intervention Training	9/15/2016	30	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09
3343	Less Lethal Chemical Weapons Training (OC, Mace, e	8/4/2016	2	Austin Police Academy	
2067	S.F.S.T. Practitioner	7/29/2016	24	Austin Police Academy	
7887	Interacting with drivers deaf or hard of hearing	6/29/2016	4	Austin Police Academy	Interacting with drivers deaf or hard of hearing (Intermediate)
3845	CPR	5/31/2016	8	Austin Police Academy	
2109	Spanish for Law Enforcement (Intermediate)	5/27/2016	20	Austin Police Academy	Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate)
3344	Less Lethal Electronic Control Device Training	5/27/2016	8	Austin Police Academy	
2107	Use of Force (Intermediate)	5/20/2016	13	Austin Police Academy	Use of Force (Intermediate)
2053	Baton (All)	5/12/2016	8	Austin Police Academy	
3807	TCIC/NCIC for Less than Full Access Operators	4/14/2016	8	Austin Police Academy	
3910	Sexual Harassment Recognition	3/22/2016	2	Austin Police Academy	
1999	Personnel Orientation by Dept. Basic Proficiency	3/21/2016	0	Austin Police Academy	Personnel Orientation
		Unit Hours	977		

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

Total Hours	1743

Total Hours

Total Career/Professional Hours	3440
Total TCOLE Course Hours	1743
Total Hours	5183

*Courses submitted between 09/01/2017 and 09/30/2017 will be credited to the 2015-2017 and 2017-2019 training unit, but will only count once toward total training hours.

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Attachment 4

Texas Commission On Law Enforcement

Personal Status Report

Name	TCOLE ID (P ID)	STATUS
THOMAS B. NELSON	345930	

Citizen	Race	Gender
Yes	White	Male

Career/Professional Training

Institution	Hours	Education	From	To
UNIV. OF HOUSTON	92	Bachelor		
SAN JACINTO COLLEGE DIST.	55	College Credits		
Total Higher Education Hours	147			
Total Higher Education Points	2940			
Total MilitaryTraining Hours	0			
Total	2940			

Service History

Appointed As	Department	Award	Service Start Date	Service End Date	Service Time
Peace Officer	AUSTIN POLICE DEPARTMENT	Peace Officer License	4/27/2007		14 years, 6 months

Total Service Time

Description	Service Time
Peace Officer	14 years, 6 months
Total officer time	14 years, 6 months

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Texas Commission On Law Enforcement

Personal Status Report

Award Information

Award	Type	Action	Action Date
Peace Officer License	License		
		Granted	4/30/2007
Basic Peace Officer	Certificate		
		Certification Issued	8/29/2008
Intermediate Peace Officer	Certificate		
		Certification Issued	4/11/2009
Basic Instructor Proficiency	Certificate		
		Certification Issued	2/9/2012
Advanced Peace Officer	Certificate		
		Certification Issued	10/17/2012
Master Peace Officer	Certificate		
		Certification Issued	4/9/2016

Academy History

	Date	Institution	Course Title
Completed	4/27/2007	Austin Police Academy	Basic Peace Officer

Courses Completed

09/01/2019 - 08/31/2021

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
355	Annual Firearms Qualification 1701.355	6/2/2021	0	Austin Police Academy	
6030	Tactical Vehicle Traffic Stops & Extractions	9/17/2020	2	Austin Police Academy	
6014	Tactical Entry Training	9/17/2020	4	Austin Police Academy	
3186	86th Legislative Session Legal Update	5/12/2020	3	Austin Police Academy	86th Session State and Federal Law Update
2055	Firearms	2/20/2020	10	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	1/28/2020	0	Austin Police Academy	
6014	Tactical Entry Training	10/30/2019	24	Texas Tactical Police Officers Association	
3517	Suicide Prevention (not 3501)	10/10/2019	4	Austin Police Academy	
3038	Agency Operations (General)	10/10/2019	4	Austin Police Academy	
2096	Arrest, Search & Seizure (Non-Intermediate Core Co	10/9/2019	8	Austin Police Academy	
3940	Community Policing	10/8/2019	8	Austin Police Academy	
30418	Civilian Interaction Training	10/8/2019	2	Austin Police Academy	Civilian Interaction Training Program

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2019 - 08/31/2021

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
1849	De-escalation Tech (SB 1849)	10/7/2019	8	Austin Police Academy	De-escalation Tech (SB 1849)
		Unit Hours	77		

09/01/2017 - 08/31/2019 *

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3305	Active Shooter Response	4/30/2019	16	Austin Police Academy	
6030	Tactical Vehicle Traffic Stops & Extractions	2/22/2019	7	Austin Police Academy	
3358	Police Bicycle	2/4/2019	10	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	1/29/2019	0	Austin Police Academy	
2024	Narcotics/Dangerous Drug Inv.	1/23/2019	16	Professional Law Enforcement Training (PLET)	
2047	Officer Survival/Weapon Retent	1/15/2019	20	Austin Police Academy	
3289	Outlaw Motorcycle Gangs	12/10/2018	8	Combined Law Enforcement Asso. of Texas	
6014	Tactical Entry Training	11/19/2018	8	Austin Police Academy	
2055	Firearms	10/16/2018	6	Austin Police Academy	
3283	Gangs	9/5/2018	5	Office of the Inspector General - TBCJ	
3305	Active Shooter Response	8/21/2018	4	Austin Police Academy	
8158	Body Worn Camera	8/15/2018	2	Austin Police Academy	
3185	85th Legislative Session Legal Update	6/14/2018	4	Austin Police Academy	85th Session State and Federal Law Update
2040	Defensive Tactics	4/30/2018	3	Austin Police Academy	
6014	Tactical Entry Training	4/25/2018	27	Austin Police Academy	
7824	Advanced Undercover Techniques/Survival	3/15/2018	36	Austin Police Academy	
2040	Defensive Tactics	1/23/2018	3	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	1/23/2018	0	Austin Police Academy	
2055	Firearms	1/23/2018	2	Austin Police Academy	
2055	Firearms	12/1/2017	10	Austin Police Academy	

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2017 - 08/31/2019 *

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3311	ALERRT	10/27/2017	16	Hays Co. Sheriff's Academy	
3340	Crowd Control	10/19/2017	6	Austin Police Academy	
3305	Active Shooter Response	9/20/2017	4	Austin Police Academy	
		Unit Hours	213		

09/01/2015 - 09/30/2017

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3305	Active Shooter Response	9/20/2017	4	Austin Police Academy	
3907	MultiCultural Diversity/Awarness for L.E. Prof.	8/3/2017	10	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	7/20/2017	0	Austin Police Academy	
2055	Firearms	7/20/2017	3	Austin Police Academy	
2055	Firearms	5/15/2017	4	Austin Police Academy	
3314	ALERRT Terrorism Response Tactics - Active Shooter	5/14/2017	16	Hays Co. Sheriff's Academy	
3823	Tactical Operators Training	4/22/2017	8	Texas Tactical Police Officers Association	
6030	Tactical Vehicle Traffic Stops & Extractions	4/22/2017	8	Texas Tactical Police Officers Association	
3342	Tactical Firearms Training	4/21/2017	4	Texas Tactical Police Officers Association	
3184	84th Legislative Session Legal Update	1/18/2017	4	Austin Police Academy	84th Session State and Federal Law Update
2096	Arrest, Search & Seizure (Non-Intermediate Core Co	1/17/2017	6	Austin Police Academy	
3342	Tactical Firearms Training	11/30/2016	8	Texas Tactical Police Officers Association	
3326	Patrol Rifle Inservice Training (Not 3322)	10/19/2016	5	Austin Police Academy	
3342	Tactical Firearms Training	10/19/2016	5	Austin Police Academy	
3311	ALERRT	9/23/2016	40	Hays Co. Sheriff's Academy	
3316	ALERRT First Responder Operations in Rural Terrain	9/9/2016	24	Hays Co. Sheriff's Academy	
3340	Crowd Control	6/25/2016	6	Austin Police Academy	
3830	General First Aid Training	6/7/2016	2	Austin Police Academy	
2045	Patrol Procedures	5/19/2016	10	Austin Police Academy	

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2015 - 09/30/2017

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
6014	Tactical Entry Training	5/2/2016	6	Austin Police Academy	
3342	Tactical Firearms Training	4/9/2016	16	Texas Tactical Police Officers Association	
3310	SWAT Inservice Training	4/8/2016	4	Texas Tactical Police Officers Association	
3312	ALERRT Update	3/2/2016	8	Hays Co. Sheriff's Academy	
3343	Less Lethal Chemical Weapons Training (OC, Mace, e	2/29/2016	4	Austin Police Academy	
3345	Less Lethal Impact Weapons Training (Bean Bag/Impa	2/29/2016	4	Austin Police Academy	
6030	Tactical Vehicle Traffic Stops & Extractions	2/22/2016	5	Austin Police Academy	
3836	Concealed Carry for Law Enforcement Officers	11/12/2015	10	Austin Police Academy	
3329	SWAT-Use of Distraction Devices	10/27/2015	4	Austin Police Academy	
3312	ALERRT Update	9/25/2015	16	Hays Co. Sheriff's Academy	
		Unit Hours	244		

09/01/2013 - 08/31/2015

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3283	Gangs	8/24/2015	3	Austin Police Academy	
2024	Narcotics/Dangerous Drug Inv.	8/20/2015	4	Combined Law Enforcement Asso. of Texas	
3338	Law Enforcement Ambush Response	8/20/2015	4	Combined Law Enforcement Asso. of Texas	
7806	Current Drug Trends TNOA	8/19/2015	4	Combined Law Enforcement Asso. of Texas	
2024	Narcotics/Dangerous Drug Inv.	8/19/2015	4	Combined Law Enforcement Asso. of Texas	
3106	Conference (General)	8/18/2015	8	Combined Law Enforcement Asso. of Texas	
2055	Firearms	7/13/2015	1	Austin Police Academy	
3305	Active Shooter Response	6/25/2015	20	Austin Police Academy	
2055	Firearms	6/16/2015	1	Austin Police Academy	
2040	Defensive Tactics	5/20/2015	10	Austin Police Academy	
3305	Active Shooter Response	5/14/2015	20	Austin Police Academy	

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Courses Completed

09/01/2013 - 08/31/2015

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3342	Tactical Firearms Training	4/13/2015	24	Texas Tactical Police Officers Association	
3396	Patrol/Tactical Seminar	4/10/2015	4	Texas Tactical Police Officers Association	
3396	Patrol/Tactical Seminar	4/10/2015	4	Texas Tactical Police Officers Association	
3396	Patrol/Tactical Seminar	4/10/2015	4	Texas Tactical Police Officers Association	
3396	Patrol/Tactical Seminar	4/10/2015	4	Texas Tactical Police Officers Association	
3183	83rd Legislative Session Legal Update	2/21/2015	4	Austin Police Academy	83rd Session State and Federal Law Update
3737	New Supervisor's Course	2/5/2015	80	Austin Police Academy	Cultural Diversity (Intermediate) New Supervisor's Required Training Special Investigative Topics (Intermediate)
3305	Active Shooter Response	1/18/2015	10	Austin Police Academy	
2029	Tech. Interviewing & Interrog.	12/18/2014	40	Austin Police Academy	
3305	Active Shooter Response	12/9/2014	10	Austin Police Academy	
3311	ALERRT	11/19/2014	26	Hays Co. Sheriff's Academy	
3304	Hostage and Barricade Suspect Situations	10/30/2014	5	Austin Police Academy	
2055	Firearms	10/27/2014	1	Austin Police Academy	
3342	Tactical Firearms Training	9/25/2014	3	Austin Police Academy	
3305	Active Shooter Response	9/21/2014	10	Austin Police Academy	
62040	Defensive Tactics - Canine Encounters (Proprietary	9/18/2014	4	Austin Police Academy	Canine Encounter (Intermediate) Canine Encouter (Advance)
3132	Search Warrants (Writing)	8/21/2014	4	Combined Law Enforcement Asso. of Texas	
7801	Pharmaceutical Diversion Investigations TNOA	8/21/2014	4	Combined Law Enforcement Asso. of Texas	
3407	Highway Drug Interdiction	8/20/2014	4	Combined Law Enforcement Asso. of Texas	
2024	Narcotics/Dangerous Drug Inv.	8/20/2014	4	Combined Law Enforcement Asso. of Texas	
57019	Bulletproof Mind and Mental Preparation For Combat	8/19/2014	8	Combined Law Enforcement Asso. of Texas	
2222	Firearms Instructor Certification	8/15/2014	40	Austin Police Academy	
2055	Firearms	7/27/2014	1	Austin Police Academy	

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2013 - 08/31/2015

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2055	Firearms	6/23/2014	1	Austin Police Academy	
4019	Blood Stain/Pattern Interpretation	6/6/2014	40	Austin Police Academy	
2055	Firearms	5/26/2014	1	Austin Police Academy	
2040	Defensive Tactics	4/27/2014	8	Texas Tactical Police Officers Association	
3342	Tactical Firearms Training	4/26/2014	8	Texas Tactical Police Officers Association	
3896	Technical/Specialized Seminar	4/25/2014	4	Texas Tactical Police Officers Association	
3283	Gangs	4/15/2014	7	Texas Attorney General's Office	
3322	Patrol Rifle	4/8/2014	20	Austin Police Academy	
3864	Manual Breaching	4/7/2014	4	Austin Police Academy	
2055	Firearms	4/7/2014	1	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	3/27/2014	6	Austin Police Academy	
3308	Officer Safety/Survival	3/21/2014	16	Tarrant Co. Sheriff's Academy	
3305	Active Shooter Response	2/14/2014	20	Austin Police Academy	
3305	Active Shooter Response	1/17/2014	20	Austin Police Academy	
2052	Hostage Negotiations	1/9/2014	3	Hays Co. Sheriff's Academy	
2018	Development/Use of Informants	1/7/2014	16	Austin Police Academy	
3283	Gangs	1/3/2014	8	Cedar Park Police Department	
3304	Hostage and Barricade Suspect Situations	12/19/2013	5	Austin Police Academy	
3305	Active Shooter Response	12/13/2013	20	Austin Police Academy	
2055	Firearms	11/26/2013	1	Austin Police Academy	
3340	Crowd Control	11/18/2013	3	Austin Police Academy	
2055	Firearms	10/17/2013	1	Austin Police Academy	
2055	Firearms	9/30/2013	1	Austin Police Academy	
3312	ALERRT Update	9/25/2013	8	Hays Co. Sheriff's Academy	
3310	SWAT Inservice Training	9/24/2013	4	Austin Police Academy	
3105	Executive Protection Training	9/20/2013	50	Texas Tactical Police Officers Association	
3318	ALERRT First Responders Operating in Low - Light	9/11/2013	24	Hays Co. Sheriff's Academy	

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

Unit Hours 677

09/01/2011 - 08/31/2013

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2055	Firearms	8/30/2013	1	Austin Police Academy	
7810	Sex Drugs and Social Networking TNOA	8/22/2013	4	Combined Law Enforcement Asso. of Texas	
7812	Intel EPIC Trends TNOA	8/22/2013	4	Combined Law Enforcement Asso. of Texas	
7804	Aryan Brotherhood Investigations TNOA	8/21/2013	4	Combined Law Enforcement Asso. of Texas	
7807	Advanced Undercover Violence TNOA	8/21/2013	4	Combined Law Enforcement Asso. of Texas	
2024	Narcotics/Dangerous Drug Inv.	8/20/2013	8	Combined Law Enforcement Asso. of Texas	
3305	Active Shooter Response	8/9/2013	10	Austin Police Academy	
2055	Firearms	7/26/2013	1	Austin Police Academy	
3315	ALERRT- Terrorism Response Tactics - Active Shoote	7/19/2013	40	Hays Co. Sheriff's Academy	
3305	Active Shooter Response	7/12/2013	10	Austin Police Academy	
3106	Conference (General)	6/28/2013	30	Lubbock Co. Sheriff's Academy	
4052	Hearing Disabilities	6/24/2013	2	Austin Police Academy	
2055	Firearms	6/21/2013	1	Austin Police Academy	
3182	82nd Legislative Session Legal Update	6/5/2013	4	Austin Police Academy	82nd Session State and Federal Law Update
3106	Conference (General)	5/30/2013	11	Dallas Co. Sheriff's Academy	
3182	82nd Legislative Session Legal Update	5/30/2013	2	Dallas Co. Sheriff's Academy	82nd Session State and Federal Law Update
2055	Firearms	5/23/2013	1	Austin Police Academy	
2024	Narcotics/Dangerous Drug Inv.	5/23/2013	16	Professional Law Enforcement Training (PLET)	
3408	Roadside Interview Techniques/patrol activities	5/21/2013	16	Austin Police Academy	
3312	ALERRT Update	5/7/2013	8	Hays Co. Sheriff's Academy	
3200	Investigations	4/30/2013	14	Texas Attorney General's Office	
2055	Firearms	4/10/2013	1	Austin Police Academy	
66800	FEMA National Resp Plan Intro (FEMA IS-800b)	2/5/2013	3	AUSTIN POLICE DEPARTMENT (Training Rosters)	

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Personal Status Report

Courses Completed

09/01/2011 - 08/31/2013

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2024	Narcotics/Dangerous Drug Inv.	2/1/2013	32	Tarrant County College District LEA	
2055	Firearms	10/24/2012	1	Austin Police Academy	
3340	Crowd Control	10/15/2012	5	Austin Police Academy	
3270	Human Trafficking	10/12/2012	4	Austin Police Academy	Human Trafficking
4041	Cartel Operations/Investigations	10/12/2012	16	Austin Police Academy	
2025	Organized Crime	10/4/2012	40	Austin Police Academy	
2055	Firearms	9/26/2012	1	Austin Police Academy	
2024	Narcotics/Dangerous Drug Inv.	9/25/2012	16	San Marcos Police Academy	
3304	Hostage and Barricade Suspect Situations	9/20/2012	6	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	9/19/2012	4	Austin Police Academy	
3310	SWAT Inservice Training	9/6/2012	4	Austin Police Academy	
4043	Mobile Video Training	9/5/2012	8	Austin Police Academy	
3283	Gangs	8/22/2012	21	Texas Attorney General's Office	
2024	Narcotics/Dangerous Drug Inv.	8/16/2012	4	Combined Law Enforcement Asso. of Texas	
3800	Technical/Specialized	8/16/2012	4	Combined Law Enforcement Asso. of Texas	
2024	Narcotics/Dangerous Drug Inv.	8/15/2012	4	Combined Law Enforcement Asso. of Texas	
2025	Organized Crime	8/15/2012	4	Combined Law Enforcement Asso. of Texas	
2024	Narcotics/Dangerous Drug Inv.	8/14/2012	4	Combined Law Enforcement Asso. of Texas	
2024	Narcotics/Dangerous Drug Inv.	7/26/2012	6	Williamson County Sheriff's Office	
3303	Law Enforcement Officer Flying Armed - (FAA)	7/26/2012	2	Williamson County Sheriff's Office	
3300	Patrol/Tactical	5/9/2012	6	Austin Police Academy	
2053	Baton (All)	5/3/2012	10	Austin Police Academy	
3344	Less Lethal Electronic Control Device Training	5/2/2012	1	Austin Police Academy	
3340	Crowd Control	4/24/2012	7	Austin Police Academy	
3896	Technical/Specialized Seminar	4/22/2012	8	Texas Tactical Police Officers Association	

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2011 - 08/31/2013

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3896	Technical/Specialized Seminar	4/22/2012	8	Texas Tactical Police Officers Association	
3864	Manual Breaching	4/22/2012	8	Texas Tactical Police Officers Association	
3342	Tactical Firearms Training	4/21/2012	8	Texas Tactical Police Officers Association	
3304	Hostage and Barricade Suspect Situations	3/15/2012	4	Austin Police Academy	
3324	SWAT Sniper Training	3/7/2012	4	Austin Police Academy	
3310	SWAT Inservice Training	2/29/2012	4	Austin Police Academy	
3311	ALERRT	2/10/2012	16	Hays Co. Sheriff's Academy	
1014	Basic Instructor Course	11/18/2011	40	Austin Police Academy	
38705	Basic PowerPoint	10/4/2011	8	Austin Police Academy	
38705	Basic PowerPoint	10/4/2011	8	Austin Police Academy	
		Unit Hours	521		

09/01/2009 - 08/31/2011

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3340	Crowd Control	8/18/2011	40	Austin Police Academy	
3283	Gangs	7/26/2011	16	Texas Municipal Police Association	
3300	Patrol/Tactical	6/17/2011	8	Austin Police Academy	
3300	Patrol/Tactical	6/16/2011	4	Austin Police Academy	
3342	Tactical Firearms Training	6/16/2011	4	Austin Police Academy	
3305	Active Shooter Response	6/15/2011	8	Austin Police Academy	
2029	Tech. Interviewing & Interrog.	6/10/2011	32	Austin Police Academy	
3181	81st Legislative Session Legal Update	3/22/2011	8	Austin Police Academy	State and Federal Law Update
2055	Firearms	2/9/2011	10	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	2/8/2011	8	Austin Police Academy	
3830	General First Aid Training	2/1/2011	8	Austin Police Academy	
2055	Firearms	1/5/2011	5	Austin Police Academy	
3342	Tactical Firearms Training	12/15/2010	10	Austin Police Academy	
3300	Patrol/Tactical	8/26/2010	40	Austin Police Academy	

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2009 - 08/31/2011

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3300	Patrol/Tactical	7/22/2010	40	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	6/23/2010	8	Austin Police Academy	
3800	Technical/Specialized	5/27/2010	16	Tarrant Co. Sheriff's Academy	
3300	Patrol/Tactical	10/7/2009	10	Austin Police Academy	
3301	Basic S.W.A.T. Course	9/15/2009	60	Austin Police Academy	
		Unit Hours	335		

09/01/2007 - 08/31/2009

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3200	Investigations	8/6/2009	1	Austin Police Academy	
3232	Special Investigative Topics	7/20/2009	8	Austin Police Academy	Special Investigative Topics (Intermediate)
3283	Gangs	6/10/2009	20	Austin Police Academy	
3300	Patrol/Tactical	4/16/2009	40	Austin Police Academy	
3300	Patrol/Tactical	2/19/2009	20	Austin Police Academy	
3939	Cultural Diversity	10/21/2008	10	Austin Police Academy	Cultural Diversity (Intermediate)
3722	Peace Officer Field Training	7/27/2008	480	Austin Police Academy	Peace Officer Field Training
3300	Patrol/Tactical	5/7/2008	20	Austin Police Academy	
3100	LAW	3/2/2008	4	Austin Police Academy	
3283	Gangs	12/13/2007	24	Texas Attorney General's Office	
3100	LAW	10/25/2007	10	Austin Police Academy	

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2007 - 08/31/2009

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3841	Crisis Intervention Training	9/1/2007	16	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09
2176	S.F.S.T. NHTSA 24hour Practitioner - BPOC	9/1/2007	0	Austin Police Academy	
3939	Cultural Diversity	9/1/2007	8	Austin Police Academy	Cultural Diversity (Intermediate)
		Unit Hours	661		

09/01/2005 - 08/31/2007

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3800	Technical/Specialized	7/30/2007	20	Austin Police Academy	
1000	Basic Peace Officer	4/27/2007	1012	Austin Police Academy	Crisis Intervention Training (Mandate) Cultural Diversity (Mandate) S.F.S.T. NHTSA 24hour Practitioner Special Investigative Topic (Mandate)
3400	Traffic	4/13/2007	4	Texas Municipal Police Association	
3200	Investigations	4/4/2007	4	Austin Police Academy	

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Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2005 - 08/31/2007

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3842	CIT(16hr)-BPOC	3/16/2007	0	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09
2106	Crime Scene Investigation (Intermediate)	2/2/2007	60	Austin Police Academy	Crime Scene Investigation (Intermediate)
66100	FEMA Intro ICS (FEMA IS-100a)	1/28/2007	3	Austin Police Academy	
2067	S.F.S.T. Practitioner	1/26/2007	24	Austin Police Academy	
3255	Asset Forfeiture	1/2/2007	2	Austin Police Academy	Asset Forfeiture (Intermediate)
3256	Racial Profiling	12/29/2006	4	Austin Police Academy	Racial Profiling (Intermediate)
2105	Child Abuse Prevention and Investigation (Interm.)	12/27/2006	24	Austin Police Academy	Child Abuse Prevention and Investigation (Intermediate)
3277	Identity Theft	12/26/2006	4	Austin Police Academy	Identity Theft (Intermediate)
2108	Arrest, Search, and Seizure (Intermediate)	11/30/2006	22	Austin Police Academy	Arrest, Search, and Seizure (Intermediate)
2107	Use of Force (Intermediate)	11/22/2006	32	Austin Police Academy	Use of Force (Intermediate)
3807	TCIC/NCIC for Less than Full Access Operators	10/18/2006	8	Austin Police Academy	
2109	Spanish for Law Enforcement (Intermediate)	9/29/2006	40	Austin Police Academy	Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate)
3910	Sexual Harassment Recognition	9/21/2006	2	Austin Police Academy	
1999	Personnel Orientation by Dept. Basic Proficiency	9/18/2006	0	Austin Police Academy	Personnel Orientation
		Unit Hours	1265		
		Total Hours	3993		

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Texas Commission On Law Enforcement

Personal Status Report

Total Hours

Total Career/Professional Hours	2940
Total TCOLE Course Hours	3993
Total Hours	6933

*Courses submitted between 09/01/2017 and 09/30/2017 will be credited to the 2015-2017 and 2017-2019 training unit, but will only count once toward total training hours.

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Exhibit 7

APD HALO Video
[Bates No. COA 5047 and COA 003]

This video exhibit will be hand delivered to the Court

This video is being provided in two formats:

- The native format (includes interactive software and time stamps) – COA 5047
- .wmv format (easier to play) – COA 003

Please contact paralegal Carol Smith at 512-974-2147 or carol.smith@austintexas.gov for assistance with video exhibits.

Exhibit 7

Exhibit 8

Exhibit 8

Still Shot Photos from APD HALO Video [Bates No. COA 5047]

Timestamp for each photo:

Photo 1 – Timestamp 2:50:06

Photo 2 – Timestamp 2:50:07

Photo 3 – Timestamp 2:50:08

Photo 4 – Timestamp 2:50:09

Photo 5 – Timestamp 2:50:11

Photo 6 – Timestamp 2:50:12

Photo 7 – Timestamp 2:50:15

Photo 8 – Timestamp 2:50:15

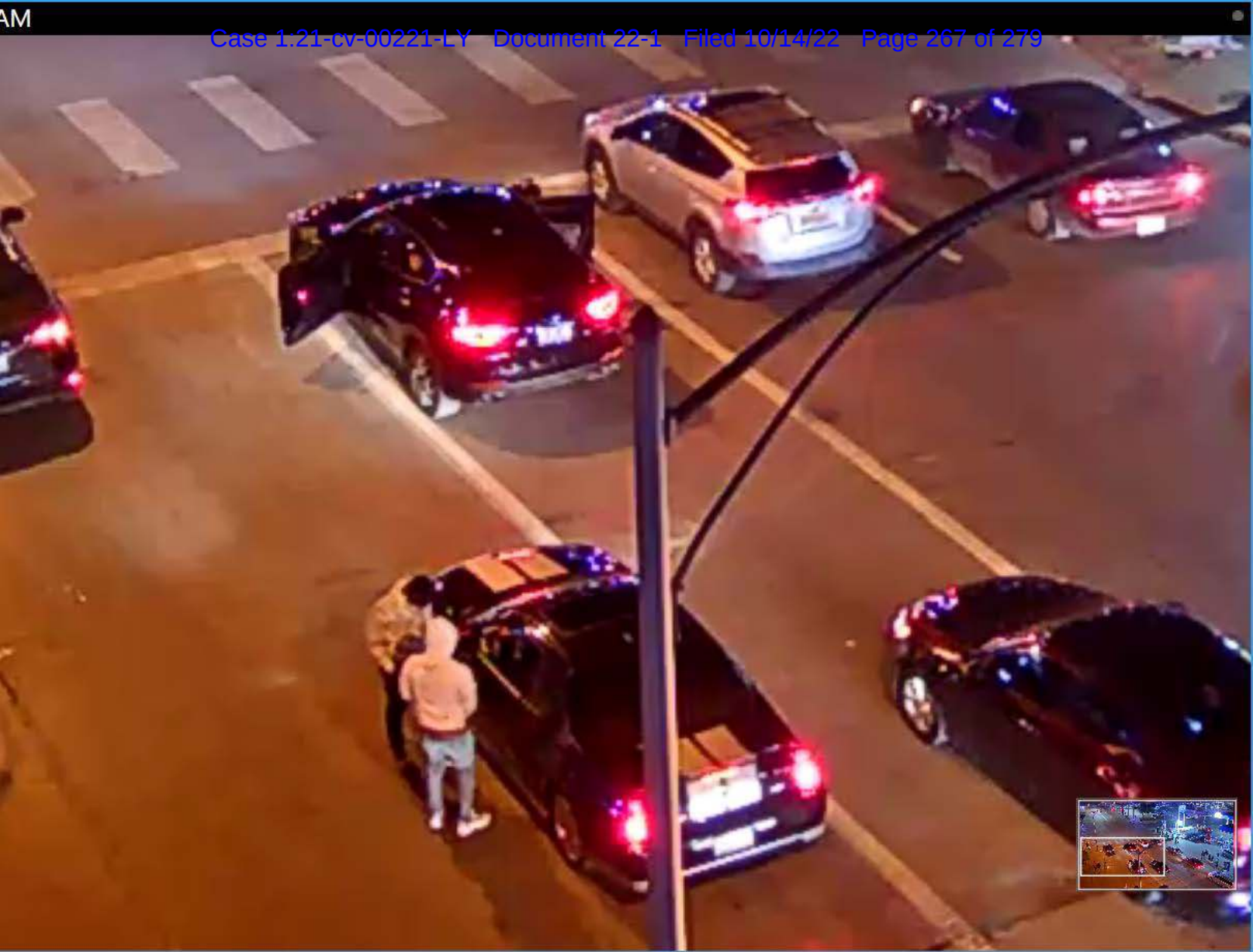
Photo 9 – Timestamp 2:50:17

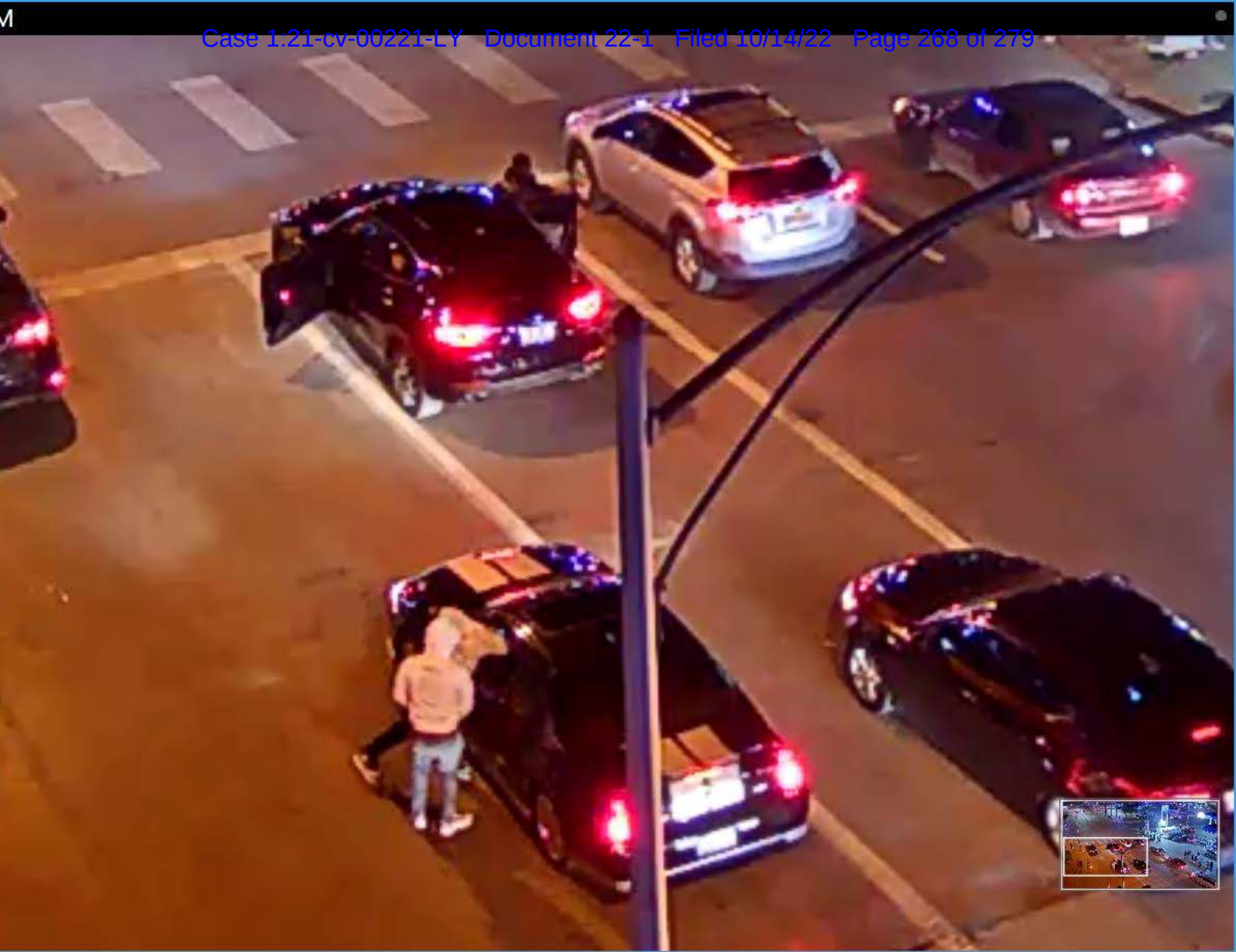
Photo 10 – Timestamp 2:50:18

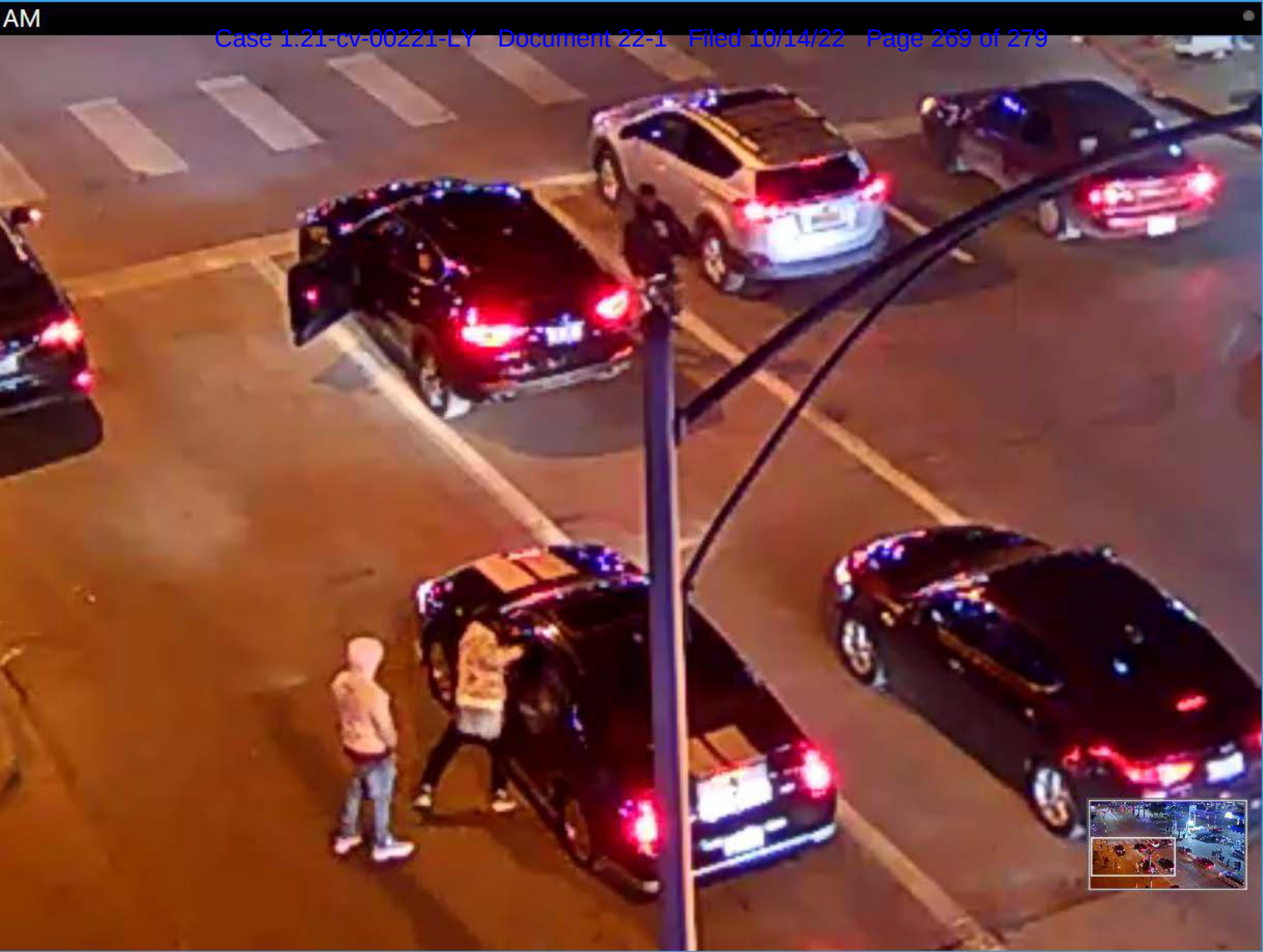
Photo 11 – Timestamp 2:50:23

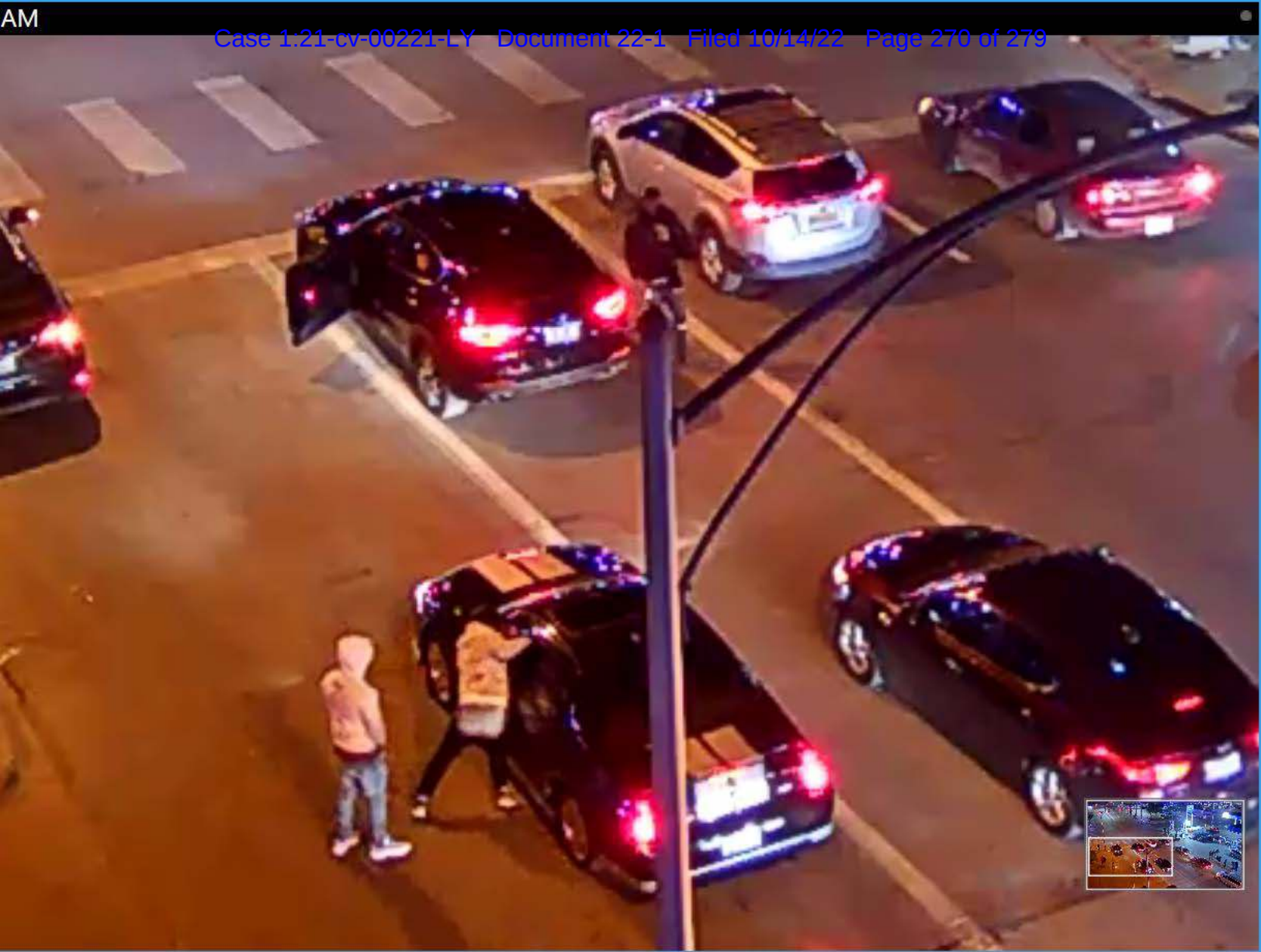
Photo 12 – Timestamp 2:50:25

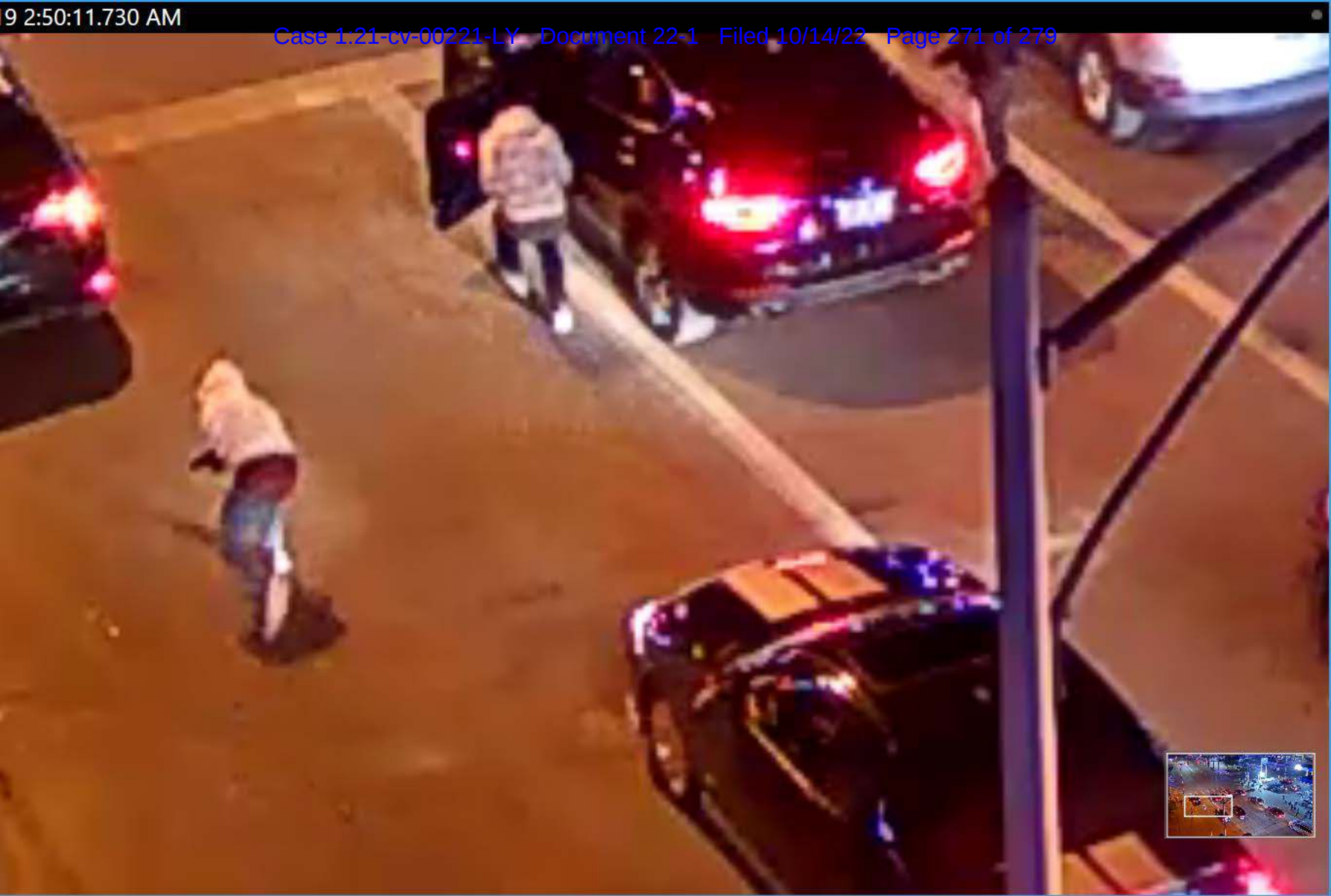
Photo 13 – Timestamp 2:50:27

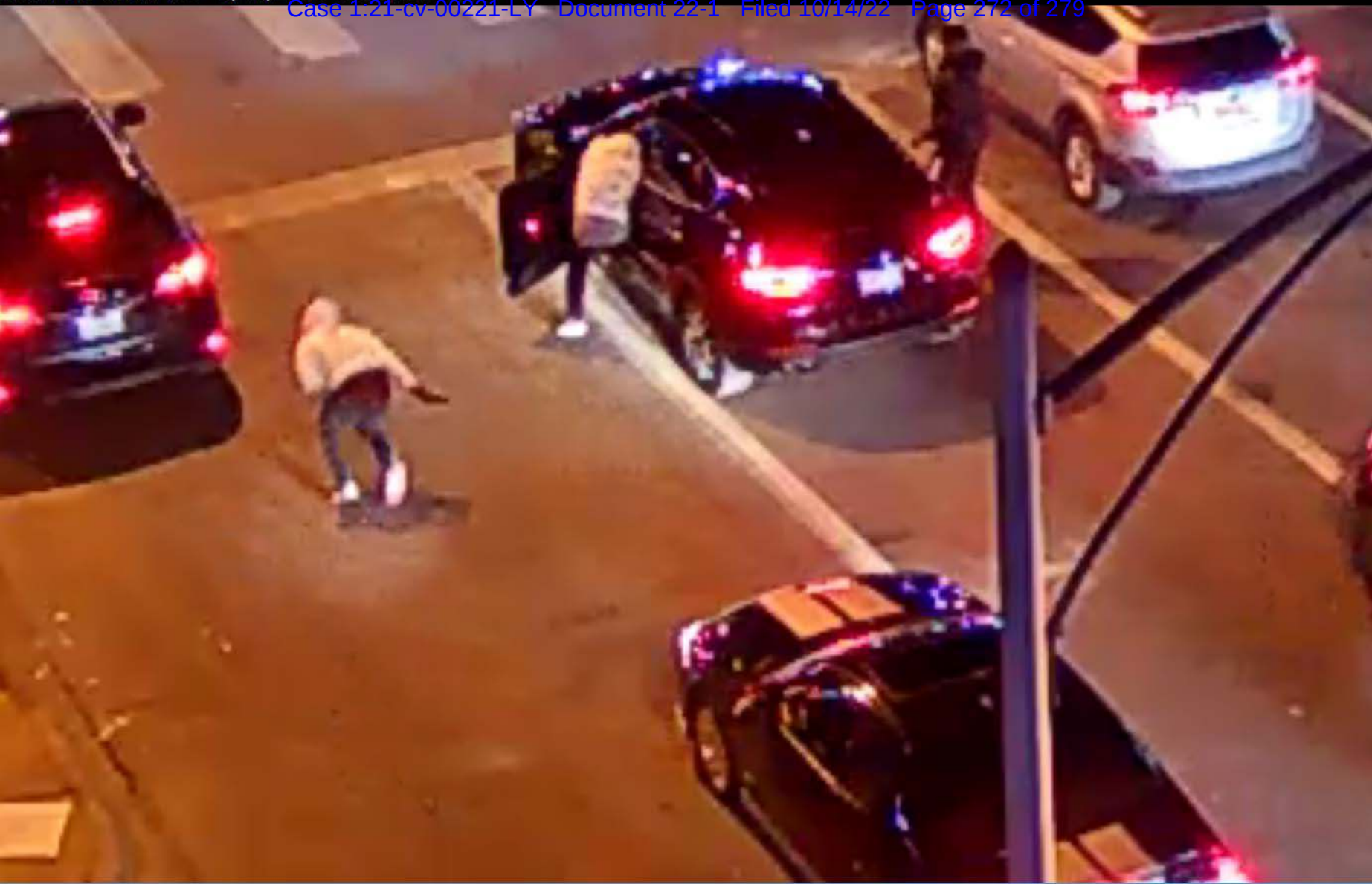


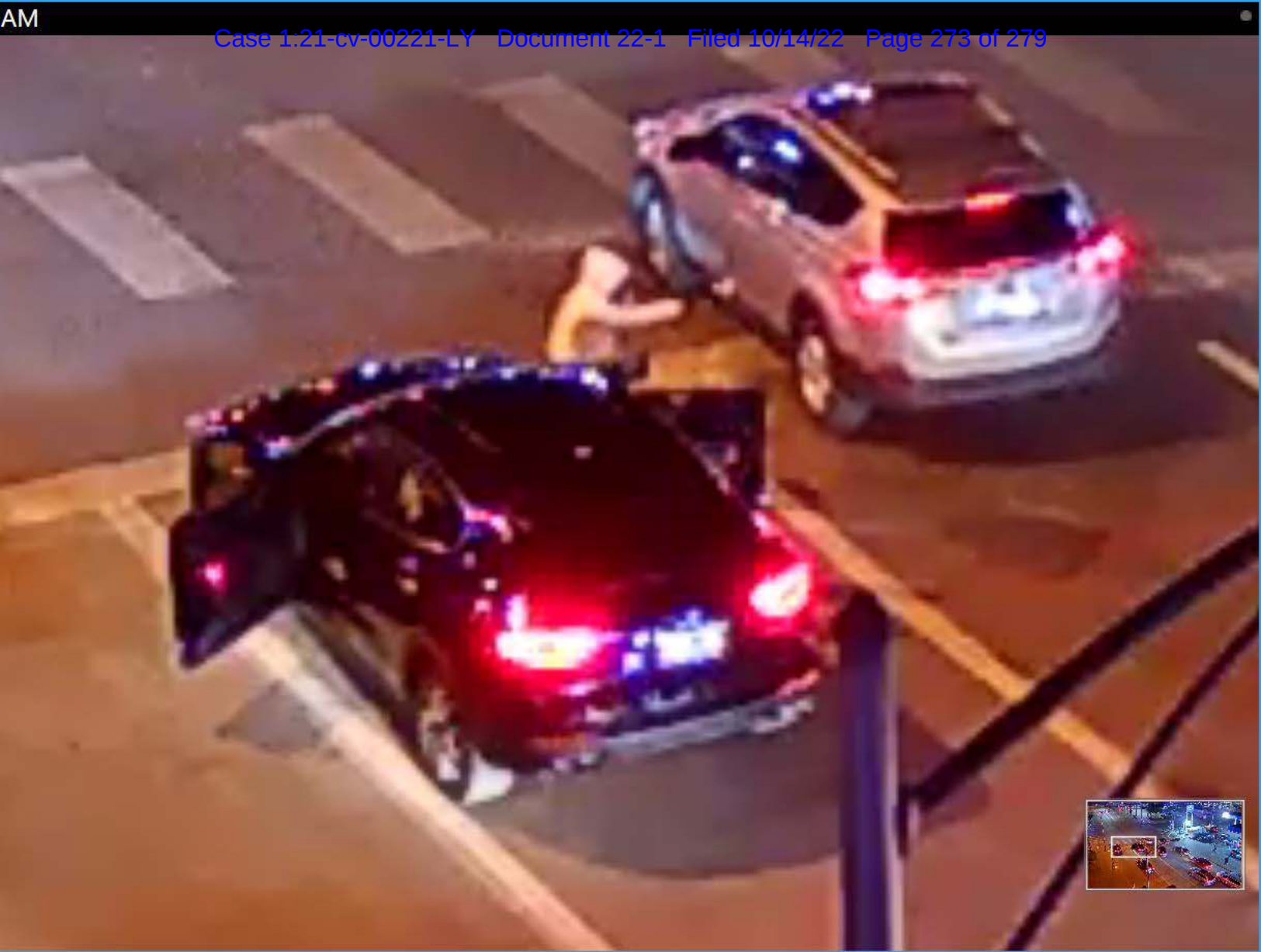


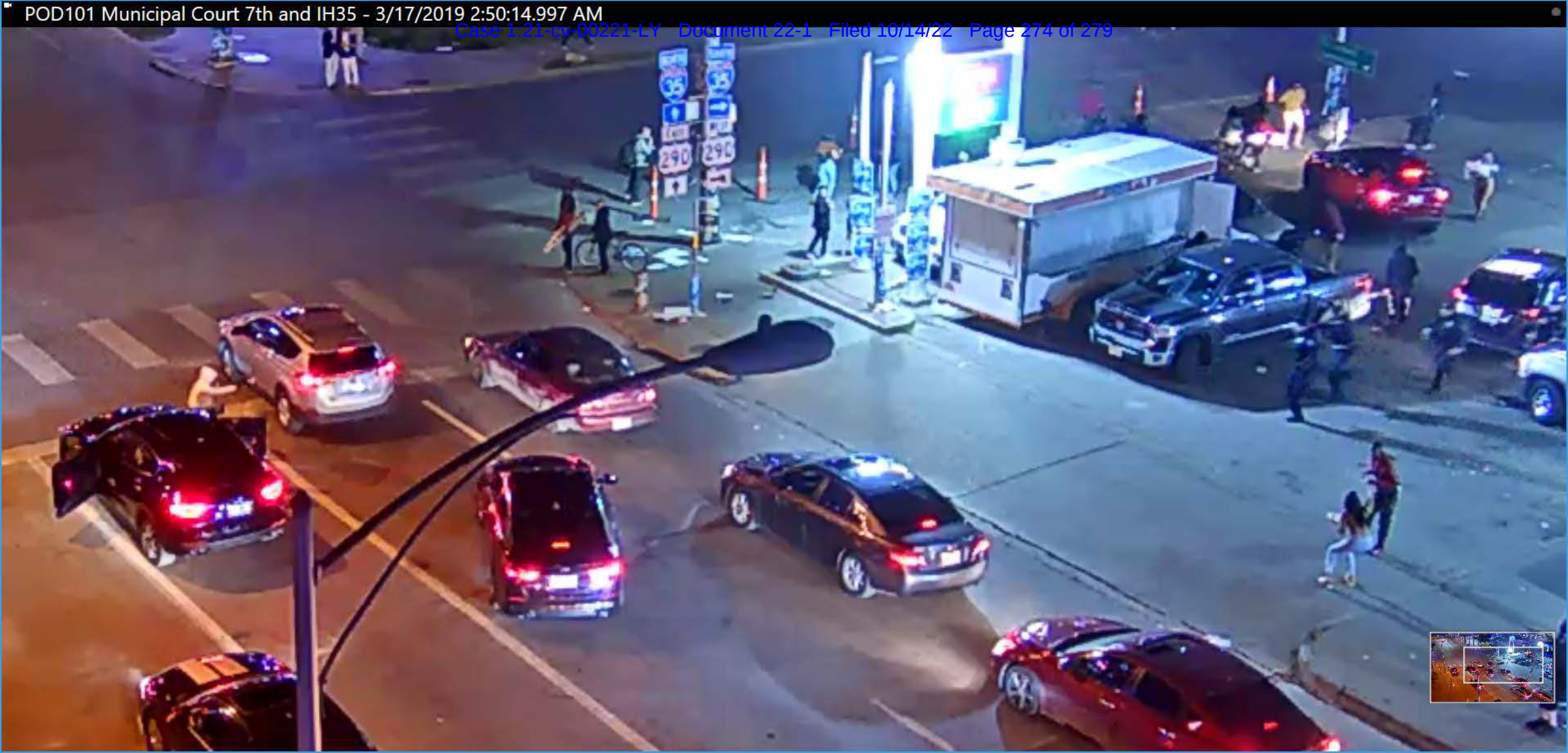


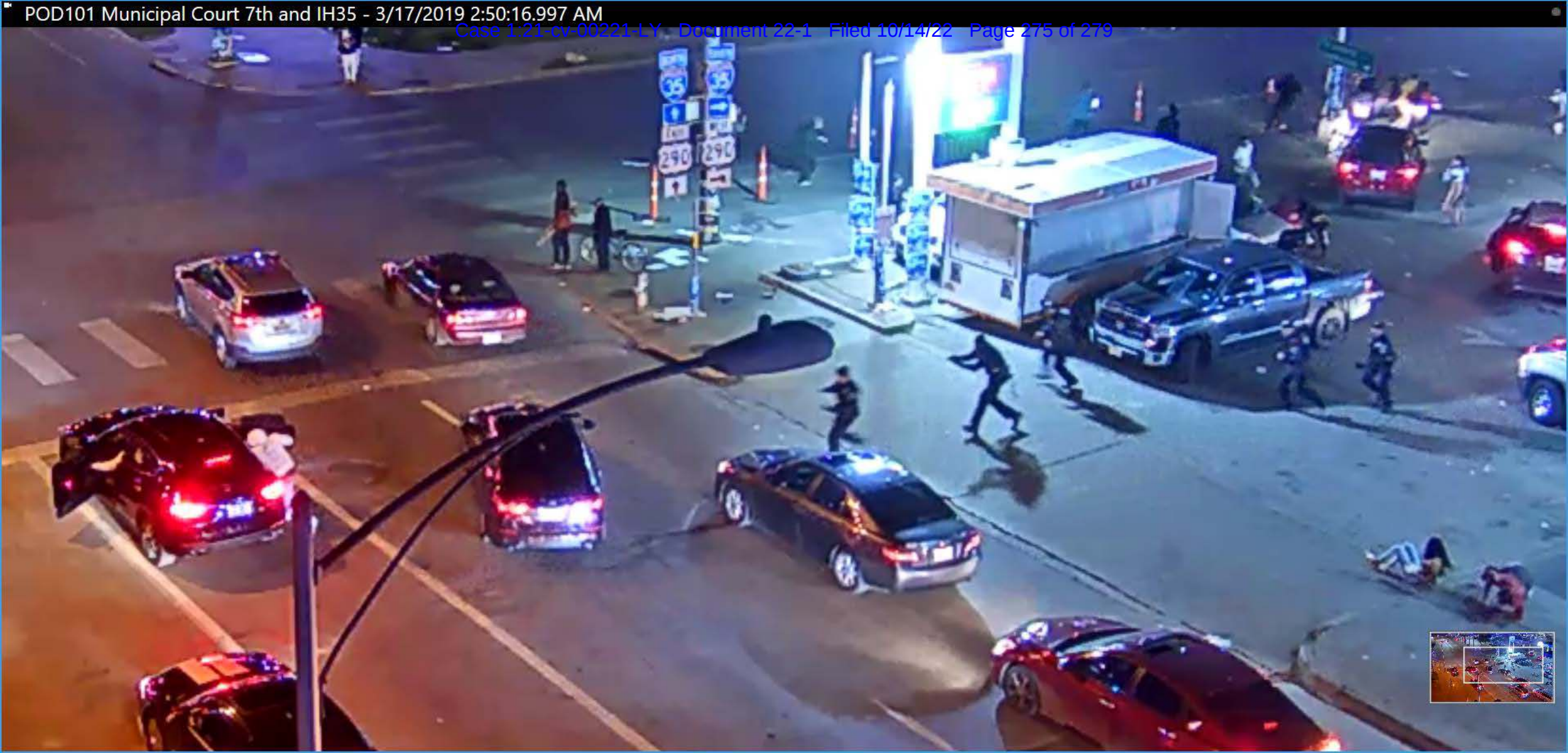


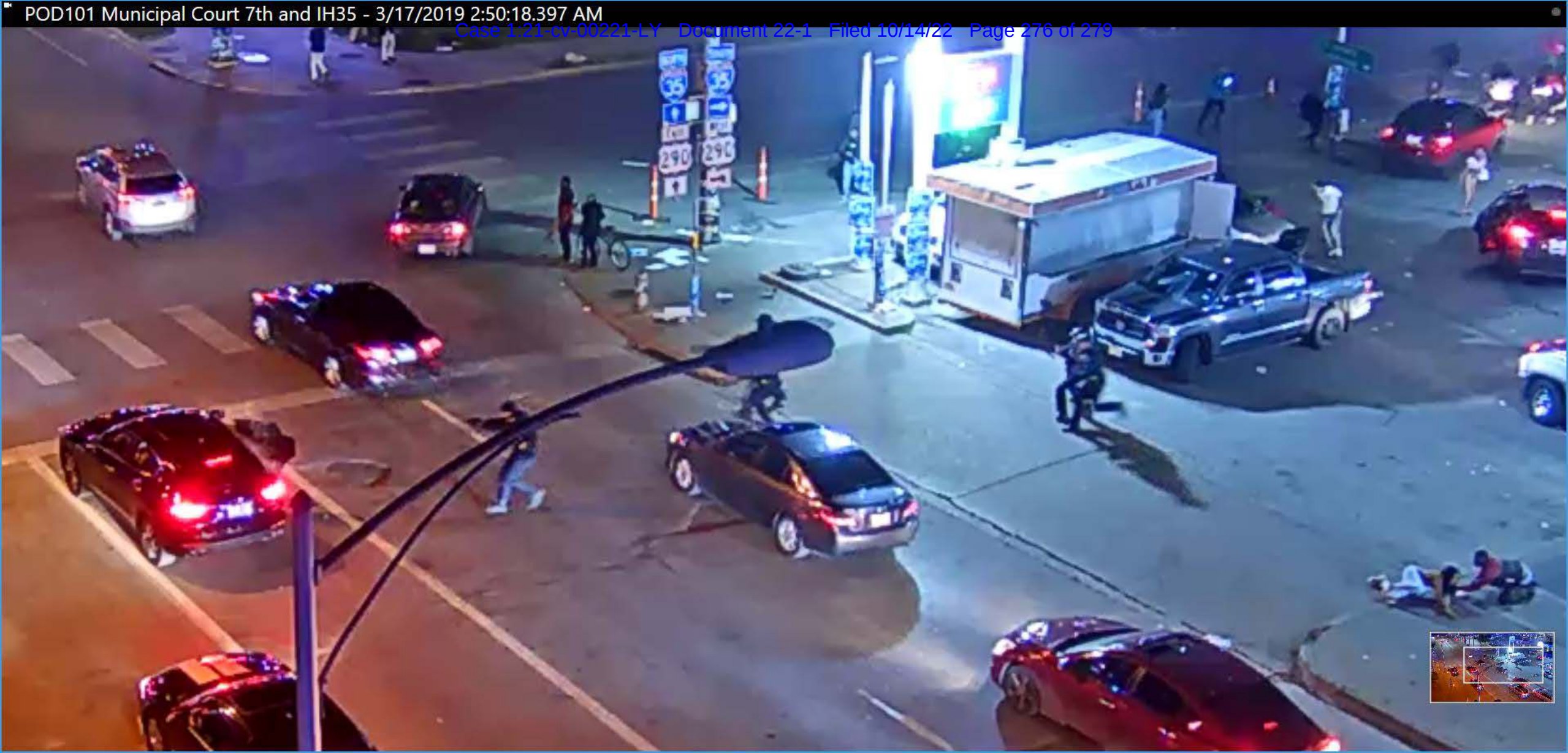


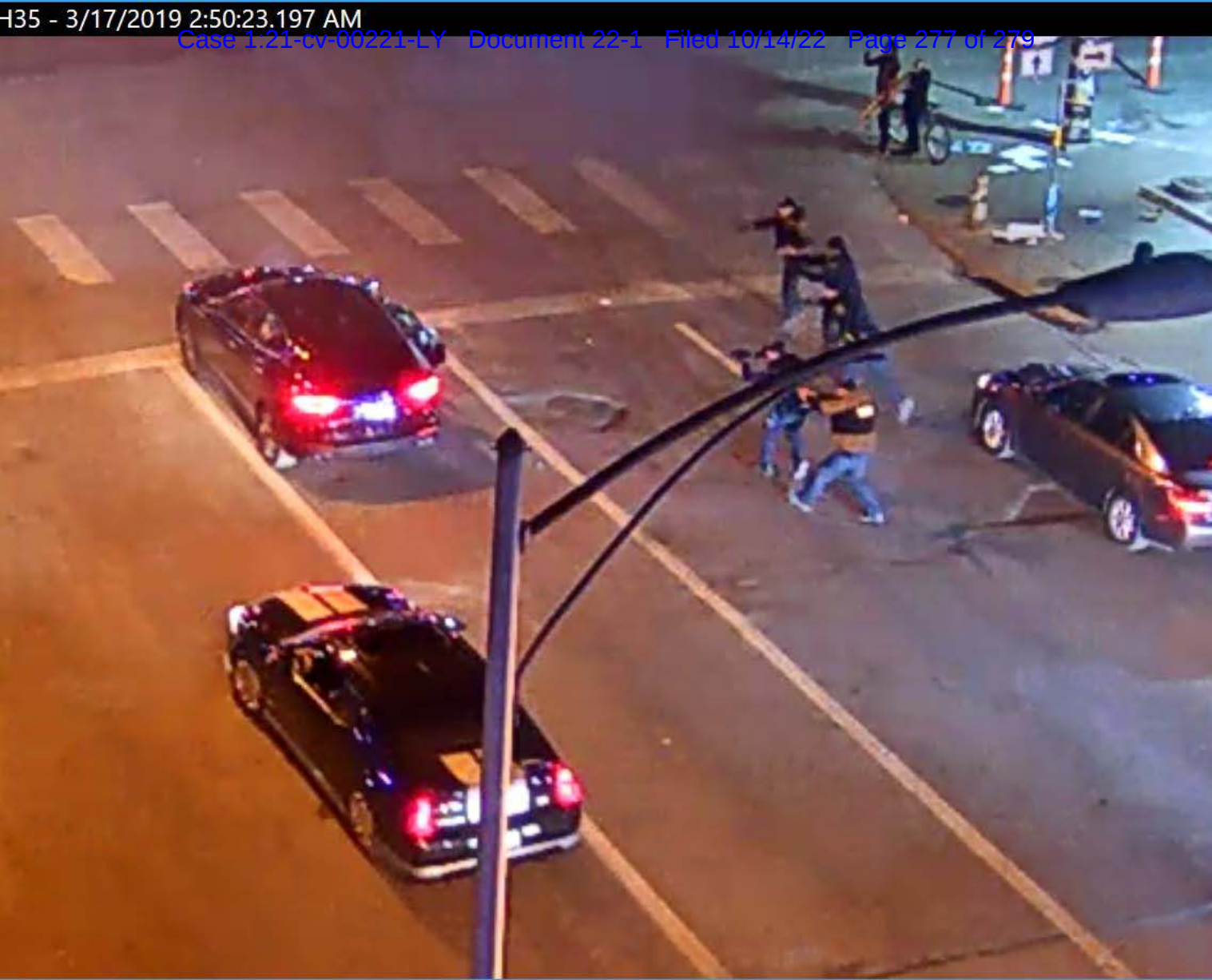


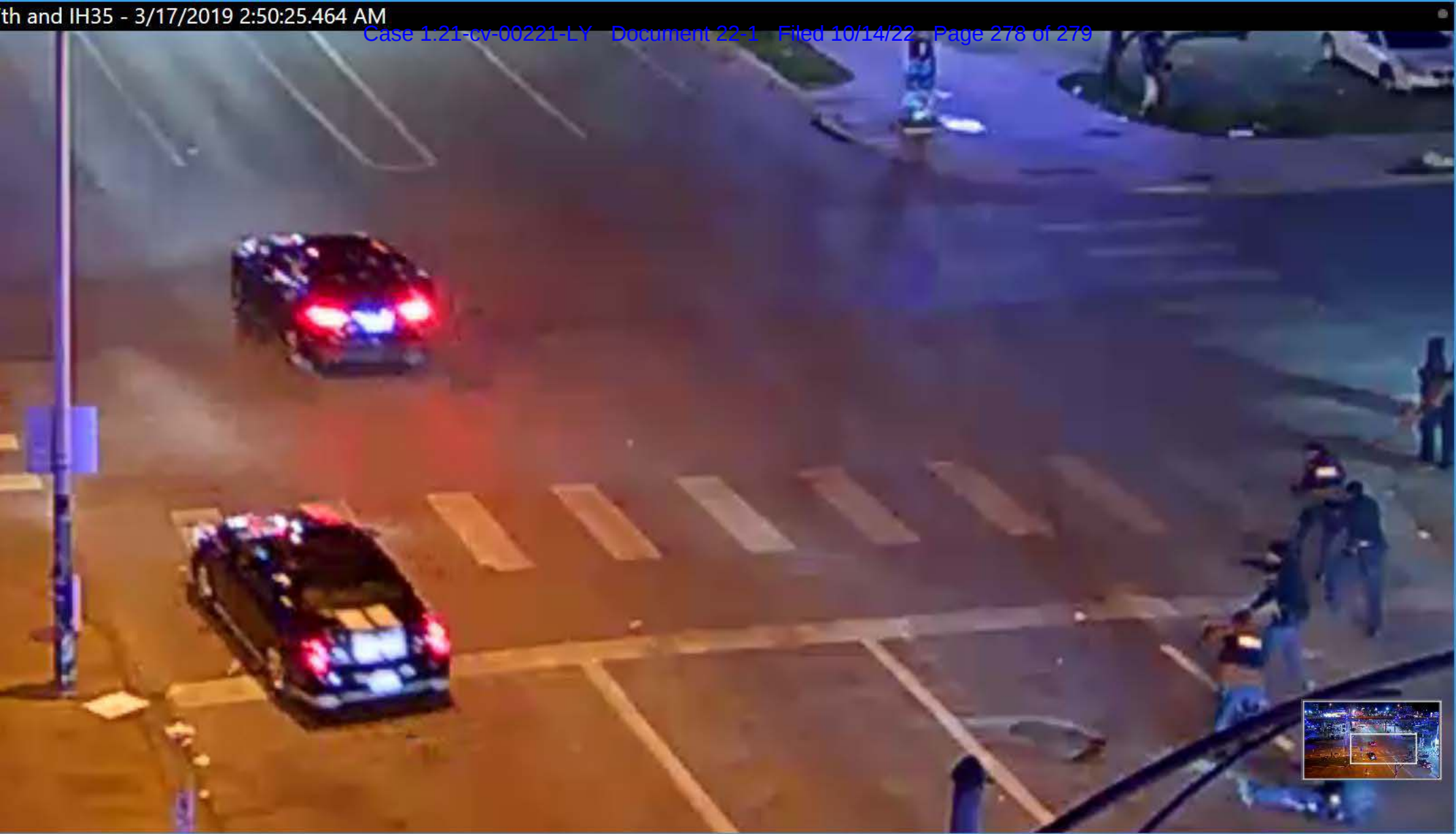


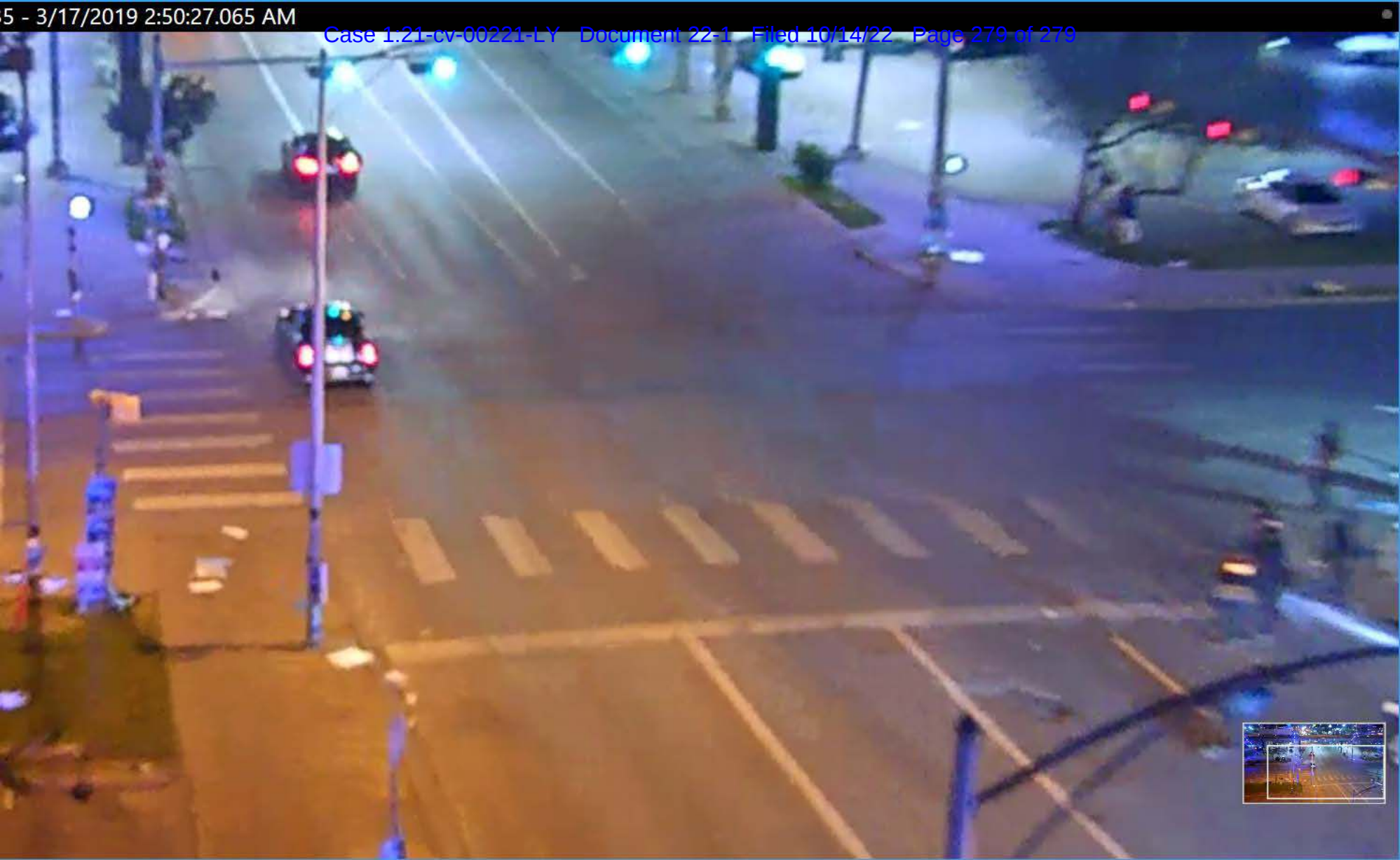

POD101 Municipal Court 7th and IH35 - 3/17/2019 2:50:14.997 AM


POD101 Municipal Court 7th and IH35 - 3/17/2019 2:50:16.997 AM


POD101 Municipal Court 7th and IH35 - 3/17/2019 2:50:18.397 AM




th and IH35 - 3/17/2019 2:50:25.464 AM


5 - 3/17/2019 2:50:27.065 AM

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON AND BENNY HUTCHINSON, ON BEHALF OF THEMSELVES AND THE ESTATE OF ISAIAH HUTCHINSON	§	**CIVIL ACTION NO. 1:21-CV-00221-LY**
Plaintiffs	§	
v.	§	
THE CITY OF AUSTIN AND DEANDRE WRIGHT AND DANE O'NEILL AND ZACHARY WOODS AND THOMAS BERNARD NELSON, III,	§	
Defendants	§	

DEFENDANT OFFICERS'
MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE LEE YEAKEL, UNITED STATES DISTRICT JUDGE:

Defendant Officers, Deandre Wright, Dane O'Neill, Zachary Woods and Thomas Bernard Nelson, III, file this Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure as follows:

Introduction

Plaintiffs bring a §1983 claim for excessive force against Officers Deandre Wright, Dane O'Neill, Zachary Woods and Thomas Bernard Nelson, III, and a §1983 Monell claim against the City of Austin. Plaintiffs' decedent, Isaiah Hutchinson, died as a result of the injuries he received in an officer-involved shooting on March 17, 2019. Video evidence conclusively shows all relevant events. There is no genuine dispute as to any material fact and the Defendant Officers are entitled to judgment as a matter of law.

All of Plaintiffs' claims fail and should be dismissed with prejudice. All of the Defendant

Officers' actions were objectively reasonable leading up to and at the time when they discharged their firearms. Each of the Officers reasonably believed that the suspect posed a threat of serious harm to the officers or others. The use of deadly force was not excessive and no constitutional violation occurred. The application of Qualified Immunity bars this lawsuit against them.

As clearly recorded and shown by the City of Austin HALO video camera, Hutchinson was shot by the officers at approximately 2:50 AM after he first pointed a gun and shot at them. These officers were stationed at the Gulf Gas Station on the southwest corner of the intersection of East 7th Street and the southbound service road of Interstate Highway (IH) 35, in Austin, Texas.

The Defendants deny the Plaintiffs' claims and maintain that Plaintiffs cannot meet their considerable evidentiary burden to establish liability under 42 U.S.C. §1983.

SUMMARY JUDGMENT EVIDENCE

Please take notice that the following Exhibits have been included with the separately filed Motion for Summary Judgment by The City of Austin. [Doc #22] (Attachments: Exhibits 1-8). Accordingly, the individual Defendant Officers hereby adopt and incorporate them by reference into this Motion for Summary Judgment.

Exhibit 1	Deposition of Deandre Wright,
Exhibit 2	Deposition of Dane O'Neill,
Exhibit 3	Deposition of Thomas Bernard Nelson, III,
Exhibit 4	Deposition of Zachary Woods,
Exhibit 5	Declaration of Joseph Chacon,
Exhibit 6	Declaration of Wade Lyons,
Exhibit 7	HALO Video for time frame: 2:49:40 - 2:50:26,
Exhibit 8	13 Combined Screen Shots from HALO Video: 01 - Time - 2:50:06

02 - Time - 2:50:07
03 - Time - 2:50:08
04 - Time - 2:50:09
05 - Time - 2:50:11
06 - Time - 2:50:12
07 - Time - 2:50:15
08 - Time - 2:50:15
09 - Time - 2:50:17
10 - Time - 2:50:18
11 - Time - 2:50:23
12 - Time - 2:50:25
13 - Time - 2:50:27

FACTS

This lawsuit arises out of an officer-involved shooting which occurred during the South by Southwest Conference and Festival (SXSW) on March 17, 2019. The incident happened at approximately 2:50 AM, in the middle of the street at the intersection of East 7th Street and the southbound service road of Interstate Highway (IH) 35, in Austin, Texas. As clearly recorded and shown by the City of Austin HALO video camera, Hutchinson was shot by the officers after he first pointed a gun and shot at them. These officers were stationed at the Gulf Gas Station on the southwest corner of the intersection of East 7th Street and the southbound service road of Interstate Highway (IH) 35.

On March 17, 2019, APD Officers Nelson, O'Neill, Woods, Wright and McDonald were all working downtown Austin on foot patrol assigned to the Special Response Team (SRT). At this time, each officer was wearing their clearly marked class B uniform which identified them as Austin Police Officers. (Deposition of Officer Deandre Wright, Exhibit 1, Page 71, Line 5-11; Deposition of Officer Dane O'Neill, Exhibit 2, Page 15, Line 15; Deposition of Officer Thomas

Bernard Nelson, III, Exhibit 3, Page 10, Lines 10-18; Deposition of Officer Zachary Woods, Exhibit 4, Page 32, Line 9) The officers were on duty and working as part of the security for the South by Southwest events taking place in the downtown area.

At approximately 2:50 AM, these officers heard shots fired in the 700 block of East 7th and ran towards the sound of the gunfire. (Deposition of Officer Wright, Exhibit 1, Page 13, Lines 18-19; Deposition of Officer O'Neill, Exhibit 2, Page 14, Lines 22-24; Deposition of Officer Nelson, Exhibit 3, Page 12, Lines 21-23; Deposition of Officer Woods, Exhibit 4, Page 22, Lines 15-17)

When the officers got to the street, they observed Mr. Isaiah Hutchinson wearing a white hooded sweatshirt with a gun in his right hand. Mr. Hutchinson was coming around the front of a dark colored Maserati sport utility vehicle ("SUV") from the direction of the driver's side towards the right rear passenger door. The HALO video captured the events leading up to and including Mr. Hutchinson firing shots in the direction of the responding officers as he moved around the front of the SUV.

The following is a timeline of the events captured by the High Activity Location Observation ("HALO") camera:

2:50:06, Mr. Hutchinson and the SUV driver walked towards a black or dark colored Monte Carlo automobile and stand at the driver's side window.

2:50:07, The SUV driver appears to punch the driver of the Monte Carlo twice through the open car window.

2:50:09, The Monte Carlo driver responded by discharging a firearm at the SUV driver and Mr. Hutchinson.

2:50:11 - 2:50:12, Mr. Hutchinson ran alongside the driver's side of the SUV and around the front end of the vehicle.

2:50:15 - 2:50:27, Mr. Hutchinson discharges his firearm and shoots at the police officers who are running toward the SUV from the Gulf Gas Station. The officers return fire, discharging their respective firearms, and the SUV flees with Mr. Hutchinson inside. (Exhibit 7, Exhibit 8; *See also* Ex. 1, pages 13-14; Ex. 2, page 15; Ex. 3, page 12; Ex. 4, pages 22-23)

As clearly recorded and shown by the City of Austin HALO video camera, Hutchinson first pointed a gun at the Defendant Officers and shot at them. In response, the officers fired their firearms at Hutchinson, who got into the backseat of the SUV and fled the scene. Each of the Officers reasonably believed that the suspect posed a threat of serious harm to the officers or others. (Deposition of Officer Deandre Wright, Exhibit 1, Page 61, Line 9-17, Page 63, Lines 24-25, Page 64, Lines 1-2, Page 66, Lines 12-18; Deposition of Officer Dane O'Neill, Exhibit 2, Page 26, Lines 8-14, Page 49, Lines 9-13, Page 56, Lines 18-19; Deposition of Officer Thomas Bernard Nelson, III, Exhibit 3, Page 26, Line 13 through Page 27, Line 9, Page 32, Line 25 through Page 33, Line 18; Page 38, Line 16-18, Page 40, Line 23 through Page 41, Line 3; Page 43, Lines 1-10, Page 46, Lines 5-16, Page 62, Line 19 through Page 63, Line 9; Deposition of Officer Zachary Woods, Exhibit 4, Page 17, Lines 21-24, Page 60, Lines 10-18, Page 86, Lines 5-14; Page 103, Lines 18-23)

The vehicle was discovered several hours later, abandoned, with Mr. Hutchinson's body still in the backseat, deceased from apparent gunshot wounds. (Amended Complaint; para. 4.06)

On August 3, 2021, the Travis County Grand Jury, after inquiring carefully, failed to find a bill of indictment and "no billed" each of the Defendant Officers, Woods, Wright, O'Neill and Nelson for their involvement in the shooting death of Isaiah Hutchinson.

STANDARD OF REVIEW

Summary judgment is proper against a party who bears the ultimate burden of proof and fails to establish the existence of an element essential to its case by raising an issue of material fact. FED. R. CIV. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323. The moving party satisfies its burden by "pointing out to the district court . . . that there is an absence of evidence to support the non-moving party's case." *Id.* at 326. The plaintiff may not rest on allegations in pleadings, but must produce competent, tangible evidence to survive summary judgment. *Id.* at 325. Moreover, "conclusory allegations, speculation, and unsubstantiated assertions are inadequate to satisfy the non-movant's burden." *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1429 (5th Cir. 1996).

I. ARGUMENT & AUTHORITIES

A. Plaintiffs' §1983 Claim against each of the Defendant Officers should be dismissed.

Plaintiffs allege that the Defendant Officers are liable for violations of Isaiah Hutchinson's constitutional rights. The Plaintiffs' claims should be dismissed because the Defendant Officers did not violate Isaiah Hutchinson's constitutional rights. In this case, the irrefutable facts are established by video. "[A] plaintiff's version of the facts should not be accepted for purposes of qualified immunity when it is 'blatantly contradicted' and 'utterly discredited' by video recordings." *Hanks v. Rogers,* 853 F.3d 738, 744 (5th Cir. 2017) (emphasis added). Moreover, a court need not rely on the "plaintiff's description of the facts where the record discredits that description, but should instead consider 'the facts in the light depicted in the videotape'." *Carnaby v. City of Houston*, 636 F.3d 183, 187 (5th Cir. 2011); citing *Scott v. Harris*, 550 U.S. 372, 381 (2007).

For the reasons set forth above and irrefutably depicted on the available video footage, and also as explained in the Depositions of each Defendant Officer, which are incorporated herein by reference, the Plaintiffs do not have a viable claim. Accordingly, summary judgment is proper as a matter of law.

The Defendant Officers have Qualified Immunity

Because Officers Deandre Wright, Dane O'Neill, Zachary Woods and Thomas Bernard Nelson, III, have been sued, respectively, as individuals, they each assert the defense of qualified immunity. *See Salazar-Limon v. City of Houston*, 826 F.3d 272, 277 (5th Cir. 2016). Consequently, the burden is on Plaintiffs to plead sufficient facts showing the inapplicability of that defense.

Government officials performing discretionary functions generally are shielded from liability for civil damages in suits under § 1983 for constitutional violations insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald,* 457 U.S. 800, 818 n.30 (1982); *Palmer v. Johnson*, 193 F.3d 346, 351 (5th Cir. 1999). "The Supreme Court has characterized the doctrine as protecting 'all but the plainly incompetent or those who knowingly violate the law."' *Cozzo v. Tangipahoa Parish Council-President Gov't*, 279 F.3d 273, 284 (5th Cir. 2002) (quoting Malley v. Briggs, 475 U.S. 335, 341 (1986)).

"An officer may be shielded from liability even if he is mistaken. Whether actions were objectively reasonable is a question of law." *Evett v. DETNTFF*, 330 F.3d 681, 688 (5th Cir. 2003). In this case, the Defendant Officers did not violate clearly established law but were in fact following clearly established practices. The overwhelming weight of the evidence establishes that they are entitled to qualified immunity.

Plaintiffs do not have sufficient evidence to raise a genuine issue of material fact to demonstrate that Officers Deandre Wright, Dane O'Neill, Zachary Woods and Thomas Bernard Nelson, III, do not have qualified immunity. "The doctrine of qualified immunity immunizes government officials acting within their discretionary authority from civil damages if their conduct does not violate clearly established constitutional law of which a reasonable person would have known." *Modica v. Taylor*, 456 F.3d 174, 179 (5th Cir. 2006). Whether an individual is entitled to qualified immunity at the summary judgment stage is determined by following a two-part analysis. In one part of the analysis, the court must determine whether the facts, taken in the light most favorable to the party asserting the injury, show that the official violated a "clearly established" constitutional right. *Price v. Roark*, 256 F.3d 354, 369 (5th Cir. 2001). If there is no constitutional violation, the inquiry ends in favor of the official asserting qualified immunity. *Mace v. City of Palestine*, 333 F.3d 621, 624 (5th Cir. 2003). In the other part of the analysis, the court must determine whether the official's conduct was objectively reasonable in light of the clearly established law. *Saucier v. Katz*, 533 U.S. 194, 202 (2001), *overruled on the other grounds by Pearson v. Callahan,* 555 U.S. 223 (2009). In other words, courts look to whether "it would be clear to a reasonable officer that his conduct was unlawful in the situation confronted." *Price*, 256 F.3d at 369. Qualified immunity protects officials who merely make a mistake in judgment and it shields "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 344-45 (1986). Thus, when a defendant asserts qualified immunity, the burden is on the plaintiff to produce evidence to pierce that immunity. *Atteberry v. Nocona General Hospital*, 430 F.3d 245, 253 (5th Cir. 2005).

"[P]olice officers are entitled to qualified immunity unless existing precedent 'squarely governs' the specific facts at issue." *Kisela v. Hughes,* 584 U.S. ____, 138 S. Ct. 1148, 1153

(2018), quoting *Mullenix v. Luna,* 577 U.S. 7, 136 S. Ct. 305 (2015)(*per curiam).* "An officer 'cannot be said to have violated a clearly established right unless the right's contours were sufficiently definite that any reasonable official in the defendant's shoes would have understood that he was violating it." *Kisela,* 138 S. Ct. at 1153, quoting *Plumhoff v. Rickard,* 572 U.S. 765, 134 S. Ct. 2012 (2014). Plaintiffs can point to no cases that would have put Officers Deandre Wright, Dane O'Neill, Zachary Woods and Thomas Bernard Nelson, III, on notice that every reasonable officer in their position would have concluded that their actions in responding to the situation (hearing gunshots fired in the street with Mr. Hutchinson then firing shots directly toward the officers and numerous pedestrians and members of the general public in and near and about the Gulf Station parking lot and building) was a violation of Mr. Hutchinson's clearly established rights.

In this case, then, the only question in the qualified immunity analysis is whether the Defendant Officers' use of deadly force was objectively unreasonable. An officer's use of deadly force is not excessive, and thus no constitutional violation occurs, when the officer reasonably believed that the suspect posed a threat of serious harm to the officers or others. *Ontivaros v. City of Rosenberg*, 564 F.3d 379, 382 (5th Cir. 2009); *Mace v. City of Palestine*, 333 F.3d 621, 624 (5th Cir. 2003). "'The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. *Graham v. Connor*, 490 U.S. 386, 396, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989). "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation." *Graham v. Connor*, supra, 490 U.S., at 396-397, 109 S.Ct., at 1872. Thus, the defense of qualified immunity must be assessed in

the context of what the officer knew at the time he acted, not on facts discovered subsequently. *See Graham v. Connor*, 490 U.S. 386 at 396-397 (1989). "A court must make this determination from the perspective of a reasonable officer on the scene, including what the officer knew at the time, not with the 20/20 vision of hindsight." *Kingsley v. Hendrickson*, 576 U.S. 389, 397, 135 S.Ct. 2466, 192 L.Ed.2d 416 (2015). "Facts an officer learns after the incident ends - whether those facts would support granting immunity or denying it - are not relevant." *Hernandez v. Mesa*, 582 U.S._, 137 S.Ct. 2003, 2007, 198 L.Ed.2d 625 (2017).

In answering this question, the focus of the inquiry is "the act that led [the officer] to discharge his weapon." *Manis v. Lawson*, 585 F.3d 839, 845 (5th Cir. 2009). In the present situation, it is clear that the Defendant Officers reasonably believed that each of them was justified when he returned fire after Isaiah Hutchinson shot at them and in the direction of numerous members of the general public. The undisputed facts and circumstances establish that each of the Officers were justified in using deadly force. Use of deadly force is not unreasonable when an officer would have reason to believe that the suspect poses a threat of serious harm to the officer or others. *Tennessee v. Garner,* 4 71 U.S. 1, 10, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985); *Mace v. City of Palestine*, 333 F.3d 621, 624 (5th Cir. 2003). The evidence is undisputed that Officers Deandre Wright, Dane O'Neill, Zachary Woods and Thomas Bernard Nelson, III, had reason to believe that Isaiah Hutchinson posed a threat of serious harm or death to others when he shot at the police officers and civilians.

Each of the Officers reasonably believed that the suspect posed a threat of serious harm to the officers or others. (Deposition of Officer Deandre Wright, Exhibit 1, Page 61, Line 9-17, Page 63, Lines 24-25, Page 64, Lines 1-2, Page 66, Lines 12-18; Deposition of Officer Dane O'Neill, Exhibit 2, Page 26, Lines 8-14, Page 49, Lines 9-13, Page 56, Lines 18-19; Deposition of Officer

Thomas Bernard Nelson, III, Exhibit 3, Page 26, Line 13 through Page 27, Line 9, Page 32, Line 25 through Page 33, Line 18; Page 38, Line 16-18, Page 40, Line 23 through Page 41, Line 3; Page 43, Lines 1-10, Page 46, Lines 5-16, Page 62, Line 19 through Page 63, Line 9; Deposition of Officer Zachary Woods, Exhibit 4, Page 17, Lines 21-24, Page 60, Lines 10-18, Page 86, Lines 5-14; Page 103, Lines 18-23)

The undisputed facts and circumstances in the early morning of of March 17, 2019, establish that each of the Defendant Officers, Deandre Wright, Dane O'Neill, Zachary Woods and Thomas Bernard Nelson, III, reasonably believed that Isaiah Hutchinson's actions placed the general public and the Austin Police officers on the scene in imminent danger of serious bodily injury or death. When viewed from the perspective of a reasonable officer on the scene of this rapidly evolving incident, the conduct and actions of Officers Deandre Wright, Dane O'Neill, Zachary Woods and Thomas Bernard Nelson, III, were objectively reasonable under the circumstances.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Defendant Officers respectfully request that the Court grant their Motion for Summary Judgment and dismiss the Plaintiffs' claims against each of them with prejudice with all costs assessed to the Plaintiffs. Defendant Officers further request any additional relief to which they, individually, may be entitled.

RESPECTFULLY SUBMITTED,
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ATTORNEYS FOR DEFENDANTS CITY OF AUSTIN, DEANDRE WRIGHT, DANE O'NEILL, ZACHARY WOODS AND THOMAS BERNARD NELSON III

CERTIFICATE OF SERVICE

I certify that on the 14th day of October, 2022, I served a copy of *DEFENDANT OFFICERS' MOTION FOR SUMMARY JUDGMENT* on all parties, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:
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/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON and BENNY HUTCHINSON, on behalf of themselves and the Estate of ISAIAH HUTCHINSON, Plaintiffs,	§	
v.	§	**Cause No. 1:21-CV-00221-DAE**
THE CITY OF AUSTIN, and DEANDRE WRIGHT and DANE O'NEILL and ZACHARY WOODS and THOMAS BERNARD NELSON, III, Defendants.	§	

PLAINTIFFS' RESPONSE TO DEFENDANT OFFICERS AND CITY OF AUSTIN'S MOTIONS FOR SUMMARY JUDGMENT

COMES NOW, Plaintiffs Benny Hutchinson and Christine Springs, on behalf of themselves and the Estate of Isaiah Hutchinson ("Plaintiffs"), who file their Response to Defendant City of Austin's Motion for Summary Judgment. In support of this filing, Plaintiffs would show unto this Court as follows:

A. Introduction

Plaintiffs bring a § 1983 claim for excessive force against Officers Deandre Wright, Dane O'Neill, Zachary Woods and Thomas Bernard Nelson, III, and a § 1983 *Monell* claim against the City of Austin. Plaintiffs' decedent, Isaiah Hutchinson, died

as a result of the injuries he received in an officer-involved shooting on March 17, 2019. While Defendants claim that video evidence conclusively shows all relevant events; there exists a genuine dispute as to material facts–whether Isaiah possessed a firearm at all, and if he did, whether he fired that firearm at the Defendant Officers. Since there exists a genuine issue of material fact regarding both of these issues, this Court is respectfully requested to deny Defendants' motions for summary judgment in all respects.

B. Evidence on Summary Judgment

In support of this Response to Defendants' motions, Plaintiffs refer the Court to the pleadings on file and attached summary judgment evidence. Additionally, the following summary judgment evidence is attached as exhibits hereto and incorporated by reference:

Exhibit A – Affidavit of Ashley Nowlin.[1]

Exhibit B – Affidavit of Amanda Estrada.[2]

[1] The Affidavit of Ashley Nowlin, which was produced by Defendant City of Austin, is attached hereto as "Exhibit A." [COA 002166–112169].

[2] The Affidavit of Amanda Estrada, which was produced by Defendant City of Austin, is attached hereto as "Exhibit B." [COA 002158–002160].

Exhibit D – Excerpt from Interview of Deandre Wright.[3]

Exhibit E – City of Austin Officer Involved Shooting Report (June 2000)[4]

Exhibit F – Officer Involved Shooting Release: September 23, 2022[5]

Exhibit G – Officer Involved Shooting Release: October 29, 2022[6]

C. Facts

This lawsuit arises out of an officer-involved shooting which occurred during the South by Southwest Conference and Festival (SXSW) on March 17, 2019. The incident happened at approximately 2:50 AM, in the middle of the street at the intersection of East 7th Street and the southbound service road of Interstate Highway (IH) 35, in Austin, Texas.

Competent summary judgment evidence shows that in the minutes leading up to the gunfire made the subject of this suit, the vehicle (a black Maserati SUV)

[3] The sworn interview of Defendant Officer Deandre Wright which was produced by Defendant City of Austin and which occurred on August 21, 2019, is attached hereto as "Exhibit D." [COA 001035–001053].

[4] This document was provided to Defendants as a Supplemental Response to Request for Production as Hutch 00242–00270.

[5] This document was provided to Defendants as a Supplemental Response to Request for Production as Hutch 00271–00273.

[6] This document was provided to Defendants as Supplemental Response to Request for Production as Hutch 00274–00276.

occupied by Isaiah Hutchinson ("Isaiah") and being operated by Demarious Davis was rear-ended by another vehicle (a black Monte Carlo) while both were proceeding down 7th Street. [Ex. B at 1]. As traffic would not allow the vehicles to stop immediately and exchange information, Demarious stopped at the next light and exited the vehicle to exchange information with the driver of the Monte Carlo. [Ex. B at 1-2]. Sworn evidence from multiple witnesses shows that the front-seat passenger in the black SUV accompanied Demarious to the Monte Carlo. [Ex. B at 2]. As shown by the footage from the city's HALO (High Activity Location Observation) cameras, after a short interaction between the drivers, the driver of the Monte Carlo fired at Demarious with a handgun. [Ex. B at 2; Def. COA MSJ at 4]. As Demarious and the front-seat passenger sprinted back to their vehicle, a group of police officers appear in the parking lot of the gas station to the right, and begin firing their handguns at the persons near the black SUV. [Ex. A at 2].

Contrary to Defendants' assertion in its motion for summary judgment, it is manifestly not clear that Isaiah ever pointed a firearm at any of the defendant officers, or that he ever discharged a firearm at the defendant officers: not only is it not possible to conclusively identify Isaiah from the HALO images, it is also not possible to conclusively identify all the persons who may or may not be in

possession of a firearm.

First, sworn evidence shows that the Maserati front seat passenger accompanied Demarious to the Monte Carlo. [Ex. B at 2]. Second, there is no witness testimony which conclusively shows that it was Isaiah who discharged a firearm at the police officers. [Ex. A at 2]. Ashley Nowlin is clear in her testimony that the ***driver*** of the black SUV was wearing a long-sleeve white shirt or sweater, and that was the only person from the black SUV which she observed pointing a firearm at the police officers. [Ex. A at 2]. Further, even assuming contrary to the evidence that the person shown on the HALO footage running around the front of the black SUV is Isaiah, the footage doesn't definitively show that person to be in possession of a handgun, a fact which is supported by Officer Wright's testimony–which unquestionably shows that Officer Wright at no time observed the person circling in front of the vehicle to be in possession of a firearm. [Ex. D at 16].

D. Standard of Review

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106

S.Ct. 2548 (1986); *Warfield v. Byron*, 436 F.3d 551, 557 (5th Cir. 2006); *see also* FED. R. CIV. P. 56(a).

The "movant bears the burden of identifying those portions of the record it believes demonstrate the absence of a genuine issue of material fact." *Triple Tee Golf, Inc. v. Nike, Inc.*, 485 F.3d 253, 261 (5th Cir. 2007) (citing *Celotex*, 477 U.S. at 322-25, 106 S.Ct. 2548). "A genuine issue of material fact exists when the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Fisk Elec. Co. v. DQSI, L.L.C.*, 894 F.3d 645, 650 (5th Cir. 2018) (internal quotations omitted); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505 (1986).

If the burden of proof at trial lies with the nonmoving party, the movant may satisfy its initial burden by "showing — that is, pointing out to the district court — that there is an absence of evidence to support the nonmoving party's case." *Celotex*, 477 U.S. at 325, 106 S.Ct. 2548. Although a plaintiff bears the burden of proof in the qualified immunity analysis, it is axiomatic that at the summary judgment stage "[w]e must accept all well-pleaded facts as true, draw all inferences in favor of the nonmoving party, and view all facts and inferences in the light most favorable to the nonmoving party." *Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 194 (5th Cir.2009).

"If the moving party fails to meet [its] initial burden, the motion [for summary

judgment] must be denied, regardless of the nonmovant's response." *United States v. $92,203.00 in U.S. Currency*, 537 F.3d 504, 507 (5th Cir. 2008) (quoting *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc)).

If the moving party has met its burden, in order to "avoid a summary judgment, the nonmoving party must adduce admissible evidence which creates a fact issue concerning the existence of every essential component of that party's case." *Thomas v. Price*, 975 F.2d 231, 235 (5th Cir. 1992).

E. Applicable Law

1. Excessive Force Claim

The Fourth Amendment's right to be free from unreasonable seizures governs excessive-force claims. *Garza v. Briones*, 943 F.3d 740, 744–45 (5th Cir. 2019); *Graham v. Connor*, 490 U.S. 386, 395, 109 S.Ct. 1865 (1989) ("[A]ll claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard, rather than under a 'substantive due process' approach."). To prove an excessive-force claim, "a plaintiff must show (1) an injury, (2) which resulted directly and only from the use of force that was clearly excessive, and (3) the excessiveness of which was clearly unreason-

able." *Manis v. Lawson*, 585 F.3d 839, 843 (5th Cir. 2009) (quoting *Ontiveros v. City of Rosenberg*, 564 F.3d 379, 382 (5th Cir.2009)).

Excessive-force claims are "necessarily fact-intensive," so courts must "examine the totality of the circumstances to determine whether an officer's actions were objectively unreasonable." *Garza*, 943 F.3d at 745 (cleaned up). "The intent or motivation of the officer is irrelevant; the question is whether a reasonable officer in the same circumstances would have concluded that a threat existed justifying the particular use of force." *Roque v. Harvey*, 993 F.3d 325, 333 (5th Cir. 2021). Courts will only consider the facts "knowable to the defendant officers" at the time the officers used force, and courts must be "careful to avoid 'second-guessing a police officer's assessment, made on the scene, of the danger presented by a particular situation.'" *Roque*, 993 F.3d at 333 (quoting *Garza*, 943 F.3d at 745.

When an officer uses deadly force, that force is considered excessive and unreasonable "unless the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others." *Romero v. City of Grapevine*, 888 F.3d 170, 176 (5th Cir. 2018) (quoting *Tennessee v. Garner*, 471 U.S. 1, 11 (1985)). Further, "an exercise of force that is reasonable at one moment can become unreasonable in the next if the justification for the use of force has ceased."

Lytle v. Bexar Cnty., 560 F.3d 404, 413 (5th Cir. 2009).

2. Monell Claim

To establish *Monell* liability, a plaintiff must show that an official policy promulgated by a municipal policymaker was the moving force behind the violation of a constitutional right. *Peterson v. City of Fort Worth*, 588 F.3d 838, 847 (5th Cir. 2009). And to get past the pleading stage, a complaint's "description of a policy or custom and its relationship to the underlying constitutional violation cannot be conclusory; it must contain specific facts." *Peña v. City of Rio Grande City*, 879 F.3d 613, 622 (5th Cir. 2018) (quotation omitted). A "failure-to-train action is a type of *Monell* claim." *Hutcheson v. Dallas Cnty.*, 994 F.3d 477, 482 (5th Cir. 2021). To establish *Monell* liability on a failure-to-train theory, a plaintiff must prove that: "(1) the city failed to train or supervise the officers involved; (2) there is a causal connection between the alleged failure to supervise or train and the alleged violation of the plaintiff's rights; and (3) the failure to train or supervise constituted deliberate indifference to the plaintiff's constitutional rights." *Id.*

F. Discussion

1. Excessive Force

Under the circumstances present here, the officers were unjustified in gunning

down Isaiah unless and until it was shown that he posed a threat of serious physical harm to the officers or others. *See Romero*, 888 F.3d at 176 (citing *Tennessee v. Garner*, 471 U.S. at 11). Competent summary judgment evidence fails to show definitively that Isaiah possessed a firearm during the police shooting episode. None of the bystander witnesses ever claimed to have identified Isaiah, much less claim that he possessed a firearm. Officer Wright admitted in his affidavit that he never saw a firearm in the possession of the person he shot at–merely a muzzle flash. [Ex. D at 16]. While the videos provide background information, they do not definitively identify Isaiah, or even which civilians–if any–were in possession of a firearm during the altercation.

Utilizing the proper standard by view all facts and inferences in the light most favorable to the nonmoving party, if Isaiah did not possess a firearm during the relevant time period, then he could not have posed a threat of serious physical harm to the police officers or others. *See Club Retro*, 568 F.3d at 194; *see also Romero*, 888 F.3d at 176 (citing *Tennessee v. Garner*, 471 U.S. at 11). When an officer uses deadly force, that force is considered excessive and unreasonable "unless Since the officers could not have had probable cause to believe that Isaiah posed a threat of serious physical harm to the officers or others, the use of deadly force was excessive and

unreasonable. *See Romero*, 888 F.3d at 176 (citting *Tennessee v. Garner*, 471 U.S. at 1).

The facts here, taken in the light most favorable to Plaintiffs, show that the officers violated a "clearly established" constitutional right protected by the Fourth Amendment to be free from excessive force and unreasonable seizure. *See Price*, 256 F.3d at 369; *see also Graham v. Connor*, 490 U.S. at 395, 109 S.Ct. 1865; *Garza*, 943 F.3d at 744–45. As shooting someone to death who could not under the circumstances present reasonably be considered a threat of serious physical harm to the officers or others is clearly unlawful, qualified immunity does not shield the officers here. *See Tennessee v. Garner*, 471 U.S. at 10; *Mace v. City of Palestine*, 333 F.3d 621, 624 (5th Cir. 2003).

This Court is therefore respectfully requested to deny Defendants motion for summary judgment.

2. <u>Monell Claim</u>

It is well established that "a municipality's policy of failure to train" its personnel can give rise to liability under 42 U.S.C. § 1983. *See Sanders–Burns v. City of Plano*, 594 F.3d 366, 380 (5th Cir.2010) (citation and internal quotation marks omitted); *Zarnow v. City of Wichita Falls, Tex.*, 614 F.3d 161, 170 (5th Cir.2010). In particular, to succeed on a *Monell* claim arising from a municipality's failure to adopt

an adequate training policy, a plaintiff must demonstrate that: "(1) [the municipality's] training policy procedures were inadequate, (2) [the municipality] was deliberately indifferent in adopting its training policy, and (3) the inadequate training policy directly caused [the constitutional violation]. *Sanders–Burns*, 594 F.3d at 381 (citing *Baker v. Putnal*, 75 F.3d 190, 200 (5th Cir.1996)).

Under the applicable case law, one way in which a plaintiff can establish a municipality's deliberate indifference to the need for proper training is to demonstrate that a municipality had "[n]otice of a pattern of similar violations," which were "fairly similar to what ultimately transpired" when the plaintiffs own constitutional rights were violated. *See Sanders–Burns v. City of Plano*, 594 F.3d 366, 381 (5th Cir. 2010).

The City of Austin has a long history of police department use of excessive force. Attached hereto as Exhibit E is the City of Austin Officer Involved Shooting Report published in June of 2009. [Ex. E *passim*]. In that report, it is revealed that there were twelve officer-involved shooting in Austin in 2018. [Ex. E at 4]. Each separate incident is discussed in the report. Notably, seven of the officer-involved shootings were fatal; with five of the deaths being directly attributed to police gunfire. [Ex. E at 4]. The report's conclusion provides ample illustration of the

shortcoming of the training provided by the City of Austin to its Police Department, stating:

> Officer-involved shootings are the most absolute representation of the power that police officers hold as a result of their positions. Consequently, every single incident requires a thorough analysis and review. The fact that the Austin Police Department was involved in 12 officer-involved shooting (OIS) incidents in 2018 makes that year especially important to review given this historically high number.
> The OPO's review of the 2018 officer-involved shooting incidents highlights disconcerting patterns that APD must acknowledge and address to provide transparency and accountability to the community. Officers' apparent failure to use de-escalation tactics in many of the incidents, as well as their failure to use "less-lethal" force options in all but one incident, is deeply troubling and requires further explanation by the department. Moreover, the 2018 data clearly reveals a disparate concentration of officer-involved shooting incidents affecting individuals who are ethnic minorities, as well as in areas of Austin that are historically minority-majority. APD must account for these demographic and geographic disparities. Increased accountability related to critical incidents will be an essential part of any foundation upon which APD might hope to effectuate the community policing model it endeavors to achieve.

[Ex. E at 19].

Such a troubling conclusion can be grafted neatly into the situation at bar. Here, the police officers failed to identify themselves before they started firing. Officer Wright admitted that he issued no commands or warning before resorting to the use of deadly force. [Ex. D at 11]. Then, without any attempt whatsoever at de-

escalation, the defendant police officers instituted a hail of gunfire which caused the death of Isaiah.

Regrettably, the Austin Police Department has not demonstrated that it's willing to ratchet down the death and destruction criticized in the report, as Exhibits F and G are releases describing the facts and circumstances pertaining to police involved shootings which occurred in September and October of this year. [Exs. F, G]. Unfortunately, the police involved shooting which occurred in September of 2022 was fatal–yet another minority male who died at the hands of the Austin Police Department. [Ex. F at 2-3].

While Defendant City of Austin claims that its training protocol is sufficient, the fact do not bear that claim out. The conclusion to the June 2020 report serves to accuse the City of Austin of failing in its forthright obligation to properly train its police force to stop killing its citizens. The report sets forth specific areas where the City of Austin has failed to correct the issues raised in the report, namely in the dearth of de-escalation practices and tactics and the failure to develop and use less lethal methods of force. [Ex. E at 19].

Having shown that a genuine issue of material fact exists regarding each and every element of their Monell claim, this Court is respectfully requested to deny

Defendants' motions for summary judgment in all aspects.

F. Prayer

PREMISES CONSIDERED, Plaintiffs respectfully request that this Court DENY Defendants' motions for summary judgment in all respects. Plaintiffs further prays for any other relief to which they may show themselves justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2022, I filed the foregoing pleading with the U.S. District Clerk for the Western District of Texas, San Antonio Division, by means of electronic filing ECF. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of the document by electronic means.

/s/ Scott Ogle
Scott Ogle

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via efiling

EXHIBIT A

Exhibit A

A.P.D. CASE #2019-0760357

STATE OF TEXAS
COUNTY OF TRAVIS

Offense No: #2019- 0760357

AFFIDAVIT

Before me, the undersigned authority, on this day personally appeared, **Ashley M. Nowlin** who after being duly sworn, upon oath deposes and says:

I HAVE BEEN INFORMED THAT UNDER PENAL CODE OF THE STATE OF TEXAS, SECTION 37.02: A PERSON COMMITS THE OFFENSE OF PERJURY IF, WITH INTENT TO DECEIVE AND WITH KNOWLEDGE OF THE STATEMENTS MEANING HE OR SHE MAKES A FALSE STATEMENT UNDER OATH OR SWEARS TO THE TRUTH OF FALSE STATEMENT PREVIOUSLY MADE AND THE STATEMENT IS REQUIRED OR AUTHORIZED TO BE MADE UNDER OATH.

Initial: AN

On March 17, 2019 I gave this statement to Detective D. Mireles #4274 at the Austin Police Department Special Investigations Unit located at 1520 Rutherford Lane in Austin, Travis County, Texas. I give Detective D. Mireles #4274 permission to type this statement for me in my presence.

Full Name: Ashly M. Nowlin
DOB: [redacted]
TX DL#: [redacted]
Home Address: 2109 St. Hwy 351, Abeline, Texas 79601 Cell Phone: (325) 338-9370
Cell Phone Provider: Cricket
Employed By: All God's Children Child Development Center
Employer Phone: (325)437-5437
Email: [redacted]

I am visiting Austin for the weekend with Amanda Estrada for South by Southwest. We are staying in South Austin at the Motel 6 on I35. There is a don Bar-b-que next to the motel. Amanda and I left the hotel and went to the club New York New York on 6th street. We arrived at the club around 11 pm. Amanda was driving and we parked the car in a parking lot on San Jacinto near the club. We met up with another friend of mine, Angelica inside the club. I have only know Angelica for a few months and do not remember her last name. We three stayed at the club until approximately 2:30 am. We walked to my car. Amanda got in the drivers seat. I rode in the passenger seat and Angelica was in the back seat behind the driver's seat.

We were trying to leave the parking lot. There was a lot of traffic. As were waiting I heard a loud bang and saw that a Black Monte Carlo and a Black SUV, possibly foreign car, collide in the intersection. The collision was pretty loud. I looked and saw that no one had gotten out of either vehicle. The vehicle kept going and Amanda entered into traffic. We continued down the road and eventually wound up on 7th street inform of the gulf gas station. As we were waiting at the intersection at the red light. We were in the far right lane. I looked over to my left and I saw the same Monte Carlo and Black SUV pull over to the left side of street. The Monte Carlo was behind the black SUV. The driver of the Monte Carlo was a Hispanic Male, possibly in his late 30's or early 40's wearing a black tank top. He also had a faded haircut. I know this because windows were down in the Monte Carlo. I did not see anyone else in the Monte Carlo.

Two males got out of the black SUV, the driver and another male. Both were what I believed to be were black males.

 Signature (_____ **)**

A.P.D. CASE #2019-0760357

There were a total of 4 males in the car. I only remember the driver wearing a white long sleeve shirt or sweater. It was distinctive because it was white. I think it also had a print on it. He had a small afro and had a gold grill or teeth. He was very dark complected. I did not see tattoo's on him or anything that stood out. Both black males approached the Monte Carlo. My windows were down so I could hear the black male driver ask the Hispanic male ask if he had his insurance. That is when I heard
A gun shot. I looked and saw the two black males run to their car. Amanda told me, "That Hispanic male just shot at them"! I do not remember how many shots there were at that time. I ducked a little and saw the two males get back into their vehicle. I looked and could see a police officer run up to the right front side of my vehicle with his gun out. I looked at the SUV and could see the black male drive with the sweater pointing a gun at what I thought was the windshield of my car. That's when I saw the officer shooting at the SUV. I could tell that the SUV was hit because the passenger side back window was shattered. I do not remember how many times the officer shot. The officer was white and was wearing a light blue uniform shirt.

It was happening so fast. I do not remember if the SUV and Monte Carlo took off while the officer was shooting. The SUV and Monte Carlo took off super-fast and went under the highway and took a left at the next left. This is the only officer I saw shooting that the vehicle.

The same officer that had shot at the SUV, came to my car and told us to put our hands where they could see them. Other officers eventually took us out of the car and identified us. The kept us on scene to speak with detectives.

My car is a 2011 Toyota Camry 4r Gray in color. I do not remember the Texas license plate.

I remember that the Monte Carlo was a black 2dr with silver trim on the bottom of the doors. The Hispanic male was the driver.

The Black SUV was a 4r with 4 black males inside. The driver was the one in the white sweater and had a gun in his hand. I could not tell which hand it was in. I could not see if the black male was shooting. I only saw the black male pointing the gun in my direction. I was scared for my life. All of us were shaken.

I CAN READ, WRITE, AND UNDERSTAND THE ENGLISH LANGUAGE. I HAVE READ THE ABOVE STATEMENT AND ACKNOWLEDGE THIS STATEMENT AND ITS MEANING. I MAKE THIS STATEMENT FREELY AND VOLUNTARILY TO DETECTIVE D. MIRELES #4274 OF THE AUSTIN POLICE DEPARTMENT. I UNDERSTAND THAT DETECTIVE D. MIRELES #4274 IS A PEACE OFFICER, IN AND FOR THE STATE OF TEXAS, AS DEFINED UNDER ARTICLE 2.12 OF THE TEXAS CODE OF CRIMINAL PROCEDURE. I UNDERSTAND THAT THIS STATEMENT IS REQUIRED OR AUTHORIZED TO BE MADE UNDER OATH. I HEREBY MAKE THIS STATEMENT UNDER OATH, AND IT IS TRUE, COMPLETE, FREE OF OMMISIONS, AND CORRECT TO THE BEST OF MY KNOWLEDGE. BY MY SIGNATURE, I ACKNOWLEDGE THAT I HAVE RAISED MY HAND AND SWORN THIS STATEMENT AS BEING THE WHOLE TRUTH UNDER THE CRIMINAL PENALTY OF PERJURY.

3-17-19

Affiant

Signature (_____)

A.P.D. CASE #2019-0760357

Subscribed and sworn to before me by the said affiant, [redacted], on this the 17th day of March, 2019.

Detective D. Mireles #4274
Peace Officer
Austin Police Department
State of Texas

Signature ( )

~~Exhibit~~
3.17.19
Ashley Nowlin



EXHIBIT B

Exhibit B

Offense # 2019 - 5011082

State of Texas x
x
County of Travis x

Before me, the undersigned authority, on this day personally appeared Amanda Estrada who after being by me duly sworn, upon oath deposes and says:

I have been informed that under the penal code of the State of Texas, section 37.02: A person commits the offense of perjury if, with intent to deceive and with knowledge of the statement's meaning he or she makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized to be made under oath.

My name is Amanda Estrada. I am 28 years of age. My date of birth is [redacted] My home address is 1617 S. 14th Street, #A, Abilene, TX 79602. My cell phone number is 325-267-1192. I am currently employed as a Cashier for Bosses. My work number is 325-704-4242. My social security number is [redacted] My Texas License number is [redacted]

I am currently at the Austin Police Department's Homicide Cold Case Unit giving a sworn statement to Detective Richard Faithful #2262 of the Homicide Cold Case Unit. This statement is in regards to an incident, which occurred at E. 7th and Trinity Street, on Sunday, 3-17-2019.

My friend, Ashley Nowlin, and I are both from Abilene, TX and came down here for the SXSW festivities. We went downtown around 11:30pm and went to the bar called, 'New York New York.' We stayed there until about 2:30am. We were in Ashley's car and walked to where we had parked it which was at 5th Street and San Jacinto. I drove and we left the parking lot and got into traffic on 7th Street heading towards IH35.

We were in the far right lane so we could turn south on IH35 when we got to the highway. I was driving with Ashley in the front passenger seat. Ashley's car is a gray Toyota Camry, 4-door sedan. We were at the light at 7th and Trinity and there was a Black SUV that looked new and had paper plates that was initially behind us. We had our windows down and could hear everything. The light changed to green and the SUV pulled up on the left side of us and then we heard a crash and realized that the vehicle that was behind the SUV had ran into it. That vehicle was a black Monte Carlo. There was too much traffic to stop there so everyone kept going until the traffic had to stop due to the light at IH35.

We ended up between the Gulf gas station and the police station. I could see that it didn't appear to be any or much damage on the SUV. The SUV had four black males in it and the Monte Carlo had one male that looked Hispanic. I did not see anyone else in the Monte Carlo. The driver and front passenger of the SUV got out. The driver and the passenger approached the driver of the Monte Carlo, who stayed in his car. The SUV driver was the one that spoke and asked the Monte Carlo driver for his insurance since he hit his car. I heard the way the SUV driver asked for the insurance from the Monte Carlo driver and it was in a polite manner and not in a threatening manner. I then heard a gunshot and saw sparks flying out of the Monte Carlo driver's window. The SUV driver grabbed his left shoulder/chest area with his right hand. I took that to mean that the SUV driver had been shot. The SUV driver then ran back to his SUV and around the front of it to the passenger side. At the same time the SUV front passenger that was with him at the Monte Carlo must have had a gun because it sounded like he was returning fire. (The sounds of the gunshots were from where he was standing.) Almost at the same time again the back passengers of the SUV got out and I then heard multiple gun shots. I took this to mean that those passengers also had guns and were returning fire.

By now Ashley and I were trying to duck so we wouldn't get hit. I then heard the police yelling and they were coming from the direction of the Gulf Gas Station. I am not sure what they were yelling but I knew they were the police. Then a lot of gunfire happened. I did see one of the SUV people (not sure which one since I was ducking) shot in the direction of the police. I did see that that person had his arm extended and a gun in his hand. The gun looked to be black since I did not see anything shiny on it.

The SUV occupants ended up getting back in the SUV and taking off with the doors still open. The Monte Carlo also ended up taking off. I did not see where any of the vehicles went because the officers were at our car by then and had Ashley and I place our hands on the dash to keep them in view. The officers secured the area and made sure we were okay. The officers ended up identifying us as witnesses and asked us to come to this office to give a statement.

Detective Faithful asked me if I saw a gun on anyone besides the SUV occupant that is described above and I did not.

Detective Faithful asked me if I can describe any of the people from the SUV or the Monte Carlo and I cannot. It happened so fast and Ashley and I were ducking and trying not to get shot.

Detective Faithful asked me if Ashley's car was hit by any bullets. It was not.

Detective Faithful asked me if the Monte Carlo driver ever said anything. I did not hear him say anything.

Detective Faithful asked me if Ashley or I knew anyone involved in the disturbance. We did not know anyone.

I can read and write the English language. I have freely given the above sworn statement to Detective Richard Faithful of the Austin Police Department's Homicide Cold Case Unit and after reading the above statement in its entirety, believe its contents to be truthful and accurate to the best of my knowledge.

Signature

Subscribed and sworn to before me, by the said **Amanda Estrada**, this 17th, day of March 2019.

Notary public/Peace Officer
in and for Travis County, Texas

Page 3 of 3 pages---Amanda Estrada statement

EXHIBIT D

Exhibit D

State of Texas

AFFIDAVIT

County of Travis

IAD CONTROL #2019-0267

On August 21, 2019 in the offices of the Internal Affairs Division, I was ordered to submit this memo by Sergeant Christopher Bealand representing Brian Manley, Chief of Police. I submit this memo as a condition of continued employment, with the understanding that:

1. I am responsible for complying with Departmental policies, which require that I cooperate with the investigation and provide full and accurate information regarding the incident under investigation, and;

2. This compelled statement cannot be used against me in any subsequent criminal proceeding, except if I make false statements under oath to the investigator (perjury or aggravated perjury), and;

3. This compelled statement can be used by the City of Austin for any lawful purpose, and is not limited to use in the investigative and disciplinary processes.

BEALAND: Today is Friday, August 21, 2019 and the time is 10:39 am. We're located at 1520 Rutherford Lane in Austin, Texas. This interview is i- of Officer Deandre Wright regarding Internal Affairs Case Number 2019-0267 and APD Incident 19-0760357. Will everyone please state and spell your full name for the record, starting with Officer Wright.

WRIGHT: My name is Officer Deandre Wright. Uh, my first name is spelled, D-E-A-N-D-R-E, and my last name is W-R-I-G-H-T.

HEILMAN: Brad Heilman, B-R-A-D, H-E-I-L-M-A-N, attorney for Officer Wright.

BENOIT: Jeremy Benoit, APA Representative, uh, 4836.

HARDING: Ryan Harding, R-Y-A-N, H-A-R-D-I-N-G, Office of Police Oversight.

NORDSTROM: David Nordstrom, D-A-V-I-D, N-O-R-D-S-T-R-O-M, Sergeant, Internal Affairs.

BEALAND: Christopher Bealand, C-H-R-I-S-T-O-P-H-E-R, Bealand, B-E-A-L-A-N-D, Sergeant in Internal Affairs. Deandre, were you informed and are you aware this interview is being recorded and the room is subject to monitoring?

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WRIGHT: Yes, sir, I was and I am.

BEALAND: All right. The Meet and Confer Contract establishes the process for this interview and allows the Office of Police Oversight, or the OPO, to have a representative present for the interview. The Meet and Confer Contract also allows the representative of the OPO to ask questions directly of any subject officer prior to the conclusion of the interview. However, as the subject officer you must first agree to allow the representative of the OPO to ask questions directly of you. This is your choice and is voluntary. Neither the course of the investigation nor this interview will change based on your decision. If you don't - if you do not agree then the representative of the OPO may not ask questions directly of you. If the representative of the OPO has any questions we'll pause the recording and take a break and confer with the OPO. I will determine if the questions are pertinent to the investigation and if so, we'll come back and continue with the questions on record. Deandre, before we continue I'm asking you if you are willing to allow the representative of the OPO to ask questions directly of you prior to the conclusion of the interview.

WRIGHT: I (respectfully), sir, I decline.

BEALAND: Okay, and I hear you, uh, declining to, uh, voluntarily agree to speak with the OPO directly. Okay. If you hear a question and you don't understand it just let me know and we'll re-phrase it. Are you under the influence of any kind of medication or other substances that will affect you...

WRIGHT: No, sir.

BEALAND: ...ability? Okay. Uh, you received your Notice of Administrative Inquiry on August 14. Is that correct?

WRIGHT: Yes, sir.

BEALAND: All right. Is this your signature on that document?

WRIGHT: Yes, sir, it is.

BEALAND: Okay. And this is page 4 of the document and it highlights, uh, the items that you had the opportunity to review today. Is that accurate?

WRIGHT: Yes, sir, it is.

BEALAND: Uh, can you please put a check box in the appropriate box here? And then sign - sign the form and date it. Thank you, sir. All right. Uh, we're here today to discuss the officer-involved shooting that occurred on March 17. Do you recall that incident?

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WRIGHT: Yes, sir, I do.

BEALAND: All right. Aside from the videos and other information that you have a chance to review today, uh, what we're most interested in, Deandre, is essentially your recollection of the incident at the time of its occurrence. What you saw, what you heard, even - even emotions that you might have experienced, okay? So we'll - we'll address those as we go along, but before that let's talk about your background a little bit. Just some introductory information, okay?

WRIGHT: Sure.

BEALAND: Uh, what did you do prior to joining APD?

WRIGHT: Uh, prior to APD I was a student at Michigan State University where I earned a bachelor's degree in Political Science, in Public Administration, and Public Policy. During my time as a student I worked for the East Lansing Police Department for a period of about five years, uh, where I worked as a civilian employee, uh, working in Code Enforcement.

BEALAND: All right. How long have you been with the Austin Police Department?

WRIGHT: I started with the Austin Police Department on August 15, 2011, so just over eight years in total.

BEALAND: And what is your current duty assignment?

WRIGHT: Currently I'm assigned to Team 1, uh, of the Street Narcotics Unit which is a subset of the Organized Crime Division.

BEALAND: And is that the same duty assignment that you had on March 17, 2019?

WRIGHT: Yes, sir, it is.

BEALAND: All right. Would you please detail your work assignment history since joining APD?

WRIGHT: Sure. Uh, after, uh, graduating from the academy, I - I, uh, of course did the FTO, uh, period. Uh, right a- right after FTO I was assigned to the Frank 600s, which at that time was a night shift. I spent about a year and a half on the Frank 600s, uh, before I transferred to the Frank 500s. Uh, I spent the next two and a half years there, so in total five years on patrol. Um, and then right at about my five-year mark I transferred to Street Narcotics, uh, which is where I've been for the past two and a half years.

BEALAND: And are you - what, uh, rank are you right now?

Confidential

WRIGHT: Uh, Senior Police Officer.

BEALAND: Okay. I want to talk about your specific assignment that night at the Gulf station on March 17, 2019. Can you give (be) - give me details about that - at the Gulf station? Why were you there? Who were you with? What was your duties there in that parking lot?

WRIGHT: Sure. Uh, so that evening I was, uh, working as part of the S- Special Response Team or SRT. Um, at that time, uh, the decision had been made by, uh, leadership to deploy officers to provide, uh, police presence at the Gulf gas station and other locations along the, uh, I-35 corridor, um, right at about 6th Street, 7th Street area. Uh, part of the reason for that was, uh, to respond to a series of, uh, violent, uh, activities that had occurred specifically involving the use of, uh, firearms, uh, during the South by event. U...

BEALAND: What is the South by event? I'm sorry.

WRIGHT: So South by Southwest is a, uh, uh, 10-day festival - music, (film), um, I guess (monti-modal) festival that comes into the city that draws quite a large number of people into the city.

BEALAND: Okay.

WRIGHT: Um, so the, uh, our - our response that evening, uh, or our purpose that evening in that - that parking lot, again, was to provide a police presence. Um, th- on that evening I was assigned to the ~~CR145~~, uh, which is a - a squad within the SR - w- within an SRT platoon. Um, h- half of our squad had been sent to one side of the frontage and the other half was, uh, assigned to provide that police presence on, uh, the southbound side or specifically at the Gulf gas station.

SIERRA M S

BEALAND: Do you remember who was with you there at the Gulf station?

WRIGHT: Sure. It was, uh, uh, Detective Nelson, uh, Officer O'Neill, uh, Officer - or now Corporal McDonald, and then Officer (Zach) Woods.

BEALAND: All right. And what uniform were you wearing that night?

WRIGHT: S-, uh, wearing the standard uniform for SRT, uh, which is a long sleeve tactical uniform, um, pants, and our typical duty belt.

BEALAND: Did part of your gear include a body-worn camera?

WRIGHT: Yes, sir, it did.

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BEALAND: Okay. Was that camera in proper working order that night?

WRIGHT: Uh, yes it was.

BEALAND: Okay. And you had a chance to review your body-worn cam, uh, footage today, correct?

WRIGHT: Yes, sir, I did.

BEALAND: All right. And I noticed when I reviewed it as - that, uh, the actual shooting incident wasn't captured on your body-worn cam. Can you explain that?

WRIGHT: Sure. Um, the, uh, body camera of course is activated, uh, a number of different ways. Uh, being that there weren't any, uh, vehicles in the area that would have caused a trigger, uh, the body-worn camera is activated by the person that's wearing the camera, uh, in response to some sort of police action. Uh, and the reason why my camera didn't capture, uh, the actual shooting incident is because, um, my immediate attention was, uh, dedicated towards, uh, the incident that was occurring - the - the life-threatening incident that was occurring before me. Immediately after that had, uh, concluded I recognized that, uh, my camera wasn't activated and I activated it and started reminding other officers to do the same.

BEALAND: Okay, thank you. All right, so, um, this is a chance for you to kinda have the floor, um, and tell us from beginning to end everything that you can recall that you saw, that ya heard, actions you took, actions you might have recalled other officers taking, even some emotions that you might have experienced. So...

WRIGHT: Sure.

BEALAND: ...(take...

WRIGHT: Of course...

BEALAND: ...your ti)...

WRIGHT: ...I - I'm sure that everybody here in this room recognizes this but it's important for me to make sure that this is on the record and that is that, uh, we're many months passed this incident and so my recollection is going to be impacted by the - the - the time that's passed...

BEALAND: Yes.

WRIGHT: ...of course. So, um, ya know, as I said earlier, the, uh, myself and other officers were assigned to provide a police presence in the parking lot at the

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Gulf gas station. Um, at, uh, near 2:50, uh, or t- two - 2:50 am, um, there had been quite a few people that were still in the parking lot and - that were either loitering or that were going in and out of the actual gas station at that location. Um, immediately prior to the - this specific incident, uh, myself and other officers had been dealing with an individual that was known to both myself and Detective Nelson, uh, who was being an agitator. Uh, there wasn't an opportunity for us to, uh, remove him and so - r- from that environment and so we decided to, uh, re-position ourselves so that way he wouldn't continue to, um, agitate the situation. Uh, as such, we positioned ourselves standing, uh, near, uh, the northeast corner of that building, um, and h- which is where we, uh, stood to provide a police presence in that parking lot. Um, while talking with people our - my attention was drawn towards what I recognized to be the sound of gunfire, uh, that was occurring, um, a distance - a short distance, uh, away from me. Um, after hearing the sounds I looked up. I saw, uh, what I recognized to be, uh, muzzle flashes from a firearm, uh, coming from generally within the area of the, uh, uh, what I now know to be a Monte Carlo. Um, myself and other officers immediately started running towards that location, um, and as we were running towards that location I recall yelling out, "Black car. Black car," um, trying to make sure that the other officers that were with me that were also responding to that, uh, the sound of the gunfire knew where it was coming from. Uh, as you were making our response, um, it was fairly chaotic with the number of people that were running away from the gunfire - th-, uh, the amount of vehicles that were attempting to drive away from that environment, uh, and so we had to maneuver around people and vehicles that were trying to flee the terror that was caused by gunfire, uh, uh, going off in that area. Um, as such, the five of us, uh, split off into a couple different directions. Um, I ended up, uh, uh, in the outside lane of travel for, uh, uh, eastbound 7th Street just before 35, um, and, uh, as I - or just prior to making myself - just prior to making it to that location, uh, I saw that there was a - a black male that was, um, coming from the west side of my periphery to the right side so he'd been p-, uh, running up along the outside of a group of cars, uh, and he rounded the front of a black SUV. Uh, and then, uh, I heard another series of gunshots or a gunshot, uh, and then saw a muzzle flash. Um, I saw that male, uh, get into, uh, the black SUV, um, and in a response to what was occurring before me I had already had my (firearm) out and in a response to what was occurring before me I fired one round at him. Um, I remember being fairly close to the vehicle - close enough where I could see, uh, the facial a-, uh, expressions of the driver. Um, I don't recall communicating with the driver, but after a short period of time the driver, uh, drove the vehicle off, uh, eastbound on 7th Street and then turned northbound on the frontage. Almost immediately after that occurred a - a police unit, uh, police officer in a black and white vehicle, uh, one of our patrol vehicles arrives on scene. I started trying to communicate to him that the - the vehicle that was involved in the shooting had just evaded and went northbound. Um, as soon as it was over with, uh, uh, again, that's when I started reminding other officers to activate their cameras and then, um, the plan was made to, um, uh, check, uh,

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the parking lot for any, uh, um, any injured persons that would have been in the parking lot that might have been impacted by the - I guess the reckless gunfire from the - the guy that had gotten into the - what is - I now know to me the Maserati and evading from the area.

BEALAND: All right. When you initially saw a muzzle flash or flashes and gunshot - or shots initially, about how distance - what was your distance from that where you could see that muzzle flash?

WRIGHT: I would probab- I - I would estimate it to be approximately, uh, 20 yards maybe.

BEALAND: Okay.

WRIGHT: Somewhere around there.

BEALAND: Do you recall how many muzzle flashes you might have seen in that incident?

WRIGHT: Um...

BEALAND: At that time?

WRIGHT: I don't. Or i- yeah. I don't.

BEALAND: Did you see who they were coming from or where they were coming from?

WRIGHT: Generally I saw that it was o- o- I - I believed that it was coming from, uh, I was able to see it - I recall being able to see it from, uh, either within or just immediately outside of the Monte Carlo - what I now know to be the m- the Monte Carlo. Um, I don't - yeah, so.

BEALAND: Okay. The subject that you're talking about where you saw a muzzle flash come from him, uh, can you describe what that subject looked like and what his actions were in that moment when you saw the...

WRIGHT: Sure.

BEALAND: ...muzzle flash?

WRIGHT: Um, so I knew that he was a black male. Um, I knew that he was wearing a - a white sh-, uh, top - a white shirt. Um, the, uh, I don't recall being able to specifically see the gun. I was - I wi- re- recall being able to see the actual muzzle flash, um, from what I believed was a gun in his hand. Um, and, uh, I recall him moving, uh, while shooting and then (ultimately) getting inside of the vehicle on - getting inside of the back passenger side of the Maserati.

Confidential

BEALAND: What was your perception of that muzzle flash? As in, was it pointed towards officers, the crowd, etcetera? Did - was he particularly targeting anybody in your perception...

WRIGHT: So...

BEALAND: ...in that moment?

WRIGHT: ...m- my - my perception, uh, was that, uh, he was intending to, uh, do one of a couple of different things. He was either specifically attempting to target the officers that were clearly running towards him who are wearing the uniforms of our position, uh, responding to the sound of gunfire. Pardon me. Um, so either, uh, it was his intention, uh, to cause harm to us, um, or it was his intention to delay our response to detain him, uh, based on his recklessness and - and firing the gun in that crowded environment.

BEALAND: I'd like you tell me about the scene itself as in, um, lighting, weather, and traffic - m- motor vehicle and pedestrian traffic that you recall.

WRIGHT: Uh, so I - I don't recall specifically the weather. Uh, I would extrapolate that it was fairly cold outside. I was wearing a - a beanie on my head. Um, the, uh, there were a lot of vehicles and people inside of that parking lot, uh, which is pretty typical for that time of - time of night, uh, and especially o- e- a- I believe that was a Saturday evening, Sunday morning. It was a lot of people, a lot of vehicles, um, and, um, the lightning, i- i- it was - in- inside of the parking - parking lot itself was fairly well-lit. Um, and then the lighting in the street was, uh, not as bright but it was still light enough for me to be able to make clear distinctions.

BEALAND: Okay. When you initially heard gunshots do you have a recollection of how many shots you heard?

WRIGHT: More than one. I don't recall the specific number.

BEALAND: Other than hearing the gunshots did you have any other information to alert you that there was a call or something in progress? For example, a radio dispatch?

WRIGHT: Specifically regarding that incident?

BEALAND: Yes.

WRIGHT: No.

BEALAND: Okay. So your first reaction and your first, uh, being made aware of it was the gunshots themselves.

Confidential

WRIGHT: Yes, sir.

BEALAND: And you reacted to that.

WRIGHT: That's correct.

BEALAND: Okay. How would you classify your threat awareness level in that moment?

WRIGHT: High. I, uh, the, um, w- w- we were put there in response to a series of violent, uh, incidents that had occurred.

BEALAND: Can you extrapolate on that just a little bit?

WRIGHT: Sure. Um, so e- e- earlier in that evening there had been a, uh, a shooting where a person was shot on 6th Street. Um, at least the night before - I don't recall the specific number of incidents, um, but at least the night before, maybe two nights prior - sometime with the very recent past there had been a shooting along, uh, the frontage road right on 6th or 7th Street. Um, it, uh, the, um, that - that's not uncommon. I've worked, uh, South by for a number of years and - and we've had shooting incidents at that - at those locations.

BEALAND: 'Kay. And what were your thoughts as you were running towards the scene?

WRIGHT: Um, ya know, i- i- in that moment, um, my - my thought was to, uh, stop an active, um, an active shooting from occurring. Um, the - ya know, I'm able to sit back, ya know, with the hindsight, uh, with the benefit of hindsight and - and recognize that, ya know, both myself, the other officers, and, uh, and everybody else was in great peril, uh, and I recognized it at the moment as well. Um, the, um, uh, th- the emotion didn't cause paralysis in action. Um, ya know, i- I - I - again, I needed, uh, it was necessary for me to - to stop that and mitigate the threat, uh, that was being presented to everybody in that environment.

BEALAND: So you thought that you might have to take action to stop a shooting and you mentioned emotion. Can you describe, perhaps, what...

WRIGHT: Sure...

BEALAND: ...your...

WRIGHT: ...and I'll...

BEALAND: ...emotions...

WRIGHT: ...clarify...

Confidential

BEALAND: ...were?

WRIGHT: ...that I knew that I had to take action to stop a shooting.

BEALAND: Okay.

WRIGHT: Um, and then as far as emotion, um, ya know, it, uh, i-, uh, I've had the benefit of having training to be able to respond and - and mitigate, uh, paralysis e- that's caused by emotion. And so, again, looking back I can say that, ya know, certainly I - it, uh, it's e- is a scary e- e- e- environment to be involved in, ya know, when somebody's shooting at you. Um, ya know, and so there - there definitely was a fear, uh, that, uh, I - I could experience, um, getting hurt, ya know, or dying in that - in that incident.

BEALAND: Did you believe that there was an imminent threat of death or serious bodily injury to any person at that time?

WRIGHT: Absolutely.

BEALAND: You mentioned earlier when you were giving i- the - the general broad description that you had, uh, discharged your weapon. You - do you r- and you said, "one round."

WRIGHT: Yes, sir.

BEALAND: That's what I recall. Okay. What factors in that moment, uh, caused you to perceive and believe that the specific subject you fired your weapon at was the same subject who had fired a weapon?

WRIGHT: Sure. Uh, so as he was travelling along the driver's side of both of those vehicles, um, and he had rounded the, uh, the front of the Maserati, uh, he was the only person in that environment. It was pretty clear that, uh, especially based on his clothing - he was wearing a white shirt, um, which would have been distinctive against the black Maserati - the dark background, um, that existed in that environment. It was pretty clear especially with the muzzle flash that, uh, he was a person where the source of that gunfire had been coming from. Um, and, uh, y- there was no doubt in my mind.

BEALAND: Deandre, did you believe that deadly force was immediately necessary?

WRIGHT: Yes.

BEALAND: What was your target when you initially pointed your weapon?

WRIGHT: His chest.

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BEALAND: Where was he positioned? Near the car or in the car or outside of the car at the time?

WRIGHT: Um, more so in the car but may have just - may have also been just getting in the car is why I don't recall specifically. I remember him being mostly contained in the backseat.

BEALAND: All right. Do you recall what was your backdrop was?

WRIGHT: The unoccupied building (on) the Austin Municipal Court. Um, ya know, i- if the bullet penetrated passed the car, um, that - that would have - that would have been the backdrop there. I didn't see any other vehicles or pedestrians in the - in that immediate environment.

BEALAND: Were you - when you fired your weapon were you moving, stationary, or...

WRIGHT: Stationary.

BEALAND: ...anything else? Okay. Approximately how far away were you from the shooter when you discharged your weapon?

WRIGHT: Approximately 15 to 20 feet would be my estimation.

BEALAND: Did you i- issue any commands to the suspect?

WRIGHT: Uh, no I did not. There was not an opportunity to.

BEALAND: 'Kay. Did - do you recall other officers issuing commands to the suspect?

WRIGHT: I don't recall.

BEALAND: (All right). How certain are you that your round struck the subject?

WRIGHT: Fairly certain.

BEALAND: Can you describe that? Wha- what makes you believe that?

WRIGHT: Uh, the distance wasn't, uh, it wasn't terribly far. Um, the only thing that, uh, uh, we- i- put doubt into that was that, uh, I - I believe that the vehicle started to move s-, uh, either at that moment or sh- at - shortly after. Um, but I - I don't know. I can't put a number to it. I...

BEALAND: Okay. Uh, from your position can you describe what or who you saw in the car?

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WRIGHT: Sure. Uh, I knew that there of course was a driver inside of the vehicle. I r- I recall being able to see him. I recall that there was a passenger in the front passenger seat, um, and then of course, uh, the individual that was, uh, uh, that had shot at us that (unintelligible), uh...

BEALAND: Okay.

WRIGHT: ...shot back at.

BEALAND: Okay. All right, uh, I've provided here a blank piece of paper and on the top of it I wrote, uh, Scene Diagram. I've put our case number - IA case number and the APD incident number and I printed your name there. Uh, if you could, Deandre, with that pen could you just draw a rough sketch of - of what the scene looked like from your perspective as it was occurring? A- and, uh, this is not a - a - a proportional diagram, so I get it.

WRIGHT: Okay.

BEALAND: It's just your - your drawing from your recollection. And you'll mark yourself with an X in your position we- as you fired your weapon and the other officers as you recall where they might have been located with...

WRIGHT: O...

BEALAND: ...an O.

WRIGHT: Okay. Uh, so final position at the moment of the shooting, is that what you're interested in? How - (okay).

BEALAND: Yes.

WRIGHT: Um, so I don't recall exactly - there were only two other officers that I have a general idea of where they were during this incident, um, at that time.

BEALAND: Yes.

WRIGHT: Of course, uh, looking at the video I can see where there are other officers that are at. Um, so I can tell ya that, uh, I'll just start here and put that, uh, Officer O'Neill was about that location and I could tell off of my periphery that on my left side, um, uh, Corporal McDonald was somewhere up on that end, so. I'm not an artist of course.

BEALAND: That's...

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WRIGHT: Yeah.

BEALAND: ...fine, Uh, you just mentioned Corporal McDonald.

WRIGHT: Yes.

BEALAND: Was there anything regarding Corporal McDonald that brought your attention or caused you concern?

WRIGHT: Yes. Um, during the gunfire, um, I saw out of my periphery Corporal McDonald fall to the ground. Uh, and, uh, i- I believed at that time that he had been shot. Um, the, um, of course soon after - like, immediately after I - I, ya know, I was able to find that he had not been shot, um, I think, uh, um, ya know, so th- that happened during the course of the gunfire. Uh, o- of course I wasn't able to distinguish between the different, uh, gunshots, um, where it was coming from so I di-, ya know, I didn't know what had occurred. I just thought that he had been shot.

BEALAND: Were you able to distinguish whether or not the other officers were discharging their weapons as well?

WRIGHT: I don't believe so in that moment. I do- I don't believe so. Um, I don't recall.

BEALAND: You ever heard of the - the expression, "tunnel vision?"

WRIGHT: Of course.

BEALAND: Okay. Uh, generally speaking, w- what is that?

WRIGHT: Uh, tunnel vision, uh, generally is, uh, what happens when a person becomes, uh, uh, focused on one thing that's happening in front of them despite a number of other things that are occurring in th- in their periphery or in - in - in their, uh, peripheral environment, yeah.

BEALAND: And based on training that you might have participated in in the past with the department or otherwise, why does that happen?

WRIGHT: Um, i- in part due to stress overload. Um, uh, due to, uh, emotional overload. Um, the, uh, yeah, in part.

BEALAND: Okay. Thank you. All right, (unintelligible) with that. Thank you very much. Deandre, did you believe that there was any other alternative other than to use deadly force at that point?

WRIGHT: At that point no, I did not.

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BEALAND: Do you believe that you had any other tactical options given the circumstances and your positioning?

WRIGHT: Given the circumstances and our positioning I don't believe that were any other tactical options.

BEALAND: All right. Did you personally witness the subject bring struck by any rounds?

WRIGHT: Struck by rounds, no.

BEALAND: Okay. Can you describe what you did see, uh, regarding the subject knowing that deadly force was being used?

WRIGHT: Sure. Um, after I fired my gun, um, I saw his body slump in the back of the car.

BEALAND: Immediately after the shots were fired, uh, you described basically what happened. Another officer showed up, you were trying to direct them to, um, that the suspect vehicle had fled the scene. You had the presence of mind to direct other officers to activate their body-worn cameras. Um, checked on one another as far as injury I imagine and then started looking at the scene itself. Um, other than that was there any other actions that happened immediately after?

WRIGHT: Uh, enforcement actions?

BEALAND: Yes.

WRIGHT: Uh, no, I don't - not that I can recall.

BEALAND: Okay. Do you believe you were justified in using deadly force?

WRIGHT: Yes, sir.

BEALAND: Can you explain that a little bit for us?

WRIGHT: Sure. The, um, of course both our policy and - and state law authorize an officer - authorizes an officer to use deadly force, um, when they are presented with, uh, a situation where, uh, either themselves or another would be at risk of serious bodily injury or imminent - imminent serious bodily injury or death. I believe that that, uh, that threshold was met. Uh, the individual, um, was involved in, uh, a shooting incident just prior that drew our attention. Um, the individual started firing, uh, displayed recklessness as he started firing either at - specifically at officers or into the crowd, um, and so certainly, uh, based on that action alone, uh, he displayed, uh, or put officers and the general public at risk of serious bodily injury or death as a

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result

(resort) of his - of his actions. Uh, further, I believe that, uh, he presented such a grave threat based on his recklessness that, uh, uh, he continued to display a threat to the general public if he was not immediately apprehended.

BEALAND: Do you believe that the deadly force was within policy?

WRIGHT: Yes, sir.

BEALAND: Do you believe the deadly force withis- was within state law?

WRIGHT: Yes I do.

BEALAND: Uh, Deandre, I als- IA also has an additional role to help identify areas of training and other advancements that may help other officers who may be involved in a similar incident - a critical incident. Do you think there was anything that you or the other officers could have done differently or were things left undone that, perhaps, could have been done?

WRIGHT: No, sir.

BEALAND: In your opinion do you believe there are any training issues that came from this incident?

WRIGHT: No I don't.

BEALAND: And if you encountered this situation again would you do anything differently?

WRIGHT: No I wouldn't.

BEALAND: Sergeant Nordstrom, any questions?

NORDSTROM: Uh, just a couple. Um, I'm going to kinda recap your statement, so if I say anything that isn't correct please tell me. But...

WRIGHT: Yes, sir.

NORDSTROM: ...it's - what I'm hearing is that you heard gunfire and initially saw muzzle flashes. You responded to that area. Then you heard and saw - or I guess you heard additional gunfire e- and, uh, at least one more muzzle flash, correct?

WRIGHT: Yes, sir.

NORDSTROM: By this subje- this black male with the white hoodie?

WRIGHT: Mm-hm.

COR 7238

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NORDSTROM: Uh, and as he rounded the front of the Maserati SUV that is when you saw, uh, well you saw the muzzle flash and a handgun - what you believed to be a...

WRIGHT: I did...

NORDSTROM: ...handgun?

WRIGHT: ...not see a handgun.

NORDSTROM: Okay. You saw a muzzle flash?

WRIGHT: Yes, sir.

NORDSTROM: Okay. Uh, how much time do you think that was between...

WRIGHT: Seconds.

NORDSTROM: Seconds?

WRIGHT: Yeah.

NORDSTROM: And between the first sound of gunfire and the time you fired your weapon, did that black male in the white hoodie give you endy- ind- any indication, uh, that he was ceasing his activity? His, "recklessness," in your words?

WRIGHT: No, in fact I believe that he was increasing his recklessness. Um, I don't believe that - I didn't believe at least, uh, based on what I had - my perception at the time and what I had saw that the initial volley of gunfire was directed at officers. I believe that he, uh, he increased his recklessness when, uh, as the officers were responding to deal with that initial volley, uh, that he then turned and fired o- either at the officers or at the crowd. Uh, so yeah, I believe that his - his recklessness in fact increased. So he - he didn't show any signs of stopping is what I'm telling ya.

NORDSTROM: Did he have an opportunity to stop what he was doing? I mean once he saw, uh, well - I'll take that question back. Um, and looking at your diagram, uh, the circle I guess...

WRIGHT: Yeah, I...

NORDSTROM: ...at the...

WRIGHT: ...apologize.

NORDSTROM: ...back right corner panel, um, is this Officer O'Neill?

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WRIGHT: So, uh, yes, this is Officer O'Neill. Um, and again, approximate, so I wouldn't necessarily say back right corner panel. He was on the side of the car in that general area, but yes, that is - this here is who I intend or who I - is represented - represents Officer O'Neill. And then this here would represent Corporal McDonald.

NORDSTROM: Okay. So they were to your left.

WRIGHT: Yes.

NORDSTROM: And at the time you took your shot, uh, were you aware of where Officer O'Neill was?

WRIGHT: I believe so, yes.

NORDSTROM: And, uh, was there anything, uh, I guess did you have a clear line of sight and a clear shot at the suspect when you fired?

WRIGHT: Yes, sir, I did. Um, I remember my ~~side of the~~ sight picture again being, uh, this guy's chest which, uh, was pretty distinctive because he was wearing a white shirt. Um, I believe that the angle provided an opportunity for me to shoot at him, um, or target his chest without there being any sort of conflict with Officer O'Neill.

BEALAND: Do you recall whether the rear passenger door where the suspect had gotten into the vehicle - was that open, closed, or something else?

WRIGHT: Um, I can't recall specifically if was - if it was open or not. Um, I remember being able to see pretty clearly inside of the vehicle so I don't know if the door was open or if the window was down. I - I - I don't recall specifically.

BEALAND: Okay. Deandre, would you do me a favor since your - your drawing is very small scale?

WRIGHT: Sure.

BEALAND: Would you mind just, um...

WRIGHT: If you want I can try it again on the back side of that.

BEALAND: No, that's fine.

WRIGHT: Oh, okay.

BEALAND: All I would like you to do if you don't mind is just indicate who each person

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is - is draw a line and...

WRIGHT: Sure...

BEALAND: ...connect...

WRIGHT: ...thing.

BEALAND: ...them somewhere. Thank you. Anything else?

NORDSTROM: No.

BEALAND: All right, we're going to take a break. The time is 11:15. We're back on the record. The time is 11:19. Deandre, would you agree that everybody who is in the room now was in the room prior to the break?

WRIGHT: Yes, sir.

BEALAND: Okay, I just want to ask one clarifying question. When you fired your shot did you fire at the vehicle - at the subject when the vehicle was stationary or was it moving?

WRIGHT: Uh, my recollection, uh, was that the vehicle was stationary. Uh, and the reason that I, uh, that I feel confident in making that statement is because, um, I remember there being some length of a pause, um, and being able to evaluate the facial expression of the driver and that I could tell that hi- it was his intent based on his facial expressions to drive away, which is of course what he did.

BEALAND: Anything else? Okay. Is there anything I haven't asked that you would like to comment on?

WRIGHT: No, sir.

BEALAND: Is there anything I have asked you that you would like to further explain or clarify?

WRIGHT: No, sir.

BEALAND: Is there anyone you believe may have information pertinent to this investigation who has not already been mentioned in this interview?

WRIGHT: No, sir.

BEALAND: Is there any i- other information you have related to this investigation that may or may not be important?

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WRIGHT: No, sir.

BEALAND: Uh, so we're going to transcribe the recording and when it's ready I'll call you back. You can come back and review it. Take your time to review it and make sure that it's accurate and then you'll be held accountable for its truthfulness...

WRIGHT: Sure.

BEALAND: ...as a document. Um, if you have anything further add at that time when you review it you can either do a memo or we'll have to re-interview for that section.

WRIGHT: Yes, sir.

BEALAND: Okay? It's 11:21. Ending the recording.

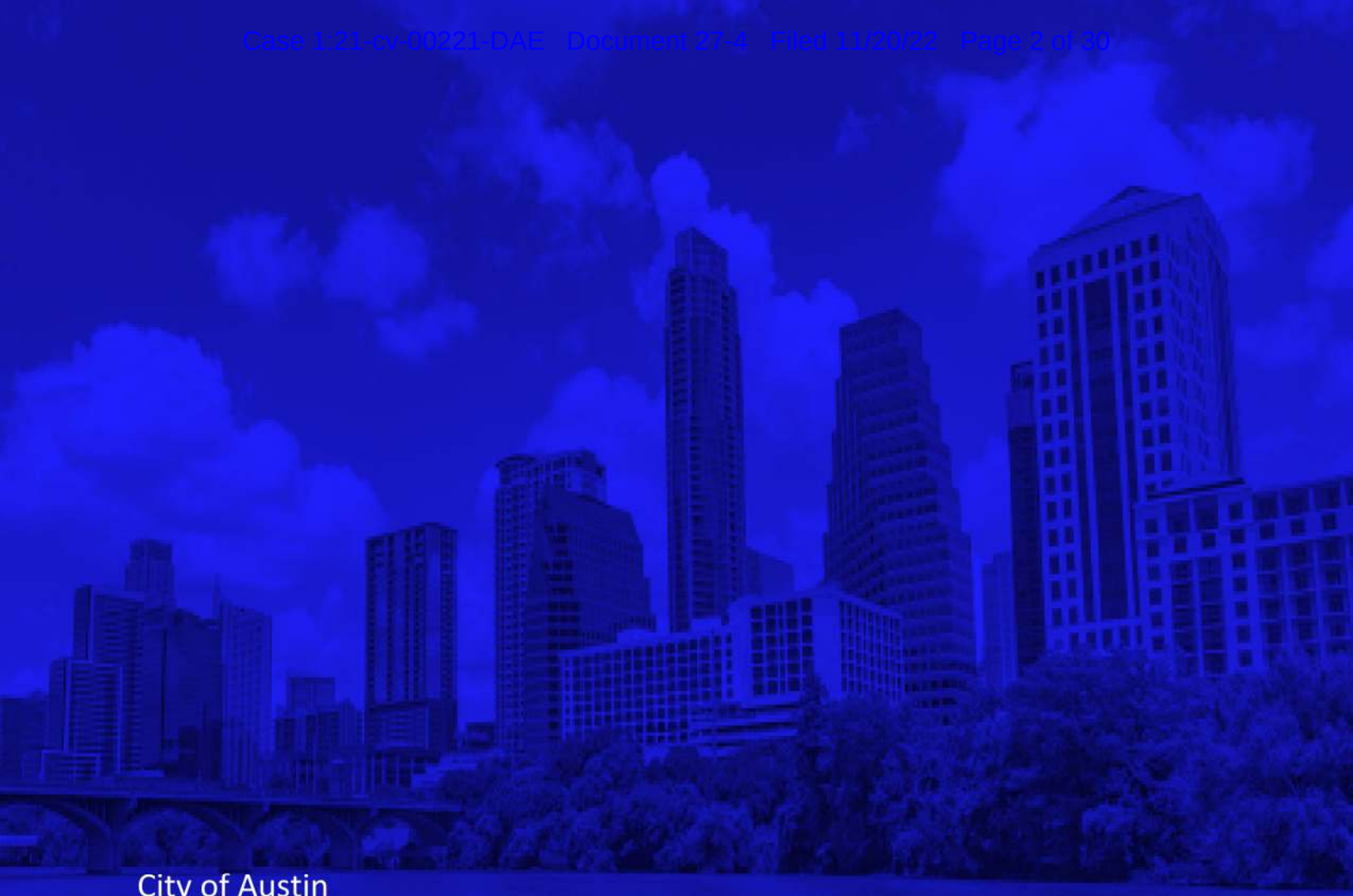
D. Wright #7238
Officer Deandre Wright

SUBSCRIBED AND SWORN TO BEFORE ME THE UNDERSIGNED AUTHORITY ON THIS THE 28th DAY OF AUGUST, 2019.

Christopher Bealand 4413 PEACE OFFICER, STATE OF TEXAS.

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EXHIBIT E



City of Austin

2018 Officer-Involved Shooting Report

June 2020

OFFICE OF POLICE OVERSIGHT

Exhibit E

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INTRODUCTION

In November 2018, the Office of Police Oversight was established as the civilian department responsible for oversight of the Austin Police Department, replacing the Office of the Police Monitor. The Office of Police Oversight's inaugural Officer-Involved Shooting Report is the first by either civilian office that is dedicated to the subject of officer-involved shootings.

The Austin Police Department (APD) released a report in May 2018 with collective data related to officer-involved shootings that occurred between 2008 and 2017.[1] This report by the Office of Police Oversight goes a step further by providing data from all 2018 officer-involved shooting incidents, summaries of each incident, and relevant policy recommendations.

Both law enforcement and civilian oversight agencies must critically analyze each officer-involved shooting incident that occurs and must also look at the aggregate data to determine what substantive policy changes can be made to address areas of concern.

The mission of the Office of Police Oversight is to provide impartial oversight of the Austin Police Department's conduct, practices, and policies to enhance accountability, inform the public to increase transparency, and create sustainable partnerships throughout the community. This report serves as a new avenue for the public to access critical incident data necessary to ensure transparency and accountability.

Special thanks to the Office of Police Oversight staff, as well as students from the University of Texas at Austin School of Law, for their editing contributions and research discussed in this report.

[1] APD's officer-involved shooting report is available at https://www.austintexas.gov/page/officer-involved-shooting-reports

EXECUTIVE SUMMARY

The Office of Police Oversight reviewed every officer-involved shooting (OIS) incident involving the Austin Police Department (APD) in 2018 to identify any recurring factors and highlight areas for improvement.[2] This report provides summaries of each incident, presents incident-specific and officer-specific data, and offers the Austin Police Department recommendations in identified areas of concern. In summary:

- **There were 12 OIS incidents involving APD in 2018.**
  - These 12 incidents involved 11 individuals and 33 police officers. [3]
  - Of the 12 incidents, 11 occurred within Austin city limits and one occurred in Round Rock.[4]
- **8 of the 12 incidents in 2018 involved ethnic minorities.**
  - 6 incidents involved Hispanic/Latinx males; 1 involved a Hispanic/Latinx female, 1 involved a Black/African American male, and 4 involved Caucasian/White males.[5]
- **7 of the 12 incidents were fatal.**
  - 5 were determined to be fatalities caused by police. All 5 fatalities caused by police involved ethnic minorities.
  - 2 of these fatal incidents were determined to be suicide.
- **5 of the 12 incidents occurred in Austin City Council District 2, the borders of which closely align with those of APD's Frank sector. District 2 and Frank sector are both located in southeast Austin.**
  - 3 of the 5 fatalities caused by police in 2018 occurred in District 2.
  - All 5 fatalities caused by police occurred in central, east, or southeast Austin.
- **25 of the 33 involved officers had 6 or fewer years of APD experience at the time of their involvement in an officer-involved shooting incident.**
- **Involved officers used "less-lethal" force[6] before firearms in only one incident.**
- **At least half of the incidents involved a mental health component.[7]**

---

[2] Officer-involved shooting incidents are defined in this report as those in which officers intentionally fired their firearms toward an individual. This number represents the total number of unique, separate incidents that occurred in 2018. This report designates 12 distinct incidents involving 11 individuals. One individual, Hugo Alvarez, was involved in two separate incidents on the same day.

[3] This report uses the words "individual" or "individuals" to refer to those persons who were shot or shot at by APD officers. The officers involved in these incidents are referred to as "officer," "involved officer," or plurals of the same.

[4] The incident in Round Rock involved Mark Anthony Conditt, the individual responsible for a series of bombings that occurred in Austin in March 2018.

[5] In the remainder of the report, Hispanic/Latinx individuals will be referred to as Latinx, Black/African American individuals will be referred to as Black, and Caucasian/White individuals will be referred to as White.

[6] "Less-lethal" force can be an alternative to deadly force and includes options such as pepper spray, K-9s (police dogs), TASER devices, and beanbag rounds."Less-lethal" weaponry used in 2018 incidents included beanbag rounds and TASERs.

[7] Incidents involving a mental health component are those in which APD had information, either before or after an incident, related to the involved individual's mental health history. Examples of this information include, but are not limited to, the following: (1) APD records with an "EDP" (emotionally disturbed person) notation, (2) APD records showing prior emergency detentions or "EDP" interventions; (3) statements from 911 callers about an individual's mental health; (4) statements from an individual's family about the individual's mental health.

OFFICER-INVOLVED SHOOTING INCIDENT DATA

Fatalities

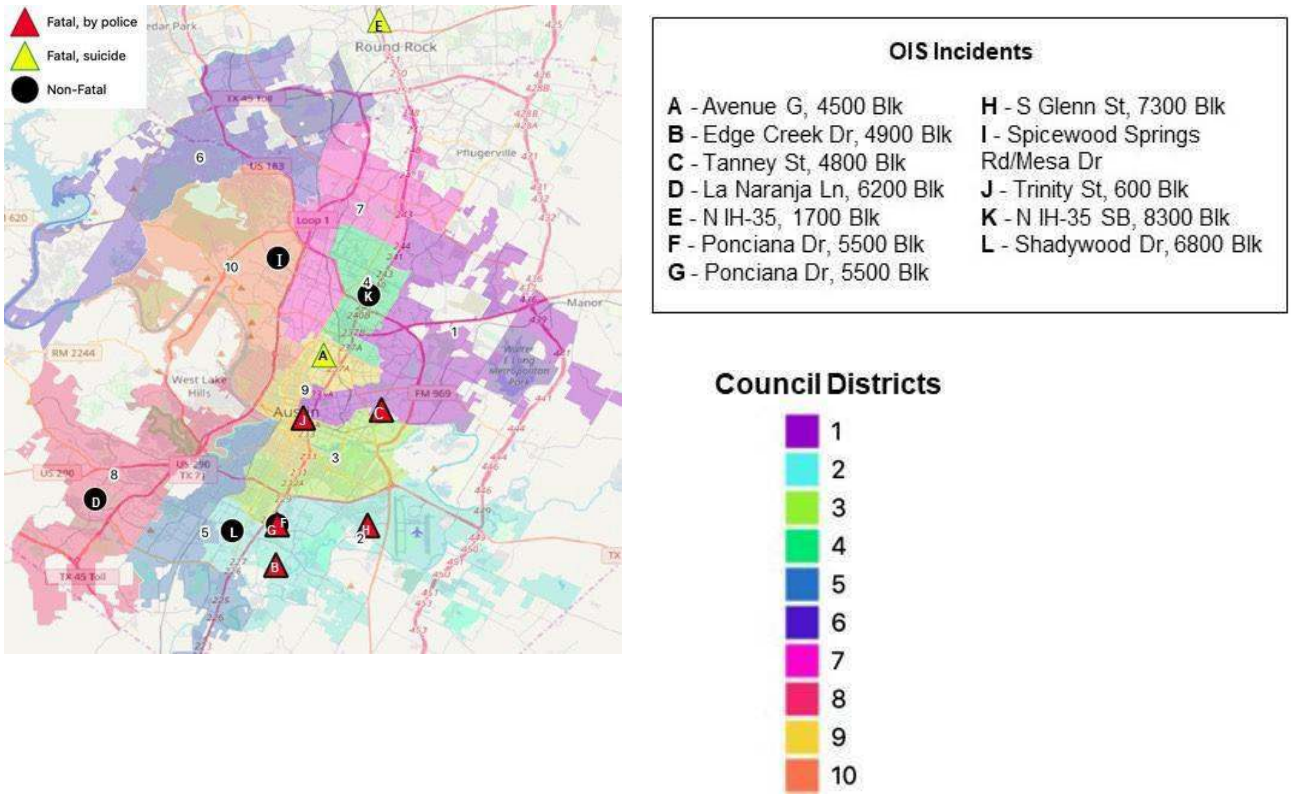
Of the 12 officer-involved shooting incidents in 2018, 7 were fatal and 5 were non-fatal.[8]

- 2 of the 7 fatal incidents were determined by the Travis County Medical Examiner's Office (ME) to be suicides caused by self-inflicted wounds.
- The remaining fatal incidents were determined by the Travis County Medical Examiner's Office to be homicides caused by gunshot wounds. The ME's reports along with ballistics reports showed that the fatalities were caused by police.

Geographic Location of Incidents

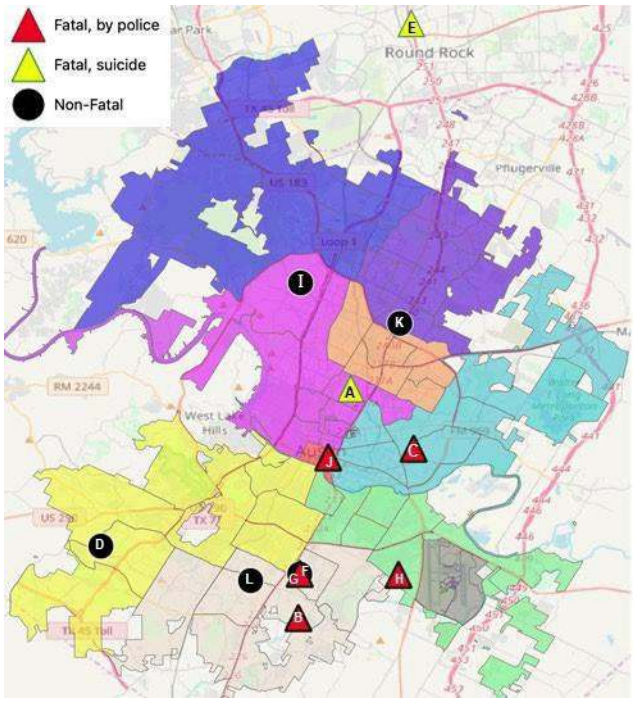
This section of the report provides data on the geographic location of each officer-involved shooting (OIS) incident in relation to both Austin City Council District and APD Sector. While City Council Districts are not directly correlated to APD Sectors, they share some overlapping borders (*See Figures 1 and 2*). The following analysis shows that the southeast region of Austin experienced the highest concentration of OIS incidents in 2018, and all fatal incidents caused by police took place in central, east, or southeast Austin.

Figure 1: Map of 2018 Incidents in Relation to Austin City Council Districts



[8] This report defines fatal incidents as ones in which an individual died. This category of incidents is further divided into two subsets distinguished by the cause of death: (1) self-inflicted wounds and (2) fatalities caused by police. Non-fatal incidents are defined as those in which no individual died.

Figure 2: Map of 2018 Incidents in Relation to Austin Police Department Sectors



OIS Incidents

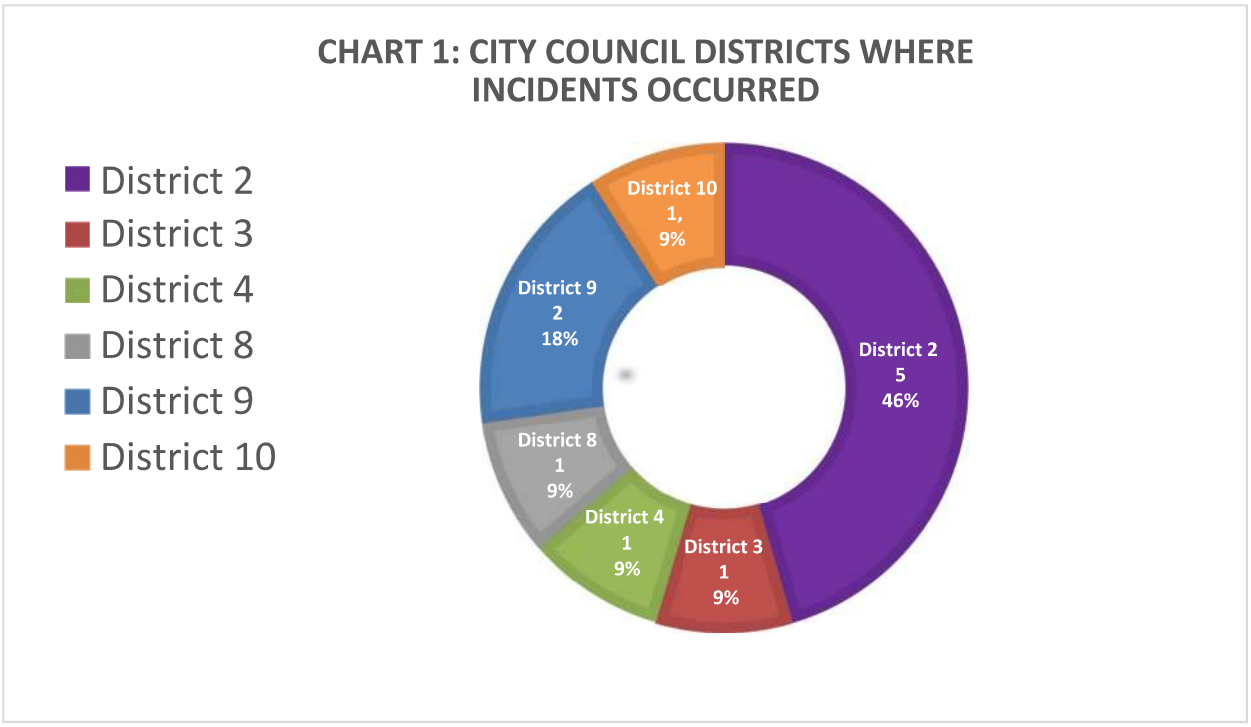
A - Avenue G, 4500 Blk
B - Edge Creek Dr, 4900 Blk
C - Tanney St, 4800 Blk
D - La Naranja Ln, 6200 Blk
E - N IH-35, 1700 Blk
F - Ponciana Dr, 5500 Blk
G - Ponciana Dr, 5500 Blk
H - S Glenn St, 7300 Blk
I - Spicewood Springs Rd/Mesa Dr
J - Trinity St, 600 Blk
K - N IH-35 SB, 8300 Blk
L - Shadywood Dr, 6800 Blk

Police Sectors

- ADAM
- APT (AIRPORT)
- BAKER
- CHARLIE
- DAVID
- EDWARD
- FRANK
- GEORGE
- HENRY
- IDA

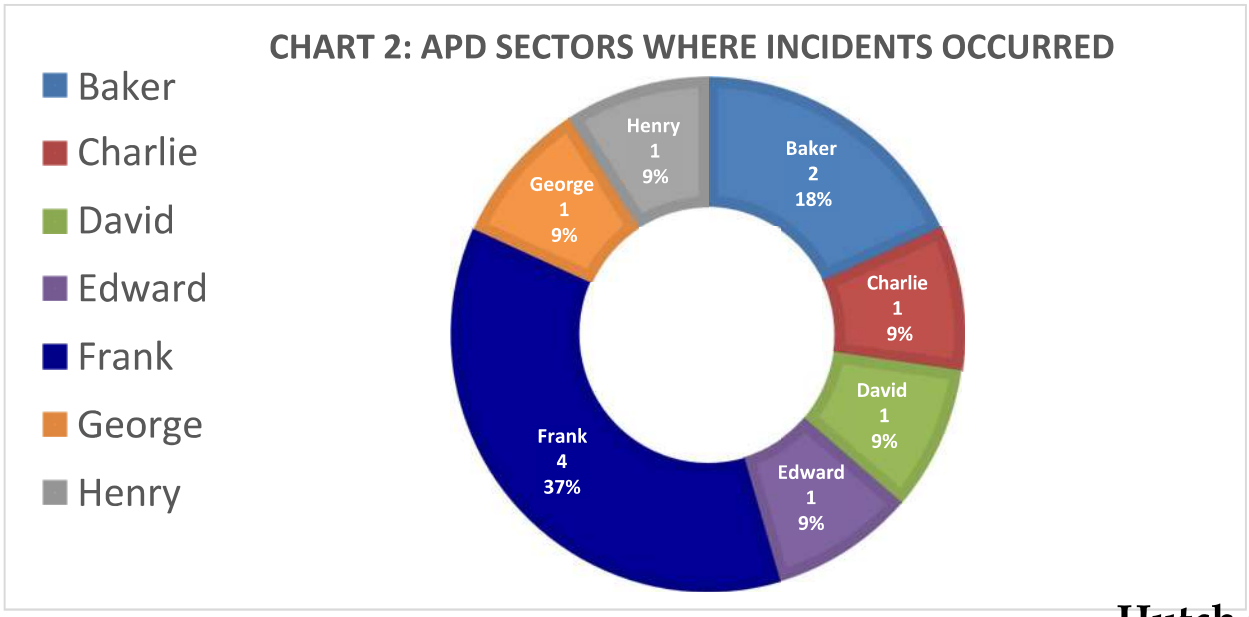
Location in Relation to Austin City Council Districts

Austin City Council District 2, located in southeast Austin, was the district with the highest concentration of officer-involved shooting (OIS) incidents in 2018, with a total of 5 OIS incidents. In addition, 3 of the 5 fatalities caused by police took place in District 2. The number of incidents that took place in District 2 was more than double that of the district with the next highest concentration. The council district with the next highest concentration of incidents was District 9, located in central Austin/Downtown, which had 2 incidents.



Location in Relation to Austin Police Department Sectors

APD's Frank sector, also located in southeast Austin, had a total of 4 officer-involved shooting incidents in 2018, making it the sector with the highest concentration of incidents. Moreover, 2 of the 5 fatalities caused by police took place in APD's Frank sector. The APD sector with the next highest concentration of incidents was Baker sector, which covers the central west area of Austin and had 2 incidents.



Time of Day When Incidents Occurred

Of the 12 officer-involved shooting incidents, 9 occurred in the late evening to early morning hours between 11 PM – 5 AM.

Demographic Information of Individuals Involved

Gender and Ethnicity

- 8 of the 12 incidents involved ethnic minorities.
    - 6 incidents involved Latinx males; 1 incident involved a Latinx female; 1 incident involved a Black male
- 4 incidents involved White males
- Of the 12 officer-involved shooting incidents, 5 resulted in fatalities. Only ethnic minorities were involved in fatal incidents.
    - 3 fatalities involved Latinx males
    - 1 fatality involved a Latinx female
    - 1 fatality involved a Black male

Age

Of the 12 incidents, 8 involved individuals between 20-28 years of age; all other individuals were over 45 years old.

Origin of Incidents

Of the 12 officer-involved shooting incidents in 2018, 10 originated as calls for service.[9] All incidents where the cause of death was fatalities caused by police originated as calls for service; none were planned encounters.

Planned encounters refer to incidents in which police contacted an individual after conducting surveillance or otherwise engaging in law enforcement activity that made officers aware of the individual's location. In the case of a planned encounter, officers would have engaged in some sort of preparatory work prior to arriving on scene and would have anticipated encountering the individual involved.

[9] Calls for service may include calls to 911 for emergency assistance or calls to 311, the non-emergency number.

Incidents with Mental Health Components

Incidents involving a mental health component are those in which APD had information, either before or after an incident, related to the involved individual's mental health history. Examples of this information include, but are not limited to, the following: (1) APD records with an "EDP" (emotionally disturbed person) notation, (2) APD records showing prior emergency detentions or "EDP" interventions; (3) statements from 911 callers about an individual's mental health; (4) statements from an individual's family about the individual's mental health.

- At least half of the OIS incidents in 2018 involved a mental health component.
- 2 of the 5 fatal OIS incidents involved a mental health component.

Presence of Weapons

- 10 of the 12 officer-involved shooting incidents involved an individual observed to be armed with a weapon at the time of the shooting. Weapons in these incidents included firearms, knives, pickaxes, and improvised explosive devices/bombs.
- 4 of the 5 fatalities caused by police involved an individual who was armed at the time of the shooting.
- 1 of the 5 fatalities caused by police involved an individual who was not armed at the time of the shooting.

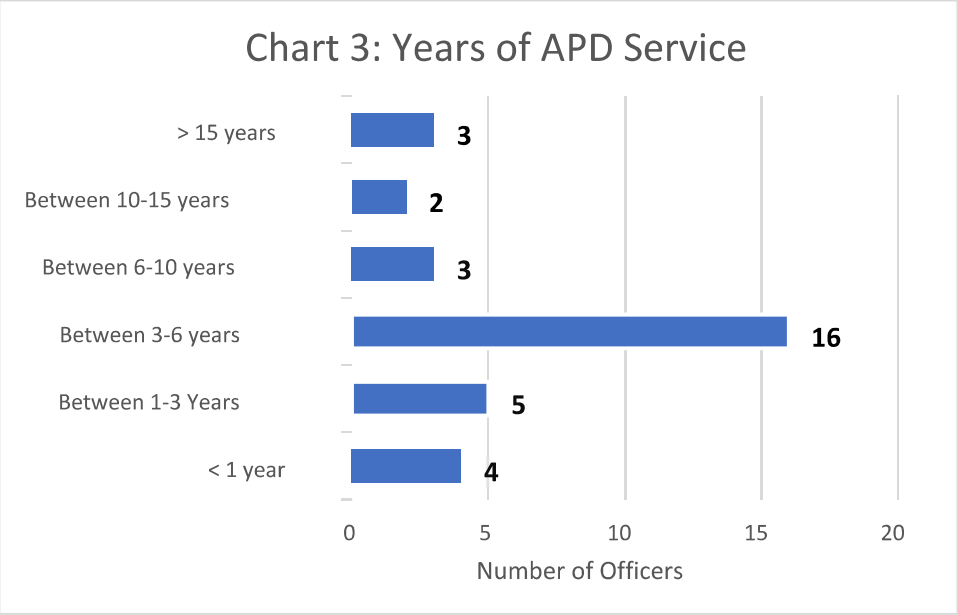
Use of "Less-Lethal" Force

In only 1 of the 12 incidents did officers use "less-lethal" force before using their firearms. "Less-lethal" force can be an alternative to deadly force and includes options such as pepper spray, K-9s, TASER devices, and beanbag rounds. "Less-lethal" weaponry used in 2018 incidents included beanbag rounds and TASERs.

Officer Experience Level and Rank

OIS incidents in 2018 involved 33 different officers. Out of the 33 officers involved, 25 officers had 6 or fewer years of APD experience.[10] Of these 25 officers, 16 had between 3-6 years of APD experience, 5 had between 1-3 years of experience, and 4 had less than one year of experience with APD.

Of the 33 officers involved, 32 held the rank of Officer. One held the rank of Sergeant.[11]

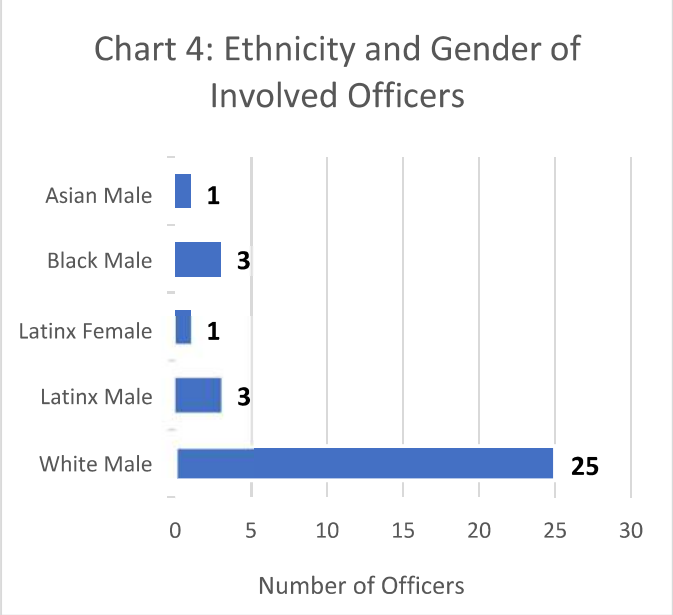


[10] Rank and APD experience is calculated based upon the date of each respective incident.
[11] Within the Austin Police Department's chain of command structure, sergeants serve as officers' supervisors.

Demographic Information of Involved Officers

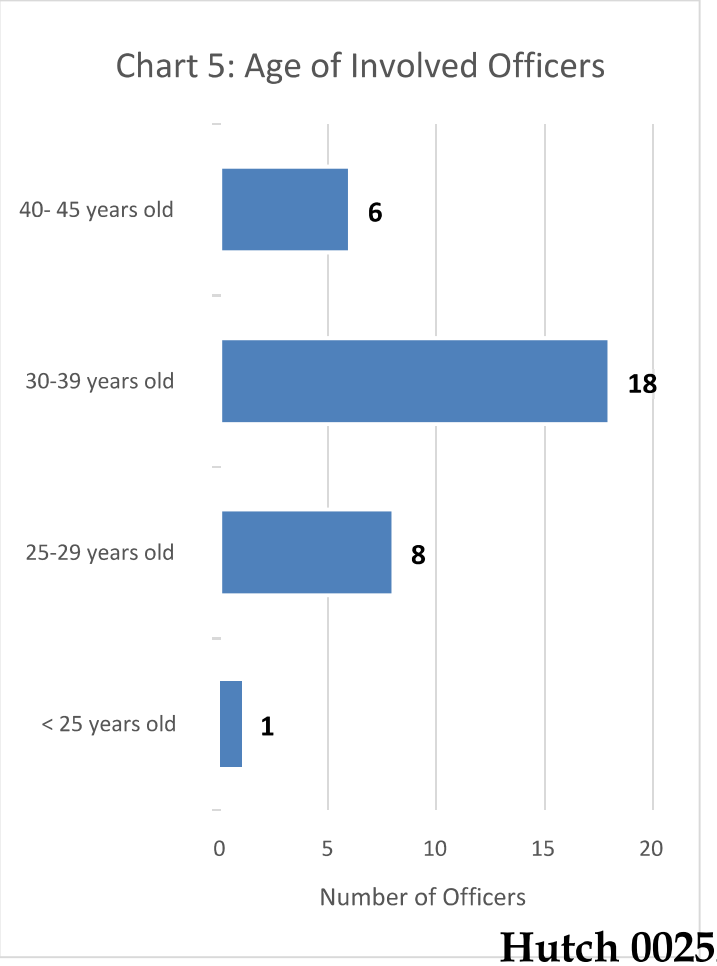
Gender and Ethnicity

Of the 33 involved officers, 25 were White males.



Age

Of the 33 involved officers, 18 were between 30-39 years of age at the time of the incident in which they were involved.



Prior Involvement in OIS Incidents

Of the 33 officers who were involved in officer- involved shootings (OIS) incidents in 2018, 3 had been involved in at least 1 prior OIS incident.

- 1 officer had been involved in 2 prior incidents.

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INCIDENT SUMMARIES

This section of the report provides summaries of each officer-involved shooting involving APD officers in 2018. Each incident is labeled with the name of the individual involved and has been assigned a letter, which corresponds with the labeling on the maps provided in Figures 1-2 in the previous section. The incidents are in chronological order.

Incident A - Christopher Eric Giles

At around 3:40 AM on January 26, 2018, APD officers responded to a burglary "hot shot call" on the 4500 block of Avenue G.[12] Officers were notified by dispatch that someone had broken into the callers' home and that the callers heard gunshots and were hiding in the closet. Two officers—Officer Jackson and Officer Abbott—arrived first to the scene and observed a man walking from the callers' residence toward an older black vehicle parked in the driveway. The man, later identified as Christopher Giles (23/White/Male), got into the vehicle and began backing out of the driveway. Officers began giving commands and Mr. Giles appeared to stop. Shortly thereafter, Mr. Giles fired a shot from inside his vehicle. Both officers on the scene reportedly attempted to return fire, but Officer Abbott experienced a weapon malfunction and was unable to do so. Officer Jackson, however, did fire his weapon multiple times, hitting Mr. Giles' vehicle various times and causing gunshot wounds to Mr. Giles' left arm.

Mr. Giles, who reportedly had a history of mental health issues, was later determined to be the person who had broken into the callers' home, having gained entry by through the glass back door of the residence.

APD's Forensic Science Services Division found evidence consistent with the conclusion that 10 shots were fired by police during this incident.

The Travis County Medical Examiner ruled Mr. Giles' death a suicide, finding a gunshot wound to his head with evidence that the shot was fired at "contact range." The Medical Examiner also found two gunshot wounds to Mr. Giles' left arm.

The Travis County District Attorney reviewed the incident and declined to file charges against the officer involved. The declination letter can be found here.[13]

[12] The Austin Police Department General Orders define "hotshot calls" as incidents "involving physical harm or injury to a person or property" and that are "in progress and/or all involved parties are still on scene." Austin Police Department's General Orders can be found at https://www.austintexas.gov/sites/default/ files/files/Police/General_Orders.pdf

[13] All available declination letters from the Travis County District Attorney's Office can be found at https://www.traviscountytx.gov/district- attorney/office- divisions/civil-rights/cru.

Incident B - Thomas Vincent Alvarez

On February 19, 2018, APD officers responded to the 4800 block of Nuckols Crossing Road after 911 received a call at around 5:31 PM from a woman who was concerned because her female roommate was on her way to their residence and had told her that a male roommate, later identified as Thomas Vincent Alvarez (23/Latinx/Male), was following her there. Through dispatch, officers were notified that Mr. Alvarez might be under the influence of drugs and that he had just had an altercation with another male roommate earlier that day during which he "had roommates hostage…and wouldn't let them leave…they had to escape." While the woman was still on the phone with dispatch, Mr. Alvarez arrived at the residence in a taxi. Due to the circumstances of the call, dispatch changed the type of call from a "Disturbance Other" to "Disturbance HS."[14]

Officer Cardenas arrived on the scene while Mr. Alvarez was still in front of the residence in the taxi. After being told by dispatch that Mr. Alvarez was possibly armed, Officer Cardenas approached the taxi with his firearm drawn and gave commands to both Mr. Alvarez and the driver. The taxi driver exited the vehicle, but Mr. Alvarez did not comply with the commands and instead climbed into the driver's seat and began driving away from the scene in the taxi.

Mr. Alvarez continued driving for roughly three miles with police following behind him. Mr. Alvarez was given commands to pull over and exit the taxi, but he did not comply. The pursuit eventually ended in front of a gated community in the 4900 block of Edge Creek Drive. There, Mr. Alvarez opened the driver's side door of the taxi, and police observed him holding a firearm.

Shortly after opening the door, Mr. Alvarez closed it again, at which point police surrounded the taxi and began talking to Mr. Alvarez through Corporal Burnsed, a trained hostage negotiator. Negotiations reportedly continued for 40 minutes.

At some point, Corporal Burnsed said over the radio that Mr. Alvarez was pointing his firearm at officers, which led to officers firing at the vehicle. After this, officers still observed Mr. Alvarez moving in the vehicle, and he again displayed the gun out the window of the taxi toward officers. At this point, SWAT officers had arrived on the scene and the second round of shots were fired toward Mr. Alvarez in the taxi. SWAT eventually took over the scene and the third round of shots were fired after officers again observed movement and the weapon. APD recovered 83 fired casings from the scene.

This incident was fatal and the Travis County Medical Examiner ruled Mr. Alvarez's death a homicide, stating that the cause of death was multiple gunshot wounds. Seven officers—Rogers, Wright, Oborski, Henion, Gebhart, Rosales, and Brady—discharged their firearms during this incident. APD documented 60-70 defects on Mr. Alvarez's body with an estimated 15-16 perforating gunshot wounds.

The Travis County District Attorney reviewed the incident and declined to file charges against the officers involved. The declination letter can be found here.

[14] HS is an abbreviated reference to a "hotshot" call.

Incident C - Victor Sanchez Ancira

At around 4:17 AM on March 7, 2018, APD officers were dispatched to the 4800 block of Tanney Street after a man, later identified as Victor Ancira (46/Latinx/Male), called 911 stating that he had just killed his father and brother[15].

Mr. Ancira had a mental health history that included schizoaffective and bipolar disorder. When officers arrived on the scene, they saw him sitting in a folding chair in the middle of the street holding a pickaxe in his hand. Officers then observed Mr. Ancira stand up and begin pacing with the pickaxe still in hand.

After Mr. Ancira did not comply with verbal commands, officers elected to use "less-lethal" weaponry to attempt to disarm him, and seven "less-lethal" beanbag rounds were deployed. Mr. Ancira continued to move from the street back toward the residence while carrying the pickaxe and using the chair as a shield. At one point, after being hit with rounds from the "less-lethal" beanbag shotgun, Mr. Ancira dropped the folding chair but continued holding the pickaxe.

During this incident, officers also deployed three TASER cartridges. After the TASER cartridges were deployed, Mr. Ancira grabbed the pickaxe with both hands, and officers subsequently fired at him. Five officers—Smart, Skeen, Rowland, Johns, and McCulloch—fired 32 rounds during this incident, including 22 9mm rounds, 5 shotgun rounds, and 5 rifle rounds.

This incident was fatal and the Travis County Medical Examiner ruled Mr. Ancira's death a homicide, stating that the cause of death was gunshot wounds.

The Travis County District Attorney reviewed the incident and declined to file charges against the officers involved. The declination letter can be found here.

Incident D - Kyle Garcia

At around 12:31 AM on March 12, 2018, APD officers responded to a "gun hotshot" call on the 6200 block of La Naranja Lane after learning that a woman had called 911 stating that her son, Kyle Garcia (24/Latinx/Male), was intoxicated and was threatening his father with a gun. Mr. Garcia's father reportedly barricaded himself in the master bedroom after Mr. Garcia chased him there while threatening him with the gun. While his father was barricaded in the bedroom, Mr. Garcia reportedly stabbed the door of the bedroom with a knife and fired shots through the door several times.

At some point, Mr. Garcia reportedly put the gun down and his father was able to exit the bedroom and eventually join Mr. Garcia's mother and the police outside.

Ultimately, Mr. Garcia opened the front door and fired at officers. Officers returned fire and Mr. Garcia subsequently retreated into the residence. He reemerged sometime later and

[15] After the incident, it was discovered that Mr. Ancira's father and brother were inside the residence and were alive and unharmed. An apparent suicide note was also recovered from the scene.

surrendered to police. This incident was not fatal, but Mr. Garcia did suffer three gunshot wounds to his left leg and arm.

Two officers—Turner and Bittner—fired seven shots at Mr. Garcia during this incident. The Travis County District Attorney reviewed the incident and declined to file charges against the officers involved. The declination letter can be found here.[16]

Incident E - Mark Anthony Conditt

In March 2018, a series of bombings took place throughout Austin, killing two people and injuring several others. Law enforcement officials discovered the identity of the bomber, Mark Anthony Conditt (23/White/Male) after tracing packages he had sent via FedEx. This and other investigative efforts led to a federal warrant and complaint being issued for Mr. Conditt, charging him with Unlawful Possession and Transfer of a Destructive Device. On March 21, 2018, the day after the warrant was issued, law enforcement officials, including APD's Special Weapons and Tactics (SWAT) team and members of the Lone Star Fugitive Task Force, executed a plan to make contact with Mr. Conditt.

At around 1 AM on March 21, law enforcement officials located Mr. Conditt at a hotel in Round Rock. Members of APD's SWAT team began following him as he drove southbound on the IH-35 frontage road. SWAT vehicles eventually closed in on Mr. Conditt's vehicle and conducted a vehicle assault, forcing him to drive into a grass-filled median in the 1700 block of the N IH-35 frontage road. SWAT officers subsequently exited their vehicles and surrounded Mr. Conditt's vehicle. Officers then attempted to break one of the front windows of Mr. Conditt's vehicle, and shortly thereafter Mr.Conditt detonated an explosive device he had with him. This caused an explosion, which pushed officers backward. One SWAT officer, Officer Garcia, fired his weapon at Mr. Conditt shortly after Mr. Conditt detonated the device.

The Travis County Medical Examiner ruled Mr. Conditt's death a suicide caused by wounds from the shrapnel from the device he detonated. As a result, while this was a fatal incident, the cause of death was not police fire.

The Williamson County District Attorney presented this case to a grand jury to determine whether charges should be brought against Officer Garcia.[17] The grand jury ultimately decided not to charge Officer Garcia.

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[16] The Travis County District Attorney website currently has a two-page declination letter with limited details, citing ongoing criminal proceedings.

[17] This case was handled by Williamson County because the incident occurred in Round Rock, Williamson County.

Incident F - Hugo Renee Alvarez (1st Incident)

At around 10:50 PM on March 25, 2018, APD officers responded to the 5500 block of Ponciana Drive after 911 received calls from a man, later identified as Hugo Renee Alvarez (28/Latinx/ Male), requesting police and then hanging up the phone.

Three officers responded to the address and initially contacted residents of the neighboring home by mistake due to confusion about the address. When officers were redirected to the correct home, they knocked on the front door three separate times with no response. One of the officers on the scene, Officer Taveras, had recently graduated from the APD Training Academy and was on the scene with her assigned field training officer, Officer Sakamoto. After some discussion about what to do next, officers decided to ask dispatch to try to contact the caller again by phone. When the caller did not answer, officers continued looking around the perimeter of the house and into the front windows for a few minutes before turning to walk away. As officers began walking away, three shots were fired from inside the residence.

Upon hearing the gunshots, officers began running for cover. A fourth shot was then fired from inside the residence, after which Officer Taveras fired her weapon toward the house. Two more shots were subsequently fired from inside the residence.

The incident was the first of two involving Mr. Alvarez on March 25 and was not fatal, nor did it result in any injuries to Mr. Alvarez. However, this incident led to a separate officer-involved shooting incident (discussed below) a few hours later involving APD's SWAT team.

The Travis County District Attorney submitted this case to a grand jury to determine whether Officer Taveras should be indicted and charged with crimes in relation to this incident. The grand jury ultimately decided not to charge Officer Taveras.

Incident G - Hugo Renee Alvarez (2nd Incident)

At around 11:42 PM on March 25, 2018, APD's SWAT team responded to the 5500 block of Ponciana Drive after being paged when other officers reported being shot at from inside the residence they had responded to during a call for service.

When SWAT officers arrived on the scene, they positioned themselves around the home and attempted to communicate with residents inside through a PA system on one of their armored vehicles.

While on the scene, officers heard several gunshots inside the residence and heard a loud bang followed by a woman screaming. Officers continued to make announcements over the PA system, including requests for Mr. Alvarez to come out. Eventually, five adults and four children exited the residence and reportedly informed officers that there was no one else inside.

Members of the SWAT team then deployed a robot to breach the front door of the residence. Moments later, officers radioed that Mr. Alvarez had a hostage and was coming out the front door. The person identified in the radio broadcast as the "hostage" was Mr. Alvarez's mother.

Seconds after Mr. Alvarez exited the house, a sniper with APD's SWAT team, Officer Judd, fatally shot Mr. Alvarez. After this incident, APD confirmed that Mr. Alvarez was not armed when he exited the house with his mother, having left the gun on the floor before exiting. Reports indicate that APD was aware of the possibility that Mr. Alvarez had left his firearm inside the residence before exiting with his mother.

This incident was fatal and the Travis County Medical Examiner ruled Mr. Alvarez's death a homicide, stating that the cause of death was gunshot wounds. The Travis County District Attorney submitted this case to a grand jury to determine whether Officer Judd should be indicted and charged with crimes in relation to this incident. The grand jury ultimately decided not to charge Officer Judd.

Incident H - Leslie Yolanda Salazar

On June 7, 2018 around 2:30 AM, APD officers responded to the 7300 Block of South Glenn Street after initially receiving a prowler "hotshot" call. While the call was initially titled "prowler hotshot," officers later received information from dispatch indicating that the call involved someone known to the callers. There were two 911 calls leading up to this incident. First, 911 received a call stating that a woman, later identified as Leslie Yolanda Salazar (20/Latinx/Female), was trying to break into her home. Moments later, 911 received a second, related call from a woman saying that Ms. Salazar was her cousin and was now threatening people in the residence with a knife. Ms. Salazar reportedly had some mental health history.

Officer Robles arrived at the residence first and knocked on the door but received no answer. Just in front of the house, he observed a knife lying on the ground.

At or around the same time, a second officer, Officer Brown, arrived on scene and the two met with the women who had called 911. Officers Robles and Brown reportedly met the two women at the intersection of Autumn Bay Drive and Aspen Glenn Boulevard, two streets down from South Glenn Street, where they stated that Ms. Salazar had physically assaulted them and threatened them with a knife and chased them down the street. Shortly after the two women met with officers, three men who had also been in the house ran up to the group and shared similar information with the officers. Soon after, officers learned that a female roommate of the women had gone to bed and was likely still in the residence with Ms. Salazar. One of the women called that roommate and told her to come outside, which she did.

Throughout these interactions, officers reportedly had concerns about the witnesses being intoxicated and so they, despite it appearing that everyone in the home aside from Ms. Salazar was accounted for, were reportedly still concerned about who might still be inside.

Moments later, Officers Brown and Robles entered the residence and began calling for Ms. Salazar by name and announcing themselves as APD officers. Seconds later, Officer Brown encountered Ms. Salazar in the kitchen and saw that she was carrying a knife.

Over 2-3 seconds, Officer Brown twice issued commands for Ms. Salazar to drop the knife and when she did not, he fired three rounds at her.

This incident was fatal, and the Travis County Medical Examiner ruled the death a homicide caused by gunshot wounds.

The Travis County District Attorney reviewed the incident and declined to file charges against Officer Brown. The declination letter can be found here.

Incident I - Craig Anthony Carter

On August 3, 2018, APD officers responded to a call for service after 911 began receiving multiple calls from the 4700 block of Chiappero Trail at around 7:38 AM with reports of hearing a woman wailing and a man yelling and telling her to "shut up." When police arrived at the residence, they made contact with a woman, who stated that her son, Craig Anthony Carter (27/White/Male), had just assaulted her and threatened her with a gun. She told police that Mr. Carter had just left, and she provided a physical description of both he and his vehicle.

Police broadcasted this information over radio and an officer subsequently saw Mr. Carter's vehicle while on patrol. The officer tried to conduct a traffic stop; however, Mr. Carter, who has a documented mental health history, did not pull over. APD camera footage shows that Mr. Carter continued driving and proceeded to lead police on a pursuit lasting roughly 12 minutes.

Mr. Carter's vehicle finally came to a stop at the intersection of Mesa Drive and Spicewood Springs Road after police performed the Precision Immobilization Technique.[18] Almost immediately after the vehicle stopped, Mr. Carter exited through the driver's side door and began firing at police.

Two officers, Officer Trahan and Officer Witt fired their weapons at Mr. Carter during this incident, and crime scene specialists collected 20 fired cartridge casings matching police weapons.

This incident was not fatal, however police returned fire and ultimately hit Mr. Carter numerous times, causing wounds to his right foot, left leg and arm, and torso.

The Travis County District Attorney reviewed the incident and declined to file charges against the officers involved. The declination letter can be found here.[19]

Incident J - Aquantis Jaymond Griffin

On August 17, 2018 around 1:02 AM, officers responded to the 600 block of Trinity St. after hearing shots fired. Approximately 41 minutes earlier, 911 began receiving calls about disturbances at Terminal 6, an 18 and over dance club then located at 302 E 6th Street in downtown Austin. Due to the size of the crowds in and around the venue, APD officers

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[18] The Precision Immobilization Technique or "PIT maneuver" is a technique used by police to force an evading vehicle to abruptly turn 180 degrees, thereby causing it to stall and stop.

[19] The Travis County District Attorney website currently has a two-page declination letter with limited details, citing ongoing criminal proceedings.

reportedly requested assistance from the Texas Alcoholic Beverage Commission and the Fire Marshal. At approximately 1:00 am, there was another disturbance in the alley and parking lot behind Terminal 6; 911 received multiple calls reporting shots fired and APD officers responded to the area.[20]

Once officers approached the alley, they heard shots being fired as well. Shortly thereafter, officers saw someone, later identified as Aquantis Jaymond Griffin (21/Black/Male), running down the alley with a handgun in his right hand.

At some point, Mr. Griffin reportedly pointed the gun at officers, and eight officers—Johnson, Cast, Mathis, Martinez, DeVries, Moran, Halbach, and Salacki—subsequently fired 43 shots at Mr. Griffin in response; a ninth officer fired a TASER device. This incident was fatal. The Travis County Medical Examiner conducted an autopsy of Mr. Griffin and reported a total of 30 gunshot wound pathways.

As of the release date of this report, the Travis County District Attorney is still investigating this OIS incident and has yet to release a letter indicating whether charges will be filed against the eight officers involved.[21]

Incident K - Glenn Austin Miles

On September 9, 2018, members of the APD Violent Crimes Task Force[22] were investigating a series of robberies that had occurred in recent days and located a potential suspect, later identified as Glenn Austin Miles (51/White/Male), in north Austin. Before contacting him, officers were aware of Mr. Miles' mental health history.

Officers located Mr. Miles at around 1:11 AM and as they approached, Mr. Miles reportedly attempted to evade by running away on foot. As officers pursued him, they reportedly observed Mr. Miles pull out a handgun and, at or around the same time, two officers—Officer Eichenholz and Sergeant White— fired their patrol rifles at Mr. Miles.

A total of seven shots were fired.

The incident was not fatal, however, Mr. Giles suffered at least two gunshot wounds and was hospitalized as a result.

The Travis County District Attorney reviewed the incident and declined to file charges against the officers involved. The declination letter can be found here.[23]

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[20] Police later discovered that some of the gunshots reported that night were fired toward Mr. Griffin and a group of others by another individual.

[21] A list of officer-involved shooting investigations currently pending with the Travis County District Attorney's Office is available at https://www.traviscountytx.gov/images/district_attorney/docs/pending-officer-involved-shooting-investigation.pdf

[22] According to the APD website, the Violent Crimes Task Force was created under Chief Brian Manley in 2018 and is a multi-agency team that investigates bank robberies and other select federal offenses that occur in the Central Texas area.

[23] The Travis County District Attorney website currently has a two-page declination letter with limited details, citing ongoing criminal proceedings.

Incident L - Mark Anthony Herrera

At around 7:40 PM on October 5, 2018, APD officers responded to calls for service on the 6800 block of Shadywood Drive. There had been various 911 calls referencing someone, later identified as Mark Anthony Herrera (48/Latinx/Male), pouring gasoline across his yard, lighting it on fire, and walking around the front yard with a gun. One caller also told 911 that Mr. Herrera had a mental health condition and might be under the influence of methamphetamine.

When police responded, they observed Mr. Herrera pacing in the street and holding what appeared to be a firearm to his head.[24] During the incident, Mr. Herrera also pointed the gun at bystanders on the street and police officers as they were walking towards him. At or around this time, two officers, Officer Littig and Officer Mihalik, fired their duty rifles at Mr. Herrera.

The incident was not fatal, however, Mr. Herrera was shot and suffered gunshot wounds to his arm, abdomen, and back.

The Travis County District Attorney reviewed the incident and declined to file charges against the officers involved. The declination letter can be found here.[25]

[24] The weapon Mr. Herrera was holding was later identified by APD as a BB pistol.

[25] The Travis County District Attorney website currently has a two-page declination letter with limited details, citing ongoing criminal proceedings

CONCLUSION

Officer-involved shootings are the most absolute representation of the power that police officers hold as a result of their positions. Consequently, every single incident requires a thorough analysis and review. The fact that the Austin Police Department was involved in 12 officer-involved shooting (OIS) incidents in 2018 makes that year especially important to review given this historically high number.

The OPO's review of the 2018 officer-involved shooting incidents highlights disconcerting patterns that APD must acknowledge and address to provide transparency and accountability to the community. Officers' apparent failure to use de-escalation tactics in many of the incidents, as well as their failure to use "less-lethal" force options in all but one incident, is deeply troubling and requires further explanation by the department. Moreover, the 2018 data clearly reveals a disparate concentration of officer-involved shooting incidents affecting individuals who are ethnic minorities, as well as in areas of Austin that are historically minority-majority. APD must account for these demographic and geographic disparities. Increased accountability related to critical incidents will be an essential part of any foundation upon which APD might hope to effectuate the community policing model it endeavors to achieve.

RECOMMENDATIONS

The Office of Police Oversight provides impartial oversight of the Austin Police Department's conduct, practices, and policies. As part of this work, the Office of Police Oversight reviews the Austin Police Department's policies and procedures and makes recommendations on any policies that warrant review or change. Based upon a review of the 2018 officer-involved shooting (OIS) incidents, the Office of Police Oversight recommends the following:

Civilian Oversight Access

Increase the Office of Police Oversight's access to officer-involved shooting incident data.

The Office of Police Oversight responds to the scenes of officer-involved shooting incidents and, as with other administrative investigations into potential misconduct by Austin Police Department officers, monitors the subsequent investigations conducted by the Internal Affairs Division. Under the 2018 Meet and Confer Agreement between the Austin Police Association and the City of Austin (Meet and Confer), the Director of the Office of Police Oversight should have unfettered access to the Internal Affairs investigation process. To achieve compliance with the civilian oversight access requirement outlined in the Meet and Confer Agreement, the Austin Police Department should provide the Office of Police Oversight with unprompted access to ballistics reports and autopsy reports related to officer-involved shooting incidents when they become available. The Office of Police Oversight further recommends that Austin Police Department informs the Office of Police Oversight in writing of the total number of sworn employees present at the scene of each incident, both at the time of the shooting and afterward. Access to this information is necessary for the Office of Police Oversight staff to provide effective oversight of investigations into each incident.

Reporting by the Austin Police Department

Publish annual reports related to officer-involved shooting incidents involving the department.

The last officer-involved shooting report published by the Austin Police Department was released by the Research and Planning Unit in May 2018 and was a collective report of incidents that occurred between 2008 and 2017. To increase transparency and access to information, the Office of Police Oversight recommends that the Austin Police Department begin publishing annual officer-involved shooting reports. In addition, the Office of Police Oversight recommends that these reports identify characteristic data points, outline the steps taken by the Austin Police Department immediately following the incidents, and include preventative measures the department will implement (or has already implemented) as a result of the incidents.

Any Austin Police Department reporting related to the 2018 incidents, in particular, should include sections acknowledging and analyzing the following issues, as well as the department's specific plans to address them:

a. the number of fatal officer-involved shooting incidents caused by police;
b. the number of officer-involved shooting incidents involving potential mental health components;
c. the concentration of officer-involved shooting incidents occurring in southeast Austin;
d. the concentration of fatal officer-involved shooting incidents occurring in south, central, and east Austin;
e. the fact that only ethnic minorities were the subjects of fatalities caused by police;
f. the fact that the majority of OIS incidents involved people from the Latinx community; and
g. the fact that "less-lethal" use of force was used prior to deadly force in only one incident.

Furthermore, the Austin Police Department should regularly communicate with the public, including City of Austin Boards and Commissions and community stakeholders, regarding this data.

Post-Academy Training Requirements

Increase continuing education for patrol officers.

As it stands, mandatory training for officers after they graduate from the Austin Police Department Training Academy is limited and often reserved for specialized units. Out of the 12 officer-involved shooting incidents in 2018, 10 of the incidents originated as calls for service. In these cases, the initial responders were patrol officers and not part of any specialized unit. Given this data, the Office of Police Oversight recommends that the Austin Police Department institute consistent and ongoing training for patrol officers in the following areas:

a. de-escalation;
b. response to resistance; and
c. crisis intervention and mental health response

Mental Health Response

Ensure mental health response training, policies, and procedures follow best practices and address shortcomings found in the 2018 City Auditor report.

This report found that at least half of the 2018 officer-involved shooting incidents involved a mental health component. A 2018 report by the Office of the City Auditor revealed that of the police departments in some of the largest cities in the U.S., "APD has the highest per capita rate of fatal police shootings involving persons believed to be experiencing a mental health crisis."[26]

In response to the City Auditor's report, the Austin Police Department recently increased mandatory mental health training for officers from 40 hours to 80 hours throughout an officer's career. While this is a step in the right direction, the completion of 80 hours of training throughout an officer's career is not enough.

[26] City of Austin. 2018. Audit Report: APD Response to Mental Health-Related Incidents. Austin, TX: Office of the City Auditor, p.7. This report is available at https://www.traviscountytx.gov/images/district_attorney/docs/180607-leslie_salazar.pdf

The City Auditor's report found that best practices result in officers receiving "regular refresher trainings on topics related to crisis intervention, de-escalation, and mental health." Austin Police Department training staff confirmed during the audit that they did not offer such opportunities.[27]

The need for the Austin Police Department to provide consistent and ongoing training on mental health and crisis response to all officers is critical because department policy requires officers to respond to emergencies involving persons experiencing mental health crisis when a Crisis Intervention Team (CIT) officer is not available.[28] The City Auditor's report found that, unlike other large cities, 911 dispatchers in Austin do not identify the nearest certified mental health officer and dispatch them to the crisis event.[29] The report also found that "[CIT] officers are not always available when needed. In addition, officers may not have all relevant information when responding to these calls for service."

As a result, the Office of Police Oversight recommends that the Austin Police Department engage in substantive efforts to meet or exceed the requirements for best practices in the area of mental health and crisis response.[30] Traditional training that supports an authoritative approach to policing has been found to be ineffective when responding to a mental health crisis. Such an approach may in fact escalate the situation and result in the use of deadly force. As a result, training specific to mental health and crisis response is critical.

Personnel Safety and Wellness

Ensure the Austin Police Department's policies and procedures align with best practices for personnel safety and wellness.

Involvement in an officer-involved shooting may compound any stress an officer may already be experiencing as a result of their job or personal life. It is important that the safety and wellness of officers be prioritized. The Office of Police Oversight recommends that the Austin Police Department align its personnel safety and wellness policies and procedures with national best practices. Current best practices support proactive wellness programs.[31] According to guidance from the U.S. Department of Justice:

> [a]n agency which truly values its employees should begin by considering how to offer routine mechanisms to support employees throughout their careers, not solely when they are exposed to traumatic events or begin to exhibit signs of trauma. When law enforcement leaders prioritize safety and wellness proactively, they create the conditions for law enforcement personnel to demonstrate a greater capacity for empathy and compassion for those in their communities and their agencies. Providing the means and training for law enforcement personnel to replace negative defense or coping mechanisms with mechanisms that encourage greater understanding serves to build trust between individuals and law enforcement agencies.[32]

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[27] *Audit Report: APD Response to Mental Health-Related Incidents*, p. 7.

[28] Crisis Intervention Team (CIT) officers are also known as Mental Health Officers (MHOs).

[29] *Audit Report: APD Response to Mental Health-Related Incidents*, p. 42.

[30] *See Audit Report: APD Response to Mental Health-Related Incidents* and *Law Enforcement Best Practices: Lessons Learned from the Field*.

[31] *Law Enforcement Best Practices: Lessons Learned from the Field*, p. 32.

[32] *Law Enforcement Best Practices: Lessons Learned from the Field*, p. 32.

Based on this guidance, the Office of Police Oversight recommends that the Austin Police Department review its current health and wellness programs and provide a written assessment considering whether they are in alignment with best practices and supportive of the department's stated goals for community policing.

APPENDIX

Figure 1: Map of 2018 Incidents in Relation to Austin City Council Districts

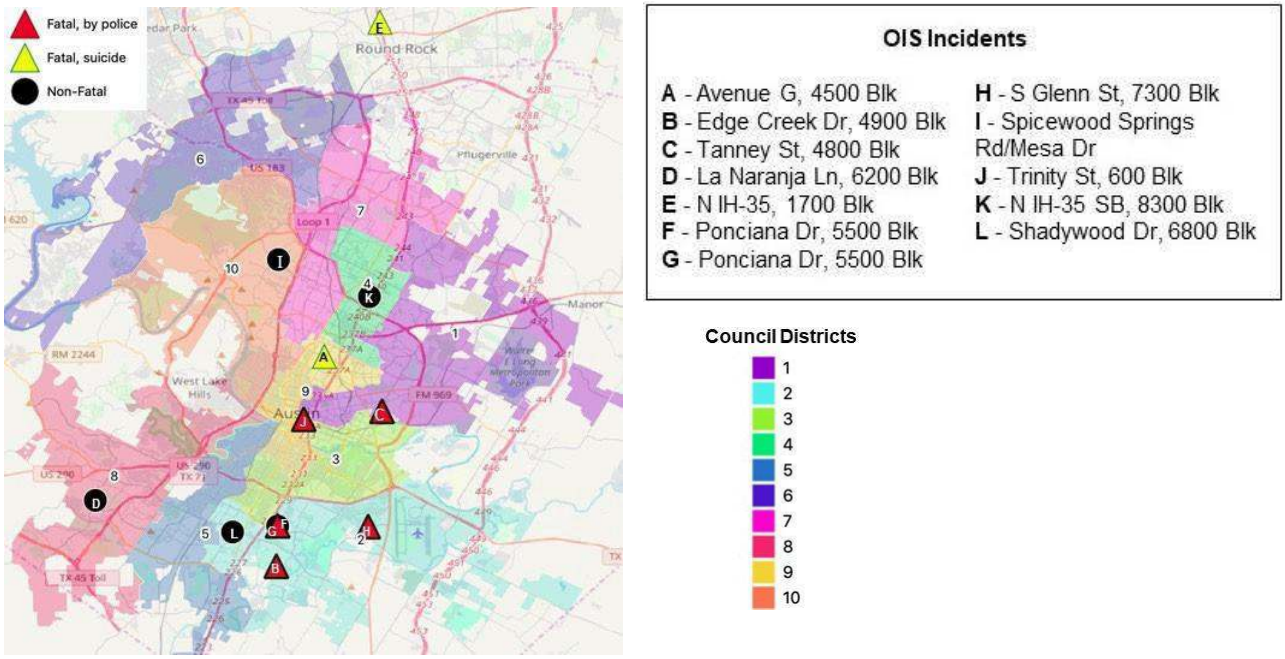


Figure 2: Map of 2018 Incidents in Relation to Austin Police Department Sectors

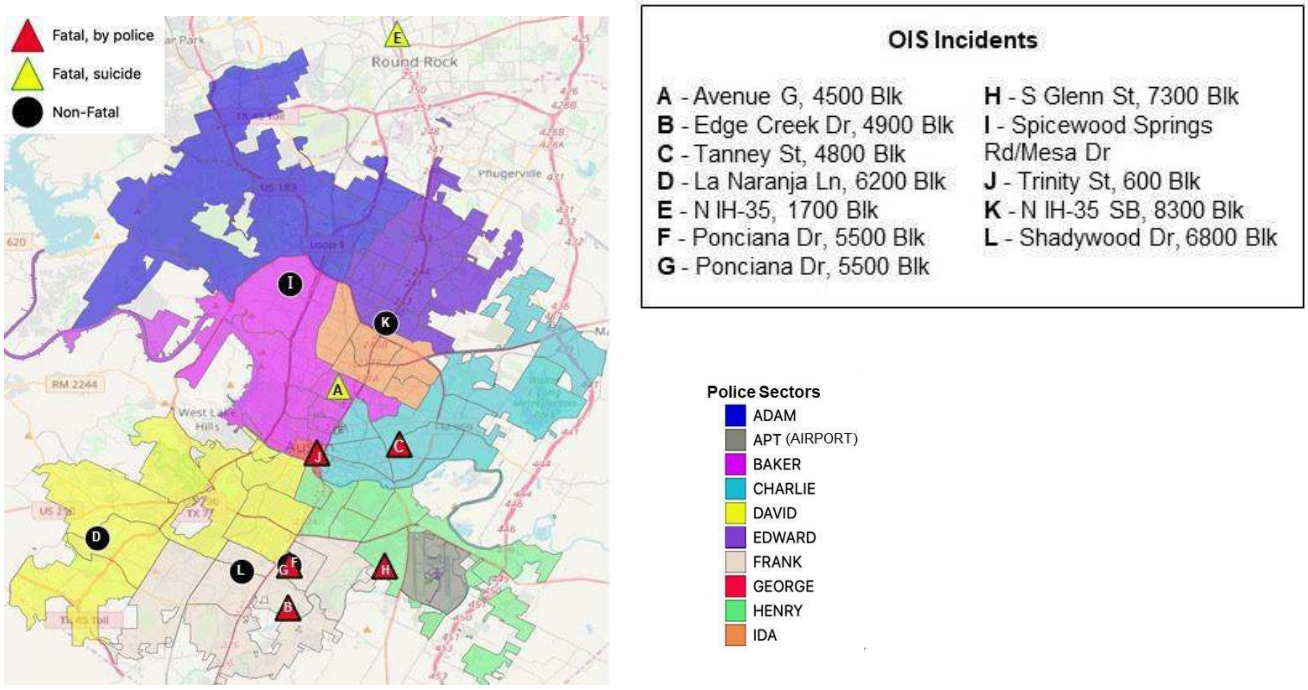


CHART 1: CITY COUNCIL DISTRICTS WHERE INCIDENTS OCCURRED

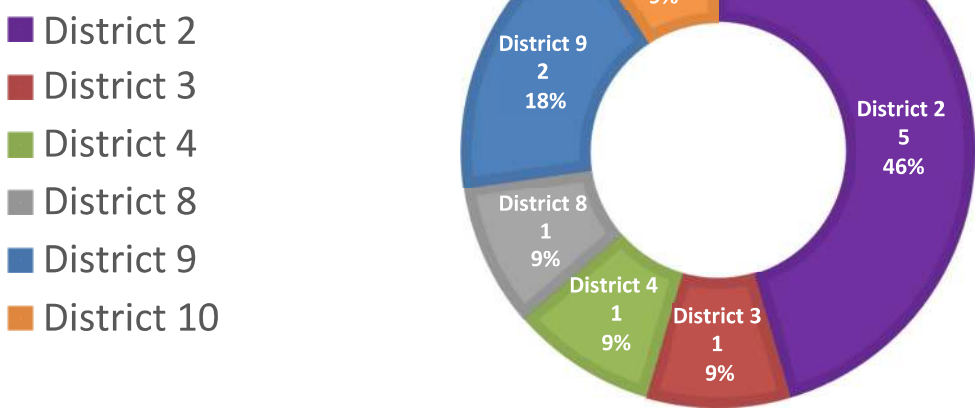
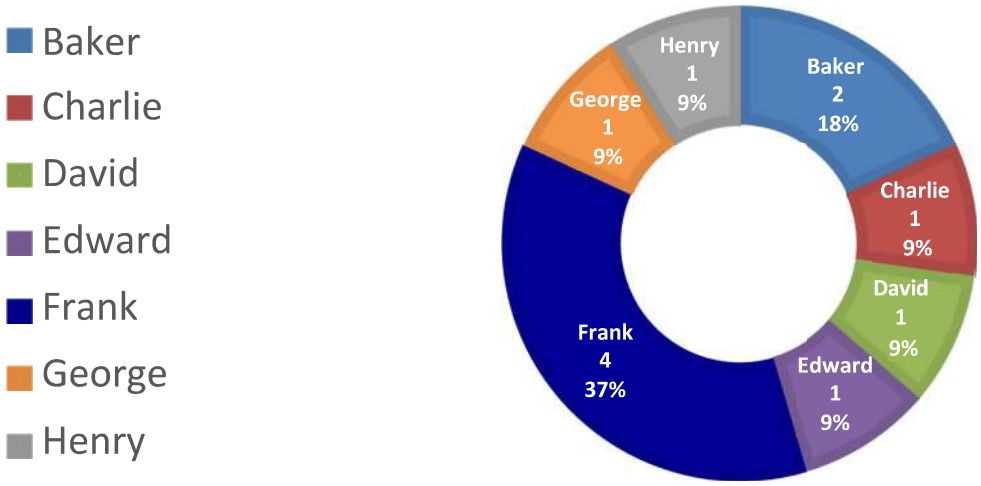
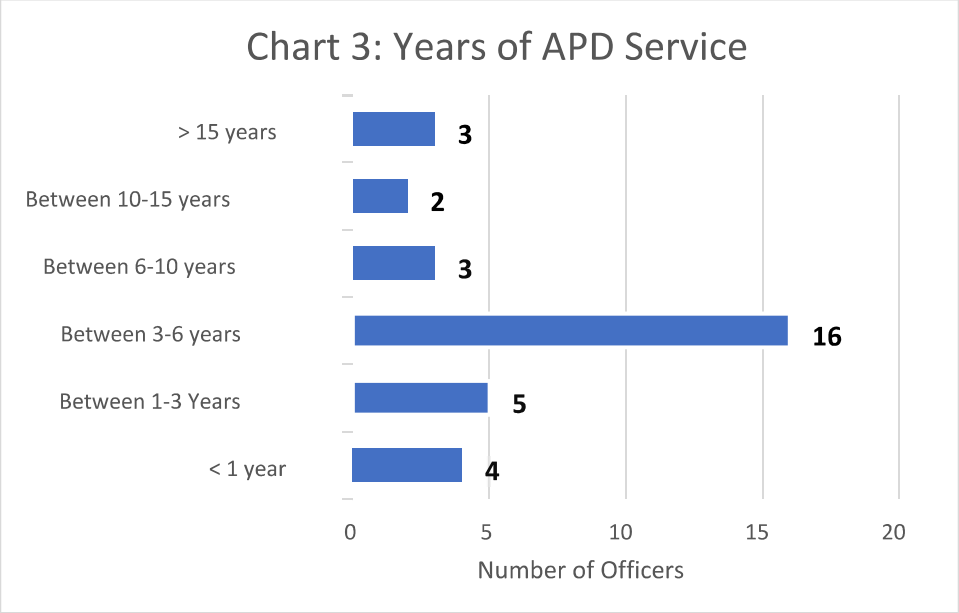
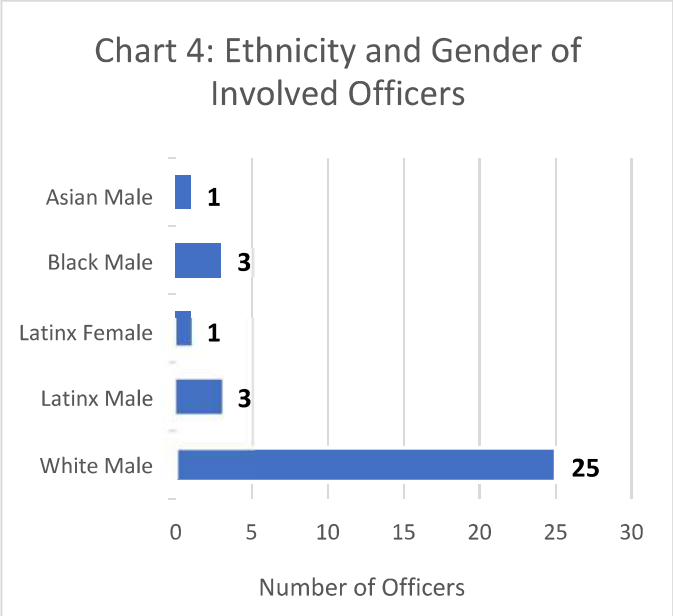


CHART 2: APD SECTORS WHERE INCIDENTS OCCURRED




Chart 3: Years of APD Service
> 15 years
3
Between 10-15 years
2
Between 6-10 years
3
Between 3-6 years
16
Between 1-3 Years
5
< 1 year
4
0
5
10
15
20
Number of Officers


Chart 4: Ethnicity and Gender of Involved Officers
Asian Male
1
Black Male
3
Latinx Female
1
Latinx Male
3
White Male
25
0
5
10
15
20
25
30
Number of Officers

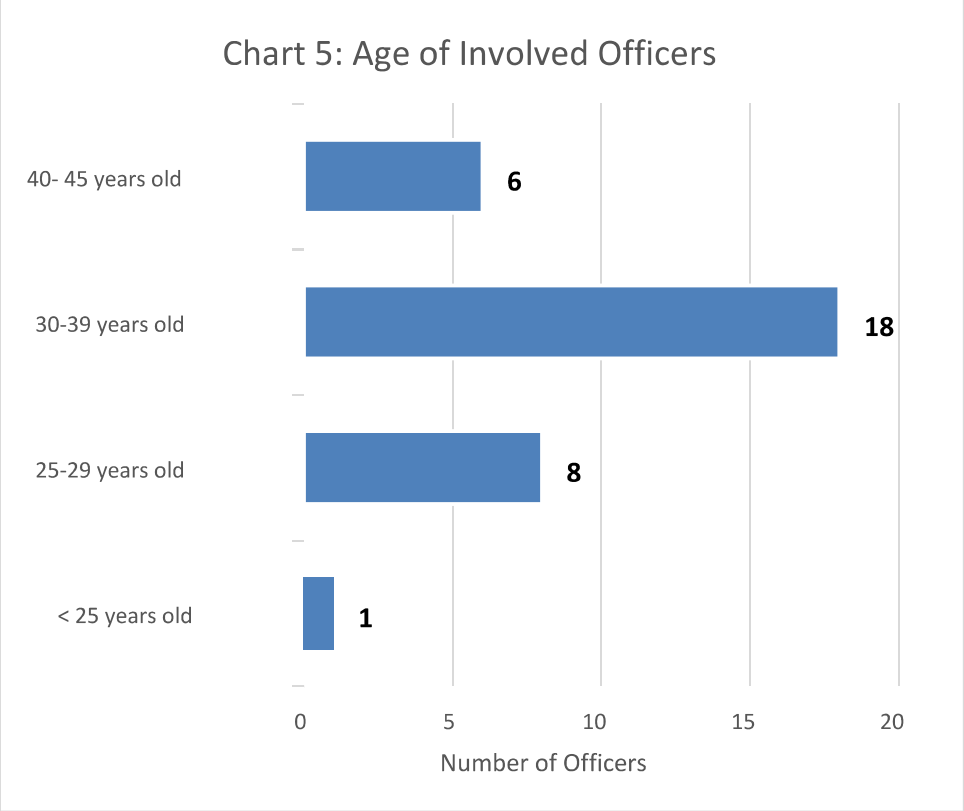

Chart 5: Age of Involved Officers
40- 45 years old
6
30-39 years old
18
25-29 years old
8
< 25 years old
1
0
5
10
15
20
Number of Officers

EXHIBIT F



Exhibit F

CITY OF AUSTIN

FOR IMMEDIATE RELEASE
Release Date: Sep. 23, 2022
Contact: Public Information 512-974-5017 (tel:512-974-5017) Email (/email/Police3)

Case: 22-2660503
Date: September 23, 2022
Time: Approximately 9:19 a.m.
Location: 1800 block of Brassie St. (Original call was at 6118 block of Fairway St.)
Suspect: Antonio Gonzales, Hispanic Male, 07/07/1993

The Austin Police Department (APD) continues to investigate the officer-involved shooting that occurred Friday, September 23, 2022.

On Friday, September 23, 2022, at approximately 9:19 a.m., APD received a 9-1-1 call of a disturbance between a man and a woman regarding child custody in the 6100 block Fairway St.

Patrol officers were dispatched to the location of the call. The woman caller provided information that a man had a gun in his pocket and displayed it. It was initially indicated that children involved were being held hostage by the man and a potential hostage situation was occurring. The man was later identified as Mr. Antonio Gonzales.

Patrol officers arrived on scene in marked APD vehicles at 9:35 a.m. Upon the officer's arrival, Mr. Gonzales did not have the children in his custody. Mr. Gonzales exited a vehicle and began walking around in the middle of the 1700 block of Brassie St., near the previous call location. He was armed with a handgun. He placed the gun against his head and then placed it in his waistband. Officers made verbal contact with Mr. Gonzales and attempted to de-escalate the situation by engaging with him and providing him with commands to lay on the ground. Officers on scene repeatedly told Mr. Gonzales they did not want him to get hurt and wanted to help. Mr. Gonzales did not comply with any of the several commands. During verbal contact with officers, Mr. Gonzales said he was going to kill himself several times. A crisis intervention officer arrived on scene at 9:43 am.

At 9:47 a.m., SWAT was called to the scene. While waiting for SWAT's arrival, officers on scene continued to ask Mr. Gonzales to drop the gun. At 9:51 a.m., Mr. Gonzales said he would shoot himself if officers refused to shoot him. At 9:53 a.m., the first officer trained as a hostage negotiator arrived on scene and began communicating with Mr. Gonzales.

At 9:59 a.m., the first SWAT officer arrived on scene. This became an "open-air SWAT call," which describes a situation where a subject is not inside a vehicle or a structure, and they are in an open-air environment threatening themselves and or others. Officers were concerned for the safety of Mr. Gonzales and the other people in the neighborhood, so they attempted to evacuate all of the homes in the immediate area. There were some residents inside the homes who decided not to evacuate, and instead chose to shelter in place.

For approximately two hours, APD crisis intervention officers and hostage negotiators attempted to de-escalate the situation by speaking to Mr. Gonzales through both a loudspeaker and a cell phone. The gun Mr. Gonzales placed in his waistband remained visible to the officers, and was easily accessible to Mr. Gonzales.

At 11:51 a.m., SWAT officers approached Mr. Gonzales with less-lethal means to attempt to take him into custody. SWAT Officers deployed two Department issued Tasers, and Department issued less-lethal munitions at Mr. Gonzales, but all means were ineffective. Mr. Gonzales then reached for his gun and attempted to pull it from his waistband. A SWAT officer fired his Department issued firearm towards Mr. Gonzales striking him. Mr. Gonzales then fell to the ground.

After officers confirmed that Mr. Gonzales was no longer a threat, they approached him to provide life-saving measures. At 11:59 a.m., Mr. Gonzales succumbed to his injuries and was pronounced deceased on scene.

The woman who originally called 9-1-1 and the children were unharmed. Civilians and the officers on scene did not sustain physical injuries.

This incident was captured on body-worn camera and other video sources. The SWAT officer that discharged his duty firearm has six years of service; the officer that deployed the less-lethal munition has 7 years of service, and the two officers who deployed the Tasers have 20 and 15 years of service with the Austin Police Department, respectively.

Per APD protocol, the four officers have been placed on administrative leave. APD will conduct two concurrent investigations into this incident: a criminal investigation by the APD Special Investigations Unit in conjunction with the Travis County District Attorney's Office, and an administrative investigation conducted by the APD Internal Affairs Unit, with oversight from the Office of Police Oversight.

Anyone with information about this incident is asked to call Crime Stoppers at 512-472-TIPS, or use the new Crime Stoppers App.

Share

(https://www.addtoany.com/share#url=https%3A%2F%2Fwww.austin investigating-officer-involved-shooting-september-23-2022&title=APD%20investigating%20Officer-Involved%20Shooting%20on%20September%2023%2C%202022)

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EXHIBIT G

Exhibit G



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CITY OF AUSTIN

FOR IMMEDIATE RELEASE
Release Date: Oct. 29, 2022
Contact: Public Information Office 512-974-5017 (tel:512-974-5017) Email (/email/Police3@austintexas.gov)

Case: 22-2961386

Date: October 23, 2022

Time: 9:26 p.m.

Location: 9200 block North Lamar Boulevard

Suspect: Emeka Onyeabo Williams, Black Male, 42 years old

The Austin Police Department (APD) continues to investigate the officer-involved shooting that occurred on Sunday, October 23, 2022.

At approximately 9:26 p.m., Austin 9-1-1 Communications received a call regarding a man with a gun at the apartment complex located at 8926 North Lamar Boulevard. The caller reported the man walked towards him with a gun and displayed the gun in a "threatening manner." The caller described the man as a black male wearing a white t-shirt, black shorts with half of his face covered. The caller remained on the phone line with Austin 9-1-1 Communications while officers responded to the scene. This man was later identified as Emeka Onyeabo Williams.

At 9:34 p.m., the first officers began arriving on scene, with the information provided by the caller; they began to look for Mr. Williams. Officers were unable to locate him in the apartment complex. The caller told Austin 9-1-1 Communications Mr. Williams was last observed

traveling northbound in the direction of a Cricket store. Officers began to search the immediate area of the 9200 and 9300 blocks of North Lamar Boulevard for Mr. Williams.

At approximately 9:40 p.m., officers located Mr. Williams who matched the description provided by the 9-1-1 caller, inside a restaurant located at 9200 North Lamar Boulevard. Mr. Williams was located in the enclosed patio area. The restaurant has a covered patio front entryway encased in plexiglass. The area near the front entryway also has seating for overflow from the main restaurant.

One officer began giving commands to Mr. Williams over the public address (PA) system in their police vehicle. The officer, while giving commands, described the white shirt Mr. Williams was wearing to indicate exactly who he (the officer) was speaking to. Repeated announcements and commands were made by the officer on the PA system to Mr. Williams. These announcements included identifying the presence of the Austin Police Department, that officers knew Mr. Williams was armed, and instructions to come out with his hands up. There were several fully marked police vehicles in the parking lot with red and blue lights activated. There was a heavy police presence at the front and side of the restaurant. Attempts to call and evacuate the restaurant were made as several civilians were inside the restaurant.

For several minutes officers gave verbal commands to Mr. Williams however, Mr. Williams did not comply with the commands. Officers alerted employees and customers inside the restaurant and were able to move some to safety. APD officers positioned themselves in an area close enough to see that Mr. Williams was armed with a handgun and could see his movements. Mr. Williams crouched down in between two rock pillars in the covered patio of the restaurant, approximately 8-10 feet from the front entryway. At the time Mr. Williams was concealed in the patio area, another man not related to the 9-1-1 call, was also in the front enclosed patio area of the restaurant near Mr. Williams.

The staff at the restaurant locked the second set of doors from the patio to the main building. The man who was in close proximity to Mr. Williams was instructed by officers to walk towards them, but he instead went to the front door and realized it was locked.

At 10:19 p.m., Mr. Williams began to fire shots from inside the restaurant patio. Officers ran towards the gunfire to the patio entryway. After the initial shots were fired by Mr. Williams from inside the restaurant patio, he remained in his position between the two stone pillars. The man, who was still on the patio and in close proximity to Williams firing the handgun, visibly reacted by squatting down to the ground as if to try to avoid gunfire.

In an attempt to rescue potentially injured patrons and to prevent serious injury or death to citizens in the restaurant, officers entered the plexiglass patio area. Several fully uniformed officers encountered Mr. Williams on the patio. Mr. Williams fired at the officers and five officers discharged their Department approved weapons towards him, striking him several times. He was struck and went to the ground.

Upon reviewing the video sources associated with this incident, it was observed that Mr. Williams discharged the handgun in the direction of an officer when he (the officer) entered the patio.

After the officers discharged their weapons towards Mr. Williams, a handgun was observed in front of Mr. Williams within arm's reach while he was on the ground. The officers gave verbal commands to Mr. Williams to not reach for the handgun in front of him. The officers were able to safely secure the handgun, and immediately began life-saving measures.

Austin-Travis County EMS (ATCEMS) arrived on scene and continued life-saving measures. ATCEMS transported Mr. Williams to a local hospital where he remains in critical condition. Civilians and officers on scene did not sustain physical injuries.

Mr. Williams has been charged with the offense of Attempted Capital Murder - 1st Degree Felony. Mr. Williams has also been charged with the offense of Deadly Conduct, 3rd Degree Felony, for recklessly discharging a firearm, placing a man who was approximately 10-12 feet away, in imminent danger of serious bodily injury.

This incident was captured on body-worn camera. Five APD officers discharged their Department approved duty weapons. Per APD protocol, the five officers have been placed on administrative leave. One Officer has eleven years and eleven months of service, and another officer has ten years and ten months of service with the Department. The third and fourth officers involved have four years of service with the department. The fifth officer involved has two years and eight months of service with the department.

APD will conduct two concurrent investigations into this incident: a criminal investigation by the APD Special Investigations Unit in conjunction with the Travis County District Attorney's Office, and an administrative investigation conducted by the APD Internal Affairs Unit, with oversight from the Office of Police Oversight.

Anyone with information about this incident is asked to call Crime Stoppers at 512-472-TIPS, or use the new Crime Stoppers App.

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involved-shooting-october-23-2022&title=Officer-
Involved%20Shooting%20on%20October%2023%2C%202022)**
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON AND BENNY HUTCHINSON, ON BEHALF OF THEMSELVES AND THE ESTATE OF ISAIAH HUTCHINSON *Plaintiffs* v. **THE CITY OF AUSTIN AND DEANDRE WRIGHT AND DANE O'NEILL AND ZACHARY WOODS AND THOMAS BERNARD NELSON, III,** *Defendants*	§ § § § § § § § § § § § §	**CIVIL ACTION NO. 1:21-CV-00221-DAE**

DEFENDANTS' REPLY
IN SUPPORT OF MOTIONS FOR SUMMARY JUDGMENT

TO THE HONORABLE DAVID A. EZRA, UNITED STATES DISTRICT JUDGE:

Defendant, City of Austin, and Defendant Officers, Deandre Wright, Dane O'Neill, Zachary Woods and Thomas Bernard Nelson, III, file this Reply to Plaintiffs' Response to Motion for Summary Judgment [Doc #27] as follows:

Plaintiffs Fail to Raise a Fact Issue Under the Standard Mandated by the Supreme Court

In *Kisela v. Hughes*, 138 S. Ct. 1148, 200 L. Ed. 2d 449 (2018) the Supreme Court held that "police officers are entitled to qualified immunity unless existing precedent 'squarely governs' the specific facts at issue." *Id*. at 1153. Here, Plaintiffs fail to cite a single precedent squarely governing the specific facts at issue. As set forth below, Plaintiffs cannot create a material issue of fact because Plaintiffs' proffered disputed facts are not relevant to the perception of the Defendant Police Officers at the time and do not create a material issue of fact.

The Facts Argued by Plaintiffs are not Relevant.

Plaintiffs seem to allege that summary judgment is not proper as to the Defendant Officers because the police did not conclusively know the identity of the suspect who was shooting at them before they returned fire. But what is clear from the video evidence (please note that Defendants adopt and fully incorporate their original Motions for Summary Judgment [Doc #22] and [Doc #23]) is that the suspect shooter went around the front of the black Maserati SUV and shot at the police and general public. The police returned fire, striking the suspect shooter while he was getting into the back passenger door of the SUV as it drove away. Isaiah Hutchinson's body was found the next day in the abandoned SUV.

In particular, Plaintiffs assert: "While Defendants claim that video evidence conclusively shows all relevant events; there exists a genuine dispute as to material facts–whether Isaiah possessed a firearm at all, and if he did, whether he fired that firearm at the Defendant Officers. Since there exists a genuine issue of material fact regarding both of these issues, this Court is respectfully requested to deny Defendants' motions for summary judgment in all respects."

In support of this argument the Plaintiffs refer to Exhibit B – Affidavit of Amanda Estrada [Doc #27-2] and Exhibit D – Excerpt from Interview of Deandre Wright [Doc 27-3]. Plaintiffs seem to be arguing that it was not Isaiah Hutchinson who came around the front end of the Maserati SUV and shot at the Police officers -- but that instead it was another person, the front seat passenger, perhaps. Plaintiffs also assert that: "it is manifestly not clear that Isaiah ever pointed a firearm at any of the defendant officers, or that he ever discharged a firearm at the defendant officers." Plaintiff also argues: "even assuming contrary to the evidence that the person shown on the HALO footage running around the front of the black SUV is Isaiah, the footage doesn't definitively show that person to be in possession of a handgun, a fact which is supported

by Officer Wright's testimony..." Plaintiffs argue that Officer Wright only saw a "muzzle flash" and that was insufficient under the circumstances to justify returning fire at the person who was pointing a muzzle flashing device at him. Plaintiffs go on to argue "if Isaiah did not possess a firearm during the relevant time period, then he could not have posed a threat of serious physical harm to the police officers or others."

Plaintiffs argument is nothing more than speculation and conjecture and does nothing to create a material issue of fact in light of the clear and unequivocal evidence presented by Defendants in their motions [Doc #22] and [Doc #23]. Further, the two documents relied upon by Plaintiffs actually support Defendants' Motions for Summary Judgment as further undisputed evidence that the muzzle-flashing suspect who ran around the front of the Maserati SUV fired gunshots at the police and general public. Whoever the shooter was -- the muzzle flashes seen by Officer Wright correspond with the gunshots seen and heard by Amanda Estrada. Ms. Estrada explained in her sworn statement:

> "By now Ashley and I were trying to duck so we wouldn't get hit. I then heard the police yelling and they were coming from the direction of the Gulf Gas Station. I am not sure what they were yelling but I knew they were the police. Then a lot of gunfire happened. I did see one of the SUV people (not sure which one since I was ducking) shot in the direction of the police. I did see that that person had his arm extended and a gun in his hand. The gun looked to be black since I did not see anything shiny on it."

([DOC 27-2] Estrada, Page 3, COA 002159)

Officer Wright, in his sworn affidavit [Doc #27-3], explained that he returned fire against the suspect who ran around the front of the Maserati SUV and shot at the police and general public, and then got into the backseat. Officer Wright clearly saw that suspect slump down into the backseat after Officer Wright's shot. (see [Doc #27-3], Affidavit of Deandre Wright at lines: 218-220, 236-244, 291-312, 397-431, 468-485, 568-588). The legal issue is whether that suspect

shooter posed an immediate threat of serious injury or death to the officer or others and whether the officers perceived it. The testimony and videotaped evidence gives an emphatic answer - "yes."

If, as Plaintiffs perhaps contend, the suspect shot by the officers who first shot at them was not Isaiah Hutchinson, then that is an additional reason why this lawsuit should be dismissed, in addition to the reasons already asserted by the Defendants their motions [Doc #22] and [Doc #23].

There is no genuine issue as to the material facts in this case. The Defendant Officers, Wright, O'Neill, Woods, and Nelson, had probable cause to believe that the suspect shooter posed a serious risk of physical harm or death to the general public and to the officers themselves. The use of deadly force in this case was objectively reasonable. Plaintiffs cannot overcome qualified immunity and the Defendant Officers are entitled to summary judgment as a matter of law.

The City of Austin is not liable to the Plaintiffs because the Officers inflicted no constitutional harm.

Although Plaintiffs include many pages and exhibits in their response to the City's motion, Plaintiffs ignore the most obvious and most important fact regarding this incident: **The suspect shooter, Isaiah Hutchinson, had already shot and was pointing his gun in the direction of the officers when the officers returned fire.** Thus, it was reasonable for the Defendant Officers to perceive that the muzzle-flashing suspect shooter still posed an imminent threat of serious bodily injury or death to individuals at the scene. As a result, the officers' actions were objectively reasonable. Since the officers did not inflict constitutional harm on Isaiah Hutchinson, Plaintiffs

do not have a viable claim against the City, and summary judgment in favor of the City is proper as a matter of law.

Plaintiffs' Inadequate Training Claim Should be Dismissed.

For their inadequate training claim, Plaintiffs must prove that: (1) the City's training policy or procedures were inadequate, (2) the inadequate training policy was a "moving force" in causing the violation of Plaintiffs' rights, and (3) the City was deliberately indifferent in adopting its training policy. *Sanders-Burns v. City of Plano*, 594 F.3d 366, 381 (5th Cir. 2010). The Plaintiffs must establish a direct causal link between the municipal policy and the constitutional injury. *Valle v. City of Houston*, 613 F.3d 536, 546 (5th Cir. 2010). In other words, the deficiency in training must be the actual cause of the constitutional violation. *Id*. Moreover, deliberate indifference is a stringent standard and is more than negligence or even gross negligence. *Id*. at 547.

Setting Plaintiffs' inflammatory rhetoric aside, the actual facts are that APD provides comprehensive training to its cadets and officers on topics including the use of force and deadly force, far in excess of the minimum training hours required by the State of Texas for law enforcement certification. This training includes training on the quantum of force and the escalation and de-escalation of officer-applied force in response to the actions and resistance posed by the subject. Simply put, Plaintiffs have not met their burden to demonstrate that APD provides inadequate training on the use of force.

Additionally, Plaintiffs have not demonstrated that any alleged deficiency in training on the use of force was the actual cause of the alleged constitutional violation. The defendant officers were aware of the correct constitutional standard for the use of deadly force through their

training and experience. Plaintiffs have failed to present evidence that additional training on the use of force would have prevented Hutchinson's death. Plaintiffs have made no showing of how APD's training on the use of force actually caused this incident.

Furthermore, the Plaintiffs have not produced sufficient evidence that the City's alleged inadequate training on the use of force constituted deliberate indifference. The deliberate indifference standard requires showing that the failure to train reflects a deliberate or conscious choice to endanger constitutional rights. *Estate of Davis v. City of N. Richland Hills,* 406 F.3d 375, 381 (5th Cir. 2005). The City has not made a "deliberate" or "conscious" choice to not train its officers on the use of force sufficient to constitute deliberate indifference.

Plaintiffs make the bare allegation that the City's inadequate use of force training had caused prior constitutional violations, yet they provide no actual link between any use of force training deficiency and a pattern of similar violations. Plaintiffs fail to provide any actual evidence that the level or substance of APD's training on use of force caused prior constitutional violations such that APD consciously chose a training program that would cause violations of constitutional rights. See *Connick v. Thompson,* 563 U.S. 51, 62, 131 S. Ct. 1350, 1360 (2011).

In summary, the undisputed facts and circumstances in the early morning of of March 17, 2019, establish that each of the Defendant Officers, Deandre Wright, Dane O'Neill, Zachary Woods and Thomas Bernard Nelson, III, reasonably believed that Isaiah Hutchinson's actions placed the general public and the Austin Police officers on the scene in imminent danger of serious bodily injury or death. When viewed from the perspective of a reasonable officer on the scene of this rapidly evolving incident, the conduct and actions of Officers Deandre Wright, Dane O'Neill, Zachary Woods and Thomas Bernard Nelson, III, were objectively reasonable under the circumstances.

Further, Plaintiffs have produced no evidence that the officers' use of force was based on an improper policy or practice of APD. Instead, the evidence reveals that the officers made the decision to use force on Plaintiffs' decedent based only on the imminent threat of serious bodily injury or death presented by the decedent's actions. Accordingly, Plaintiffs' §1983 claim against the City should also be dismissed.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the City of Austin and the Defendant Officers respectfully request that the Court grant their respective Motions for Summary Judgment and dismiss the Plaintiffs' claims against each of them with prejudice with all costs assessed to the Plaintiffs. Defendants further request any additional relief to which they, individually, may be entitled.

RESPECTFULLY SUBMITTED,
ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF, LITIGATION
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ATTORNEYS FOR DEFENDANTS CITY OF AUSTIN, DEANDRE WRIGHT, DANE O'NEILL, ZACHARY WOODS AND THOMAS BERNARD NELSON III

CERTIFICATE OF SERVICE

I certify that on the 27th day of November, 2022, I served a copy of *DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT* on all parties, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

Scott Ogle
TBN: 00797170
2028 Ben White Blvd.
Austin, Texas 78704
Phone: 512-442-8833
Fax: 512-442-3256
soglelaw@peoplepc.com

ATTORNEY FOR PLAINTIFFS

/s/ Monte L. Barton Jr.
MONTE L. BARTON JR.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON and BENNY HUTCHINSON, on behalf of themselves and the Estate of ISAIAH HUTCHINSON,	§	
Plaintiffs,	§	
v.	§	**Cause No. 1:21-CV-00221-LY**
THE CITY OF AUSTIN, and DEANDRE WRIGHT and DANE O'NEILL and ZACHARY WOODS and THOMAS BERNARD NELSON, III,	§	
Defendants.	§	

PLAINTIFFS' OPPOSED MOTION FOR LEAVE TO FILE SURREPLY TO DEFENDANTS' REPLY IN SUPPORT OF OFFICERS' AND CITY OF AUSTIN'S MOTIONS FOR SUMMARY JUDGMENT

Pursuant to Local Rule CV-7(b) and 7(f)(1) and Rule 7(b), Federal Rules of Civil Procedure, Plaintiffs' respectfully move for leave to file a 6-page Surreply to respond to Defendants' Reply in Support of Defendants' Motions for Summary Judgment.

As grounds for this motion the Moving Parties state:

1. Pursuant to Local Rule 7(i), undersigned conferred with counsel for Defendants' , Gray Laird, on the relief sought by this motion and he indicated that Defendants do not consent to this motion.

2. Although sur-replies "are heavily disfavored," it is within the sound

discretion of the courts to grant or deny leave to file such additional briefing. *Warrior Energy Servs. Corp. v. ATP Titan M/V*, 551 F. App'x 749, 751 n.2 (5th Cir. 2014) (per curiam). In seeking leave to file a surreply brief, a party must identify the new issues, theories, or arguments which the movant raised for the first time in its reply brief. *Donnelly v. Nissan Motor Co., Ltd.*, 5:19-CV-0882-JKP, 2019 WL 6340153, at *1–2 (W.D. Tex. Nov. 26, 2019)(Pulliam, J)(citations and quotations omitted). Leave is justified and should be granted where a party seeks to respond to newly contested matters raised for the first time in a reply. *See, e.g., Duarte v. St. Paul Fire and Marine Ins. Co.*, EP-L4-CV-305-KC, 2015 WL 12910213, at *1 (W.D. Tex. Aug. 28, 2015) (Berton, MJ); *Salomon v. Wells Fargo Bank, N.A.*, No. EP-10-CV-106-KC, 2010 WL 2545593, at *2 (W.D. Tex. June 21, 2010) (Cardone, J) (granting Motion for Leave to File a Sur-Reply based on one case cited for the first time in Reply); *see also Donnelly*, 2019 WL 6340153, at *1–2 (Leave granted to file surreply where movant clearly identified the new arguments addressed by the surreply had directly and briefly addressed them in the proposed brief and "it does not appear that party is merely wanting to have the last word."); *Mzyk v. N. E. Indep. Sch. Dist.*, SA-08-CA-344-FB, 2009 WL 10669308, at *7–8 (W.D. Tex. Oct. 27, 2009)(Mathy, MJ), report and recommendation adopted, SA-08-CA-344-FB, 2009 WL 10669153 (W.D. Tex. Dec. 10, 2009), aff'd, 397 Fed. Appx. 13 (5th Cir. 2010) (unpublished) (leave to file surreply

granted in a complicated case where surreply includes additional arguments addressing the reply); *Racetrac Petroleum, Inc. v. J.J.'s Fast Stop, Inc.*, No. CIV.A. 3:01-CV-1397, 2003 WL 251318, at *18 (N.D. Tex. Feb. 3, 2003)(sur-reply appropriate when movant raises new legal theories or attempts to present to new evidence at the reply stage).

3. On Tuesday, November 27, 2022, Defendants filed their reply brief supporting their two motions for summary judgment.

4. In reviewing the Defendants' Reply Brief, undersigned counsel determined that a surreply was necessary to respond to a new argument raised by Defendants in their reply.

5. Plaintiffs now seek to leave to file a 6-page surreply to briefly address Defendants' argument that Defendant City of Austin is not liable to the Plaintiffs because the officers inflicted no constitutional harm, and that Plaintiff has failed to connect a failure to train to the incident made the subject of this suit.

6. The above includes arguments, case law, and evidence raised for the first time in Defendants' reply to which Plaintiffs seeks to respond. This is not a case of Plaintiffs seeking to repeat their arguments already made in their opposition brief nor an attempt to get the last word; undersigned counsel would not oppose

Defendants seeking leave to respond to Plaintiffs' surreply (if permitted by the Court). For the forgoing reasons, Lab Defendants seek leave to file its 6-page Sur-Reply, an executed copy of which is attached as an exhibit to this motion pursuant to Local Rule CV-7(b).

F. Prayer

PREMISES CONSIDERED, Plaintiffs respectfully request that this Court GRANT this motion for leave to file surreply in all respects. Plaintiffs further prays for any other relief to which they may show themselves justly entitled.

Respectfully submitted,

/s/ Scott Ogle
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Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2022, I filed the foregoing pleading with the U.S. District Clerk for the Western District of Texas, San Antonio Division, by means of electronic filing ECF. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of the document by electronic means.

/s/ Scott Ogle
Scott Ogle

H. Gray Laird, III
City of Austin
P.O. Box 1546
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Counsel for Defendants
via efiling

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON and BENNY HUTCHINSON, on behalf of themselves and the Estate of ISAIAH HUTCHINSON,	§	
Plaintiffs,	§	
v.	§	**Cause No. 1:21-CV-00221-LY**
THE CITY OF AUSTIN, and DEANDRE WRIGHT and DANE O'NEILL and ZACHARY WOODS and THOMAS BERNARD NELSON, III,	§	
Defendants.	§	

PLAINTIFFS' SURREPLY TO DEFENDANTS' REPLY IN SUPPORT OF DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

I. **Defendants' claim that Defendant City of Austin is not liable to the Plaintiffs because the officers inflicted no constitutional harm is refuted by the facts and the law.[1] (Reply pp. 4-7).**

To prevail on a § 1983 excessive force claim in violation of the Fourth Amendment, a plaintiff must show (1) that he was seized, (2) that he suffered an injury, (3) which "resulted directly and only from the use of force that was excessive to the need, and that (4) the force used was objectively unreasonable." *Flores v.*

[1]Plaintiffs adopt and incorporate by reference their Response to Defendant Officers and City of Austin's Motions for Summary Judgment.

Palacios, 381 F.3d 391, 396 (5th Cir.2004). "To determine whether a seizure was objectively reasonable, and thus whether an injury is cognizable, courts ask whether the totality of the circumstances justified [that] particular sort of search or seizure," balancing the "amount of force used against the need for force." *Id.* at 398–99. *See also Carnaby v. City of Houston*, 636 F.3d 183, 187 (5th Cir.2011)("To prevail on a Fourth Amendment excessive force claim, a plaintiff must establish: (1) an injury; (2) that the injury resulted directly from the use of excessive force; and (3) the excessiveness of the force was unreasonable.") To decide whether the seizure was objectively reasonable, generally the court must ask if the totality of the circumstances justified that kind of search or seizure. *Id., citing Tennessee v. Garner*, 471 U.S. 1, 8–9 (1985).

Although the reasonableness of the force must be judged from the view of a reasonable officer on the scene, *see Graham v. Connor*, 490 U.S. 386, 396 (1989), the Supreme Court held that deadly force is not justified in circumstances where a fleeing suspect "poses no immediate threat to the officer and no threat to others." *Garner*, 471 U.S. at 11.

II. Defendant's MSJ Exhibits 7 & 8 depicts Defendant Officers discharging firearms in Hutchinson's direction after any purported immediate threat had ceased.

The HALO video attached to Defendant City of Austin's Motion for Summary

Judgment reveals that Hutchinson re-entered the Maserati in which he had been riding after being fired upon by the officers. [Def. COA MSJ Exs. 7, 8]. That same exhibit shows that the driver of the Maserati immediately accelerated down 7th Street toward the freeway entrance ramp. [Def. COA MSJ Exs. 7, 8]. There can be no rational argument that Hutchinson poses an imminent threat to the officers or a threat to others as his vehicle flees the scene in the mind of a reasonable officer on the scene. *See Graham*, 490 U.S. at 396. The evidence shows that the officers continued firing at the receding Maserati as it sped away, notwithstanding the fact that once the doors were closed on the Maserati, no more shots were fired from it according to Officer Nelson.[2] [Surreply Ex. 1].

Because continuing to use deadly force after the threat to the officers and public had ended, that deadly force was not justified. *See Garner*, 471 U.S. 11. Under the circumstances, there is at the least a genuine issue of material fact that Plaintiffs have suffered an injury which "resulted directly and only from the use of force that was excessive to the need, and that the force used was objectively unreasonable." *Flores*, 381 F.3d at 396.

---

[2] An excerpt from the deposition of Officer Nelson is attached hereto as "Surreply Exhibit 1."

III. Because there is at least a genuine issue of material fact whether the officers inflicted constitutional harm, Defendant City of Austin liable to Plaintiffs.

The facts shown here reveal that there exists a genuine issue of material fact that the Defendant officers continued to use deadly force by firing repeated shots at the fleeing Maserati in which Hutchinson was a passenger. [Def. COA MSJ Exs. 7, 8]. Because continuing to use deadly force after the threat to the officers and public had ended, that deadly force was not justified. *See Garner*, 471 U.S. 11. Under the circumstances, there is at the least a genuine issue of material fact that Plaintiffs have suffered an injury which "resulted directly and only from the use of force that was excessive to the need, and that the force used was objectively unreasonable." *Flores*, 381 F.3d at 396.

IV. A sufficient connection exists between the Defendant officers' improper use of deadly force and the City of Austin's failure to train or supervise regarding the proper use of deadly force constitutes deliberate indifference to the plaintiffs' constitutional rights.

Plaintiffs attached as exhibits to its response sufficient evidence to raise a genuine issue of material fact that City of Austin had "[n]otice of a pattern of similar violations," which were "fairly similar to what ultimately transpired" when the plaintiffs own constitutional rights were violated. *See Sanders-Burns v. City of Plano*, 594 F.3d 366, 381 (5th Cir. 2010). Plaintiff's summary judgment response included

exhibits D, E, F & G, each of which detail improper uses of force by Austin police officers. The competent summary judgment evidence admitted here raises a genuine issue of material fact as to whether the Defendant officers here engaged in the improper use of excessive force.

PREMISES CONSIDERED, Plaintiffs respectfully request that this Court DENY Defendants' motions for summary judgment in all respects. Plaintiffs further prays for any other relief to which they may show themselves justly entitled.

Respectfully submitted,

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Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2022, I filed the foregoing pleading with the U.S. District Clerk for the Western District of Texas, San Antonio Division, by means of electronic filing ECF. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of the document by electronic means.

/s/ Scott Ogle
Scott Ogle

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Counsel for Defendants
via efiling

Transcript of the Testimony of
Thomas Bernard Nelson

July 18, 2022

Christine Springs-Hutchinson, et al. v. The City of Austin, et al.

Givens Court Reporting
sgivens@austin.rr.com
(512) 301-7088

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON AND BENNY HUTCHINSON, ON BEHALF OF THEMSELVES AND THE ESTATE OF ISAIAH HUTCHINSON,	$	
Plaintiffs,	$	CIVIL ACTION NO.
v.	$	1:21-CV-00221-LY
THE CITY OF AUSTIN AND DEANDRE WRIGHT AND DANE O'NEILL AND ZACHARY WOODS AND THOMAS BERNARD NELSON III,	$	
Defendants.	$	

THE VIDEOTAPED ORAL DEPOSITION OF
SERGEANT THOMAS BERNARD NELSON, III,
July 18, 2022

ORAL DEPOSITION OF SERGEANT THOMAS BERNARD NELSON, III, produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above styled and numbered cause on the 18th day of July 2022, from 1:08 p.m. to 4:26 p.m., before Sandra S. Givens, CSR, in and for the State of Texas, reported by machine shorthand method at Austin City Hall, 301 W. 2nd Street, Austin, Texas 78701, pursuant to the Federal Rules of Civil Procedure.

A P P E A R A N C E S

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FOR THE DEFENDANTS:
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Ms. Ruth Blackwelder
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VIDEOGRAPHER:
Ms. Lauren Morris
Audio Evidence Forensics

I N D E X

Appearances - 2
Exhibits - 3
SERGEANT THOMAS BERNARD NELSON, III
Examination by Mr. Ogle - - - - - - - - - - - - - 4
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Changes and Signature - - - - - - - - - - - - - - 141
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E X H I B I T S

NO.	DESCRIPTION	PAGE
Exhibit 1	7th Street and Neches HALO Video of Shootings, COA 003 "The Halo Incident"	20
Exhibit 2	Amanda Estrada Video of Shootings, COA 1561 "Facebook Video"	101
Exhibit 3	KXAN Article, "Austin officer-involved shooting one of two shootings overnight"	121
Exhibit 4	COA 002 "Video of 7th and Neches Collision"	132

VIDEOGRAPHER: Good afternoon. Today is Monday, July 18th, 2022. The time is 1:08 p.m., and we are on the record for the deposition of Officer Thomas Bernard Nelson, III, in Civil Action 1-21-CV-0021-LY.

SERGEANT THOMAS BERNARD NELSON, III having been first duly sworn, testified as follows:

EXAMINATION

BY MR. OGLE:

Q Could you state your name for the record, please?

A Thomas Nelson.

Q Okay. And Mr. Nelson, I understand that you're here as an officer involved in the incident that occurred on March 18th, 2019 involving Isaiah Hutchinson; is that correct?

A Yes, sir.

Q I'm going to ask that you give full and complete answers, and if I ask you the same question at trial, I would expect you to give us the same answer you give us today. Do you understand that?

A Yes, sir.

Q And if you give us an answer that is different than an answer you give today, then we can point this out to the judge and jury and then we can

Q They.
A -- other occupants --
Q Did anyone --
A -- of the vehicle?
Q -- in the Maserati? Was anyone in the Maserati shooting after Isaiah got into the vehicle?
A Once the door shut and the vehicle began to leave there were no more rounds fired.
Q By you or by the other officers?
A I didn't fire any more rounds, and the occupants of the vehicle, to the best of my knowledge, did not fire any more rounds as they left the scene.
Q Did you see other officers in the video that we've seen a dozen times shooting at the fleeing vehicle?
A I don't believe I did, sir. The video doesn't reflect gunshots. You can't see bullets in the video, sir.
Q You can't --
A You --
Q You can't --
A -- you can see, you can see officers pointing their weapon at the vehicle. I don't believe that any more rounds were fired when that vehicle left the scene, if that's what you're asking, but again, I

didn't conduct this investigation.
Q If there had been shots fired at the fleeing Maserati, would that have been outside of police policy in terms of justifying shooting?
MR. BARTON: Object to the form.
A Again, that's, that's a little vague. If the occupants of the vehicle are posing a threat, a lethal threat, then lethal force would be justified. So no, it would not be outside of policy.
Q (By Mr. Ogle) So the police officers were justified in this situation after Isaiah got into the vehicle and fled the scene?
A The officers were justified employing lethal force against Mr. Hutchinson. Yes.
Q Even after it was fleeing, shooting him in the back.
A As I previously answered, sir, I don't believe rounds continued to be fired as the vehicle fled the scene.
Q Okay. And if you -- if there's evidence that proves you wrong, would that change your position?
MR. BARTON: Object to the form, calls for hypothetical.
A At this time with the facts that I have, sir, and having been on that scene, no. I believe that

lethal force employed against Mr. Hutchinson was both justifiable and legal in order to prevent loss of life or serious bodily injury to, again, myself, the public, and the other officers on scene.
Q (By Mr. Ogle) Have you ever received continuing training after you became an active-duty police officer regarding circumstances where you are authorized to use deadly force?
A Yes, sir.
Q Were there -- was, was -- were there any differences regarding the use of force from the training you received at the police academy?
MR. BARTON: Object to the form.
Q (By Mr. Ogle) Had you been retrained, in other words, in regard to using deadly force?
A I've had continuous training since I went through the police academy. Yes, sir.
Q And there was one incident in which a naked man was shot by police officers here in Austin. Do you remember that, that case?
A No, sir.
Q Have you ever been sued before?
A No, sir.
Q If you had a do-over in this incident which led to the death of Isaiah Hutchinson, would you do

anything differently at this point?
A No, sir.
Q Did you hear any of the officers on the scene instruct Isaiah to drop his, drop his gun?
A I did not hear any commands, sir.
Q Okay. And we've already discussed the fact that none of you announced yourself as police officers, correct?
MR. BARTON: Object to the form.
A I don't know what the other officers did, sir. As you can see from the video, three went to the right and I went to the left.
Q (By Mr. Ogle) Do you remember --
A I didn't give any --
Q -- hearing --
A -- commands and I didn't say anything. It was a chaotic scene, sir. People were yelling, vehicles were driving, there was road noise, and we were being shot at.
Q So you're not certain whether Isaiah was killed initially while the vehicle was parked or as a result of shots fired after he was fleeing the scene. Is that fair?
A I'm, I'm not a doctor, sir. I don't know when, when he became deceased. I've read the report

CHANGES AND INSERTIONS

OFFICER THOMAS BERNARD NELSON, III

July 18, 2022

PAGE	LINE	CHANGE	REASON

ACKNOWLEDGMENT OF DEPONENT

I, THOMAS BERNARD NELSON, III, do hereby certify that I have read the foregoing pages and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Changes and Signature Page (Errata).

THOMAS BERNARD NELSON, III

DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON AND BENNY HUTCHINSON, ON BEHALF OF THEMSELVES AND THE ESTATE OF ISAIAH HUTCHINSON,	§	
Plaintiffs,	§	
	§	CIVIL ACTION NO.
v.	§	
	§	1:21-CV-00221-LY
THE CITY OF AUSTIN AND DEANDRE WRIGHT AND DANE O'NEILL AND ZACHARY WOODS AND THOMAS BERNARD NELSON III,	§	
Defendants.	§	

REPORTER'S CERTIFICATION OF THE
ORAL DEPOSITION OF OFFICER THOMAS BERNARD NELSON, III
July 18, 2022

I, Sandra S. Givens, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, OFFICER THOMAS BERNARD NELSON, III, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the original deposition transcript was submitted to: OFFICER THOMAS BERNARD NELSON, III in care of his attorney, Monte L. Barton, Jr.;

That a copy of this certificate was served on all

parties and/or the witness shown herein on July 27, 2022.

I further certify that pursuant to FRCP Rule 30(f)(1) that the signature of the deponent was requested by the deponent's attorney before the completion of the deposition and that the transcript is to be returned within 30 days from the date of receipt. If returned, the attached Changes and Insertions page contains any changes and the reasons therefor:

That $ is the deposition officer's charges to the Defendants for preparing the original deposition transcript and any copies of exhibits;

That the amount of time used by each party at the deposition is as follows:

Scott Ogle - 2 hours, 46 minutes

Monte L. Barton, Jr. - 13 minutes

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

Scott Ogle - Attorney for Plaintiffs

Monte L. Barton, Jr. - Attorney for Defendants

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was

GIVENS COURT REPORTING
6549 Fair Valley Trail, Austin, Texas 78749 (512) 301-7088 sgivens@austin.rr.com

taken, and further, that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this 27th day of July 2022.

GIVENS COURT REPORTING
6549 Fair Valley Trail
Austin, Texas 78749
(512) 301-7088

SANDRA S. GIVENS, CSR
Certification No. 5000
Certificate Expires 1/31/24

sg-1957

Page 145

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON AND BENNY HUTCHINSON, ON BEHALF OF THEMSELVES AND THE ESTATE OF ISAIAH HUTCHINSON *Plaintiffs,*	§	
v.	§	**CIVIL ACTION NO. 1:21-CV-00221**
THE CITY OF AUSTIN AND DEANDRE WRIGHT AND DANE O'NEILL AND ZACHARY WOODS AND THOMAS BERNARD NELSON, III, *Defendants.*	§	

ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO FILE SURREPLY TO DEFENDANTS' REPLY IN SUPPORT OF OFFICERS' AND CITY OF AUSTIN'S MOTIONS FOR SUMMARY JUDGMENT

After considering the PLAINTIFFS' MOTION FOR LEAVE TO FILE SURREPLY TO DEFENDANTS' REPLY IN SUPPORT OF OFFICERS' AND CITY OF AUSTIN'S MOTIONS FOR SUMMARY JUDGMENT, the Court **FINDS** that there is cause for Plaintiffs to file their surreply and **GRANTS** Plaintiffs' Motion for Leave.

Signed on this 1st day of December 2022.

U.S. DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON and BENNY HUTCHINSON, on behalf of themselves and the Estate of ISAIAH HUTCHINSON,	§	
Plaintiffs,	§	
v.	§	**Cause No. 1:21-CV-00221-LY**
THE CITY OF AUSTIN, and DEANDRE WRIGHT and DANE O'NEILL and ZACHARY WOODS and THOMAS BERNARD NELSON, III,	§	
Defendants.	§	

PLAINTIFFS' SURREPLY TO DEFENDANTS' REPLY IN SUPPORT OF DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

I. **Defendants' claim that Defendant City of Austin is not liable to the Plaintiffs because the officers inflicted no constitutional harm is refuted by the facts and the law.[1] (Reply pp. 4-7).**

To prevail on a § 1983 excessive force claim in violation of the Fourth Amendment, a plaintiff must show (1) that he was seized, (2) that he suffered an injury, (3) which "resulted directly and only from the use of force that was excessive to the need, and that (4) the force used was objectively unreasonable." *Flores v.*

[1]Plaintiffs adopt and incorporate by reference their Response to Defendant Officers and City of Austin's Motions for Summary Judgment.

Palacios, 381 F.3d 391, 396 (5th Cir.2004). "To determine whether a seizure was objectively reasonable, and thus whether an injury is cognizable, courts ask whether the totality of the circumstances justified [that] particular sort of search or seizure," balancing the "amount of force used against the need for force." *Id.* at 398–99. *See also Carnaby v. City of Houston*, 636 F.3d 183, 187 (5th Cir.2011)("To prevail on a Fourth Amendment excessive force claim, a plaintiff must establish: (1) an injury; (2) that the injury resulted directly from the use of excessive force; and (3) the excessiveness of the force was unreasonable.") To decide whether the seizure was objectively reasonable, generally the court must ask if the totality of the circumstances justified that kind of search or seizure. *Id., citing Tennessee v. Garner*, 471 U.S. 1, 8–9 (1985).

Although the reasonableness of the force must be judged from the view of a reasonable officer on the scene, *see Graham v. Connor*, 490 U.S. 386, 396 (1989), the Supreme Court held that deadly force is not justified in circumstances where a fleeing suspect "poses no immediate threat to the officer and no threat to others." *Garner*, 471 U.S. at 11.

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The HALO video attached to Defendant City of Austin's Motion for Summary

Judgment reveals that Hutchinson re-entered the Maserati in which he had been riding after being fired upon by the officers. [Def. COA MSJ Exs. 7, 8]. That same exhibit shows that the driver of the Maserati immediately accelerated down 7th Street toward the freeway entrance ramp. [Def. COA MSJ Exs. 7, 8]. There can be no rational argument that Hutchinson poses an imminent threat to the officers or a threat to others as his vehicle flees the scene in the mind of a reasonable officer on the scene. *See Graham*, 490 U.S. at 396. The evidence shows that the officers continued firing at the receding Maserati as it sped away, notwithstanding the fact that once the doors were closed on the Maserati, no more shots were fired from it according to Officer Nelson.[2] [Surreply Ex. 1].

Because continuing to use deadly force after the threat to the officers and public had ended, that deadly force was not justified. *See Garner*, 471 U.S. 11. Under the circumstances, there is at the least a genuine issue of material fact that Plaintiffs have suffered an injury which "resulted directly and only from the use of force that was excessive to the need, and that the force used was objectively unreasonable." *Flores*, 381 F.3d at 396.

---

[2] An excerpt from the deposition of Officer Nelson is attached hereto as "Surreply Exhibit 1."

III. Because there is at least a genuine issue of material fact whether the officers inflicted constitutional harm, Defendant City of Austin liable to Plaintiffs.

The facts shown here reveal that there exists a genuine issue of material fact that the Defendant officers continued to use deadly force by firing repeated shots at the fleeing Maserati in which Hutchinson was a passenger. [Def. COA MSJ Exs. 7, 8]. Because continuing to use deadly force after the threat to the officers and public had ended, that deadly force was not justified. *See Garner*, 471 U.S. 11. Under the circumstances, there is at the least a genuine issue of material fact that Plaintiffs have suffered an injury which "resulted directly and only from the use of force that was excessive to the need, and that the force used was objectively unreasonable." *Flores*, 381 F.3d at 396.

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PREMISES CONSIDERED, Plaintiffs respectfully request that this Court DENY Defendants' motions for summary judgment in all respects. Plaintiffs further prays for any other relief to which they may show themselves justly entitled.

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Transcript of the Testimony of
Thomas Bernard Nelson

July 18, 2022

Christine Springs-Hutchinson, et al. v. The City of Austin, et al.

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FOR THE WESTERN DISTRICT OF TEXAS
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CHRISTINE SPRINGS-HUTCHINSON AND BENNY HUTCHINSON, ON BEHALF OF THEMSELVES AND THE ESTATE OF ISAIAH HUTCHINSON,	$	
Plaintiffs,	$	CIVIL ACTION NO.
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THE CITY OF AUSTIN AND DEANDRE WRIGHT AND DANE O'NEILL AND ZACHARY WOODS AND THOMAS BERNARD NELSON III,	$	
Defendants.	$	

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SERGEANT THOMAS BERNARD NELSON, III,
July 18, 2022

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A P P E A R A N C E S

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FOR THE DEFENDANTS:
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Attorney
Ms. Ruth Blackwelder
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VIDEOGRAPHER:
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I N D E X

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EXAMINATION

BY MR. OGLE:

Q Could you state your name for the record, please?

A Thomas Nelson.

Q Okay. And Mr. Nelson, I understand that you're here as an officer involved in the incident that occurred on March 18th, 2019 involving Isaiah Hutchinson; is that correct?

A Yes, sir.

Q I'm going to ask that you give full and complete answers, and if I ask you the same question at trial, I would expect you to give us the same answer you give us today. Do you understand that?

A Yes, sir.

Q And if you give us an answer that is different than an answer you give today, then we can point this out to the judge and jury and then we can

Q They.
A -- other occupants --
Q Did anyone --
A -- of the vehicle?
Q -- in the Maserati? Was anyone in the Maserati shooting after Isaiah got into the vehicle?
A Once the door shut and the vehicle began to leave there were no more rounds fired.
Q By you or by the other officers?
A I didn't fire any more rounds, and the occupants of the vehicle, to the best of my knowledge, did not fire any more rounds as they left the scene.
Q Did you see other officers in the video that we've seen a dozen times shooting at the fleeing vehicle?
A I don't believe I did, sir. The video doesn't reflect gunshots. You can't see bullets in the video, sir.
Q You can't --
A You --
Q You can't --
A -- you can see, you can see officers pointing their weapon at the vehicle. I don't believe that any more rounds were fired when that vehicle left the scene, if that's what you're asking, but again, I

didn't conduct this investigation.
Q If there had been shots fired at the fleeing Maserati, would that have been outside of police policy in terms of justifying shooting?
MR. BARTON: Object to the form.
A Again, that's, that's a little vague. If the occupants of the vehicle are posing a threat, a lethal threat, then lethal force would be justified. So no, it would not be outside of policy.
Q (By Mr. Ogle) So the police officers were justified in this situation after Isaiah got into the vehicle and fled the scene?
A The officers were justified employing lethal force against Mr. Hutchinson. Yes.
Q Even after it was fleeing, shooting him in the back.
A As I previously answered, sir, I don't believe rounds continued to be fired as the vehicle fled the scene.
Q Okay. And if you -- if there's evidence that proves you wrong, would that change your position?
MR. BARTON: Object to the form, calls for hypothetical.
A At this time with the facts that I have, sir, and having been on that scene, no. I believe that

lethal force employed against Mr. Hutchinson was both justifiable and legal in order to prevent loss of life or serious bodily injury to, again, myself, the public, and the other officers on scene.
Q (By Mr. Ogle) Have you ever received continuing training after you became an active-duty police officer regarding circumstances where you are authorized to use deadly force?
A Yes, sir.
Q Were there -- was, was -- were there any differences regarding the use of force from the training you received at the police academy?
MR. BARTON: Object to the form.
Q (By Mr. Ogle) Had you been retrained, in other words, in regard to using deadly force?
A I've had continuous training since I went through the police academy. Yes, sir.
Q And there was one incident in which a naked man was shot by police officers here in Austin. Do you remember that, that case?
A No, sir.
Q Have you ever been sued before?
A No, sir.
Q If you had a do-over in this incident which led to the death of Isaiah Hutchinson, would you do

anything differently at this point?
A No, sir.
Q Did you hear any of the officers on the scene instruct Isaiah to drop his, drop his gun?
A I did not hear any commands, sir.
Q Okay. And we've already discussed the fact that none of you announced yourself as police officers, correct?
MR. BARTON: Object to the form.
A I don't know what the other officers did, sir. As you can see from the video, three went to the right and I went to the left.
Q (By Mr. Ogle) Do you remember --
A I didn't give any --
Q -- hearing --
A -- commands and I didn't say anything. It was a chaotic scene, sir. People were yelling, vehicles were driving, there was road noise, and we were being shot at.
Q So you're not certain whether Isaiah was killed initially while the vehicle was parked or as a result of shots fired after he was fleeing the scene. Is that fair?
A I'm, I'm not a doctor, sir. I don't know when, when he became deceased. I've read the report

CHANGES AND INSERTIONS

OFFICER THOMAS BERNARD NELSON, III

July 18, 2022

PAGE	LINE	CHANGE	REASON

ACKNOWLEDGMENT OF DEPONENT

I, THOMAS BERNARD NELSON, III, do hereby certify that I have read the foregoing pages and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Changes and Signature Page (Errata).

THOMAS BERNARD NELSON, III

DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON AND BENNY HUTCHINSON, ON BEHALF OF THEMSELVES AND THE ESTATE OF ISAIAH HUTCHINSON,	§	
Plaintiffs,	§	
	§	CIVIL ACTION NO.
v.	§	
	§	1:21-CV-00221-LY
THE CITY OF AUSTIN AND DEANDRE WRIGHT AND DANE O'NEILL AND ZACHARY WOODS AND THOMAS BERNARD NELSON III,	§	
Defendants.	§	

REPORTER'S CERTIFICATION OF THE
ORAL DEPOSITION OF OFFICER THOMAS BERNARD NELSON, III
July 18, 2022

I, Sandra S. Givens, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, OFFICER THOMAS BERNARD NELSON, III, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the original deposition transcript was submitted to: OFFICER THOMAS BERNARD NELSON, III in care of his attorney, Monte L. Barton, Jr.;

That a copy of this certificate was served on all

parties and/or the witness shown herein on July 27, 2022.

I further certify that pursuant to FRCP Rule 30(f)(1) that the signature of the deponent was requested by the deponent's attorney before the completion of the deposition and that the transcript is to be returned within 30 days from the date of receipt. If returned, the attached Changes and Insertions page contains any changes and the reasons therefor:

That $ is the deposition officer's charges to the Defendants for preparing the original deposition transcript and any copies of exhibits;

That the amount of time used by each party at the deposition is as follows:

Scott Ogle - 2 hours, 46 minutes

Monte L. Barton, Jr. - 13 minutes

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

Scott Ogle - Attorney for Plaintiffs

Monte L. Barton, Jr. - Attorney for Defendants

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was

GIVENS COURT REPORTING
6549 Fair Valley Trail, Austin, Texas 78749 (512) 301-7088 sgivens@austin.rr.com

taken, and further, that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this 27th day of July 2022.

GIVENS COURT REPORTING
6549 Fair Valley Trail
Austin, Texas 78749
(512) 301-7088

SANDRA S. GIVENS, CSR
Certification No. 5000
Certificate Expires 1/31/24

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Christine Springs-Hutchinson and Benny Hutchinson, on behalf of themselves and the Estate of Isaiah Hutchinson,	§	No. 1:21-CV-00221-DAE
Plaintiffs,	§	
vs.	§	
The City of Austin, Deandre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III,	§	
Defendants.	§	

ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

Before the Court are two Motions for Summary Judgment. The first was filed by the City of Austin (Dkt. # 22); the second by Deandre Wright, Dane O'Neill, Zachary Woods, and Thomas Bernard Nelson, III ("Defendant Officers," and together with the City of Austin, "Defendants") (Dkt. # 23).

The Court finds this matter suitable for disposition without a hearing. After careful consideration of memoranda filed in support of and in opposition to these Motions, the Court—for the reasons that follow—**GRANTS** Defendants' Motions for Summary Judgment.

BACKGROUND

Isaiah Hutchinson ("Hutchinson"), the son of Christine Springs-Hutchinson and Benny Hutchinson ("Plaintiffs"), died from the injuries he sustained during an officer-involved shooting on March 17, 2019. (Dkt. # 11 ¶ 6.01.) Plaintiffs brought this lawsuit on March 9, 2021. (Dkt. # 1.)

Plaintiffs assert claims under 42 U.S.C. § 1983 against Defendant Officers for violating Hutchinson's Fourth and Fourteenth Amendment rights. (Dkt. # 11 ¶¶ 6.01–6.03.) Plaintiffs also assert a § 1983 claim against the City of Austin (the "City"), alleging that Hutchinson's rights were violated due to City practices that include discriminatory policing and failing to train and discipline police officers. (Id. ¶¶ 6.07–6.11.)

SUMMARY JUDGMENT EVIDENCE

This shooting took place in the early hours of March 17, 2019, in Austin, Texas. (Dkt. # 27 at 3.) Hutchinson was a passenger in a black Maserati SUV that was rear-ended by a Chevrolet Monte Carlo while both vehicles traveled on East 7th Street. (Dkt. # 11 ¶ 4.02.) Footage from the City of Austin's High Activity Location Observation ("HALO") cameras captured the collision and subsequent events. (Dkt. # 27 at 4.)

Following the collision, the driver of the Maserati SUV, Demarious Davis ("Davis"), stopped at the intersection of East 7th Street and the southbound

service road of Interstate 35. ("HALO video," Dkt. # 22-1, Ex. 7 at 2:49:43.) Davis and Hutchinson[1] both exited the SUV and walked to the driver's side of the Monte Carlo, which had stopped behind and to the left of the SUV. (Id. at 2:50:06.) Davis appears to punch the driver of the Monte Carlo twice through the open car window. (Id. at 2:50:07.) The Monte Carlo driver can be seen opening fire on Davis and Hutchinson from inside the vehicle, firing several gunshots. (Dkt. # 27 at 4; HALO video at 2:50:09.) Davis and Hutchinson ran back toward the SUV. (HALO video at 2:50:10.)

City of Austin Police Department Officers, including Defendant Officers, "were working on foot nearby as crowd control for the South by Southwest music festival." (Dkt. # 11 ¶ 4.04.) Defendant Officers heard the gunfire "and responded rapidly on foot to the scene." (Id.) Hutchinson ran along the driver's side of the SUV and around the front end of the vehicle, making his way to the passenger's side. (HALO video at 2:50:13.) As Hutchinson reached the front right side of the SUV, he pointed a gun in the direction of the approaching

[1] As explained below, the Court does not find that Plaintiffs have raised a genuine issue of material fact as to whether this individual was Hutchinson. It appears that Plaintiffs may also have conceded this point in Plaintiffs' Surreply to Defendants' Reply. (See Dkt. # 35 at 2–3) ("The HALO video . . . reveals that Hutchinson re-entered the Maserati in which he had been riding after being fired upon by the officers.").

officers and fired at least one shot.[2] (Id. at 2:50:15.) Defendant Officers fired multiple shots at Hutchinson as he entered the rear passenger seat of the SUV. (Id. at 2:50:16–2:50:27; Dkt. # 11 ¶ 4.04.) The SUV began to flee the scene, accelerating down 7th Street toward the freeway entrance ramp. (HALO video at 2:50:23.) The SUV was found abandoned later that day. (Dkt. # 11 ¶ 4.06.) Hutchinson, "deceased from apparent gunshot wounds," was in the back seat. (Id.)

LEGAL STANDARD

A movant is entitled to summary judgment upon showing that "there is no genuine dispute as to any material fact." FED. R. CIV. P. 56(a); see also Meadaa v. K.A.P. Enters., L.L.C., 756 F.3d 875, 880 (5th Cir. 2014). A dispute is only genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

The moving party bears the initial burden of showing the absence of any genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the moving party meets this burden, the nonmoving party must come forward with specific facts that establish the existence of a genuine issue for trial.

[2] Based on its review of Defendants' summary judgment evidence—in particular, the video evidence—the Court also does not find that Plaintiffs have raised a genuine issue of material fact as to whether Hutchinson fired a gun at the officers, as explained below.

Distribuidora Mari Jose, S.A. de C.V. v. Transmaritime, Inc., 738 F.3d 703, 706 (5th Cir. 2013) (quoting Allen v. Rapides Par. Sch. Bd., 204 F.3d 619, 621 (5th Cir. 2000)). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" Hillman v. Loga, 697 F.3d 299, 302 (5th Cir. 2012) (quoting Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986)).

In deciding whether a fact issue has been created, a court must draw all reasonable inferences in favor of the nonmoving party, and it "may not make credibility determinations or weigh the evidence." Tiblier v. Dlabal, 743 F.3d 1004, 1007 (5th Cir. 2014) (quoting Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000)). But "[u]nsubstantiated assertions, improbable inferences, and unsupported speculation are not sufficient to defeat a motion for summary judgment." United States v. Renda Marine, Inc., 667 F.3d 651, 655 (5th Cir. 2012) (quoting Brown v. City of Hous., 337 F.3d 539, 541 (5th Cir. 2003)). When one party's version of the facts "is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." Scott v. Harris, 550 U.S. 372, 380 (2007).

ANALYSIS

Defendant Officers contend that Plaintiffs' § 1983 claims are barred by the defense of qualified immunity. (Dkt. # 23.) Qualified immunity protects government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). To determine whether a government official is entitled to qualified immunity, a court decides (1) whether a plaintiff has alleged facts sufficient to establish a constitutional violation, and (2) whether the right at issue was clearly established at the time of the defendant's alleged misconduct. Pearson v. Callahan, 555 U.S. 223, 231 (2009). A court has discretion to determine the order in which it considers those questions. Id. at 236. Here, the Court will first consider whether Plaintiffs have adequately alleged a constitutional violation.

I. Constitutional Violation

The use of deadly force to apprehend a person suspected of a criminal offense "is a seizure subject to the reasonableness requirement of the Fourth Amendment."[3] Tennessee v. Garner, 471 U.S. 1, 7 (1985). To prevail on a Fourth

[3] Plaintiffs assert that Defendant Officers violated Hutchinson's Fourth and Fourteenth Amendment rights by shooting and killing Hutchinson. (Dkt. # 11 ¶ 6.01.)

Amendment excessive-force claim, a plaintiff must show "(1) an injury, (2) which resulted directly and only from the use of force that was clearly excessive, and (3) the excessiveness of which was clearly unreasonable." Malbrough v. Stelly, 814 F. App'x 798, 802–03 (5th Cir. 2020) (citing Ramirez v. Knoulton, 542 F.3d 124, 128 (5th Cir. 2008)). The analyses of whether a use of force is "clearly excessive" or "clearly unreasonable . . . are often intertwined." Poole v. City of Shreveport, 691 F.3d 624, 628 (5th Cir. 2012).

When assessing reasonableness, a court must consider the totality of the circumstances in each case, 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." Graham v. Connor, 490 U.S. 386, 396 (1989). "The threat-of-harm factor typically predominates the analysis when deadly force has been deployed." Harmon v. City of Arlington, 16 F.4th 1159, 1163 (5th Cir. 2021). The Fifth Circuit has held that "[a]n officer's use of deadly force is not excessive, and thus no constitutional violation occurs, when the officer reasonably believes that the suspect poses a threat of serious harm to the officer or to others." Id. (citing Manis v. Lawson, 585 F.3d 839, 843 (5th Cir. 2009)).

Finally, because of the difficulty of "split-second judgments," reasonableness is judged "from the perspective of a reasonable officer on the

scene, rather than with the 20/20 vision of hindsight." Id. (quoting Graham, 490 U.S. at 396). Courts "should be cautious about second-guessing a police officer's assessment, made on the scene, of the danger presented by a particular situation." Id. (quoting Ryburn v. Huff, 565 U.S. 469, 477 (2012)).

Plaintiffs assert that three genuine issues of material fact preclude summary judgment. (Dkts. ## 27, 35.) The Court addresses each in turn.

A. Identity of the passenger

Plaintiffs argue that there is a genuine issue of material fact as to whether Hutchinson was the passenger who shot at the police. (Dkt. # 27 at 4.) In their Amended Complaint, Plaintiffs call this passenger an "unidentified person," claiming that "according to witness statements, Hutchinson, who was riding in the back seat, opened the rear passenger door but did not completely exit the vehicle." (Dkt. # 11 ¶ 4.02.)

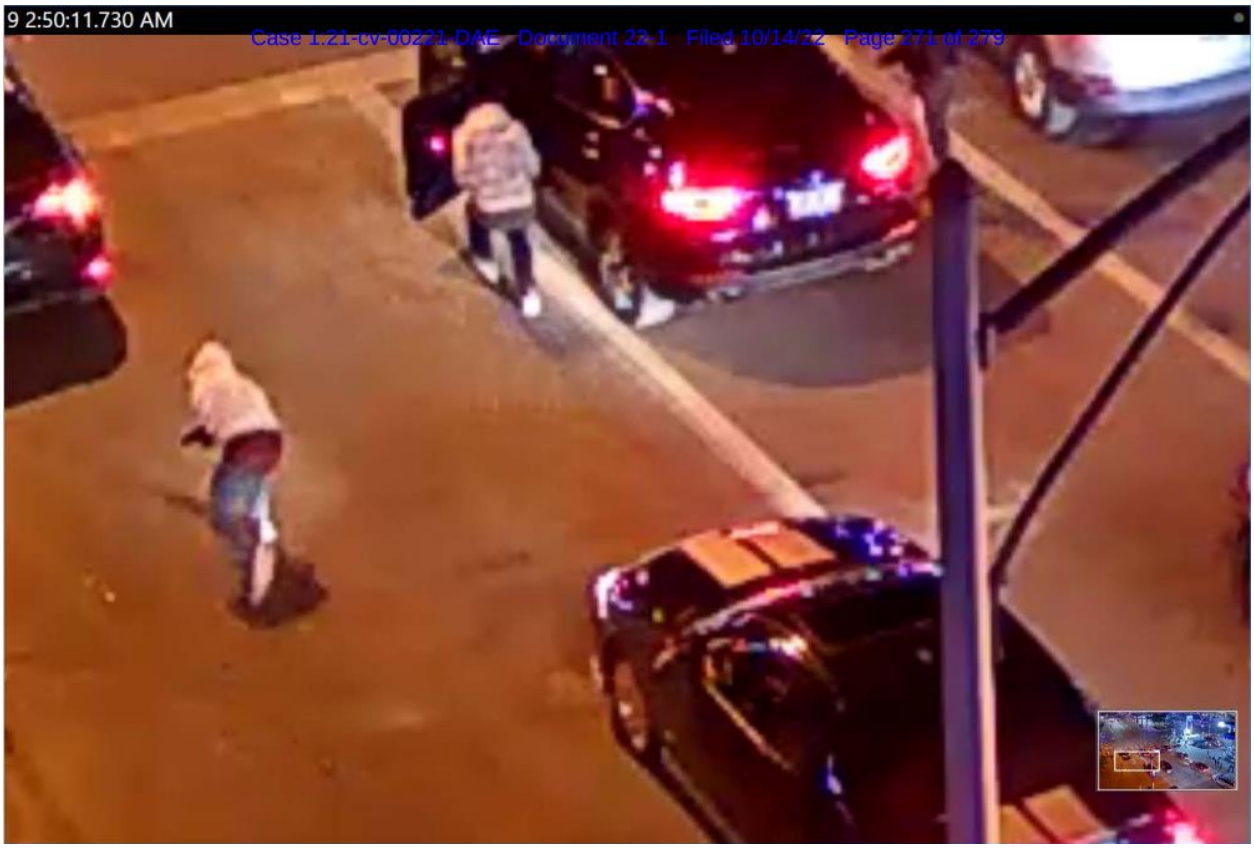
In support of their assertion, Plaintiffs point to sworn statements provided to police by Ashley Nowlin and Amanda Estrada, who both witnessed the incident from a nearby car. (Dkt. # 27, Exs. A & B.) But Nowlin's statement focuses on the *driver* of the SUV:

> There were a total of 4 males in the car. I only remember the driver wearing a white long sleeve shirt or sweater. It was distinctive because it was white. I think it also had a print on it.
>
> . . . .

> [I] heard [a] gunshot. I looked and saw the two black males run to their car. Amanda told me, "That Hispanic male just shot at them!" I do not remember how many shots there were at that time. I ducked a little and saw the two males get back into their vehicle. I looked and could see a police officer run up to the right front side of my vehicle with his gun out. I looked at the SUV and could see the black male drive[r] with the sweater pointing a gun at what I thought was the windshield of my car. That's when I saw the officer shooting at the SUV. I could tell that the SUV was hit because the passenger side back window was shattered.
>
> . . . .
>
> The Black SUV was a 4[door] with 4 black males inside. The driver was the one in the white sweater and had a gun in his hand. I could not tell which hand it was in. I could not see if the black male was shooting. I only saw the black male pointing the gun in my direction. I was scared for my life.

(Dkt. # 27, Ex. A.) The HALO camera footage shows that the driver of the SUV returned directly to the driver's seat of the SUV after the Monte Carlo driver opened fire. (HALO video at 2:50:12.) Though both the SUV driver and passenger were wearing light-colored sweaters or hoodies—as shown in the below video screenshot[4]—the passenger, not the SUV driver, is clearly the individual who goes around to the passenger side of the SUV and fires toward the officers.

[4] The Court bases its findings on the video evidence, not screenshots, but includes screenshots in this Order for the reader's benefit. See Dawes v. City of Dallas, No. 3:17-CV-1424-X, 2022 WL 3273833, at *2 (N.D. Tex. Aug. 11, 2022) (stating same).



(Dkt. 22-1, Ex. 8.)

Estrada, meanwhile, stated in pertinent part:

> I then heard a gunshot and saw sparks flying out of the Monte Carlo driver's window. The SUV driver grabbed his left shoulder/chest area with his right hand. I took that to mean that the SUV driver had been shot. The SUV driver then ran back to his SUV around the front of it to the passenger side. At the same time the SUV front passenger that was with him at the Monte Carlo must have had a gun because it sounded like he was returning fire. (The sounds of the gunshots were from where he was standing.) Almost at the same time again the back passengers of the SUV got out and I then heard multiple gun shots. I took this to mean that those passengers also had guns and were returning fire.
>
> By now Ashley and I were trying to duck so we wouldn't get hit. I then heard the police yelling and they were coming from the direction of the Gulf Gas Station. I am not sure what they were yelling but I knew they

> were the police. Then a lot of gunfire happened. I did see one of the SUV people (not sure which one since I was ducking) shot in the direction of the police. I did see that that person had his arm extended and a gun in his hand. The gun looked to be black since I did not see anything shiny on it. The SUV occupants ended up getting back in the SUV and taking off with the doors still open.

(Dkt. # 27, Ex. B.)

Again, the HALO camera footage definitively shows that the SUV driver did not run around the front of the SUV toward the passenger side. (HALO video at 2:50:12.) "Although evidence is reviewed in the light most favorable to the nonmoving party, the Fifth Circuit has instructed that courts assign greater weight, even at the summary judgment stage, to the facts evident from video recordings taken at the scene." Carnaby v. City of Houston, 636 F.3d 183, 187 (5th Cir. 2011). In addition, although Estrada identified the individual who accompanied the driver as "the SUV *front* passenger," she could only say that it was "one of the SUV people" who "shot in the direction of the police." (Dkt. # 27, Ex. B.)

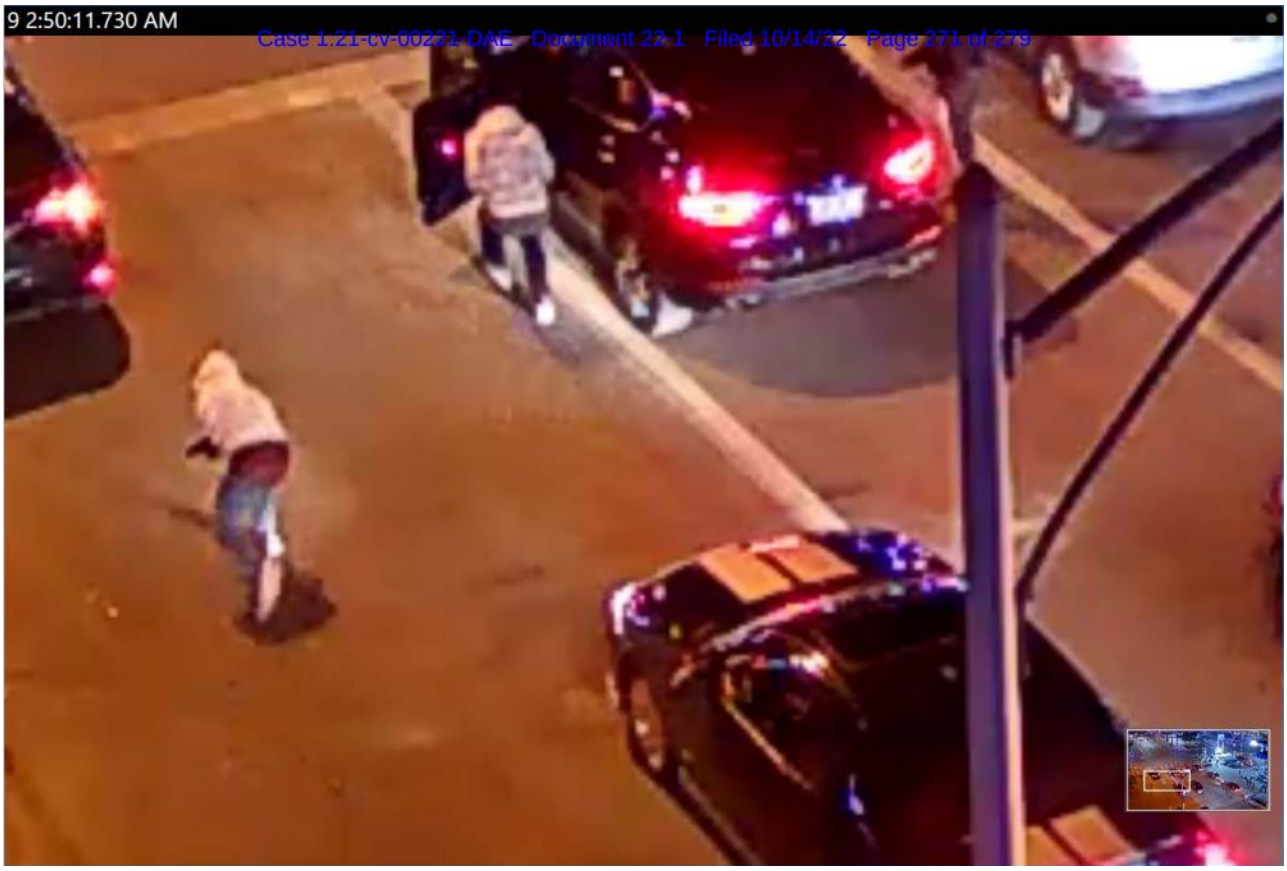
"[C]onclusional allegations and denials, speculation, improbable inferences, unsubstantiated assertions, and legalistic argumentation do not adequately substitute for specific facts showing a genuine issue for trial." Coleman v. BP Expl. & Prod., Inc., 19 F.4th 720, 726 (5th Cir. 2021) (quoting TIG Ins. Co. v. Sedgwick James of Wash., 276 F.3d 754, 759 (5th Cir. 2002)). Even though Hutchinson's identity is not an issue for which Plaintiffs should have trouble

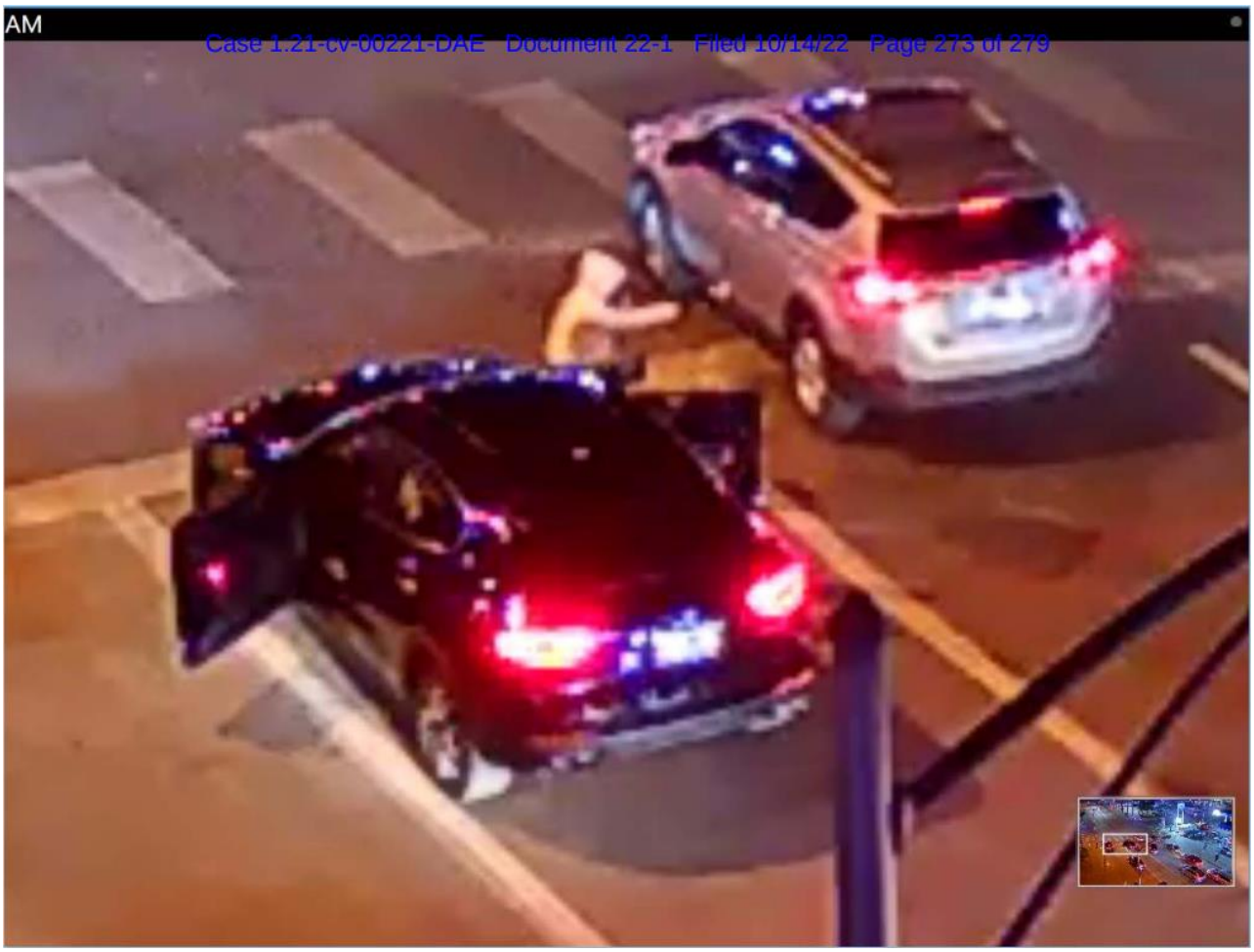
presenting competent evidence,[5] Plaintiffs have mustered only an unsubstantiated allegation. The Court thus finds no genuine issue of material fact.

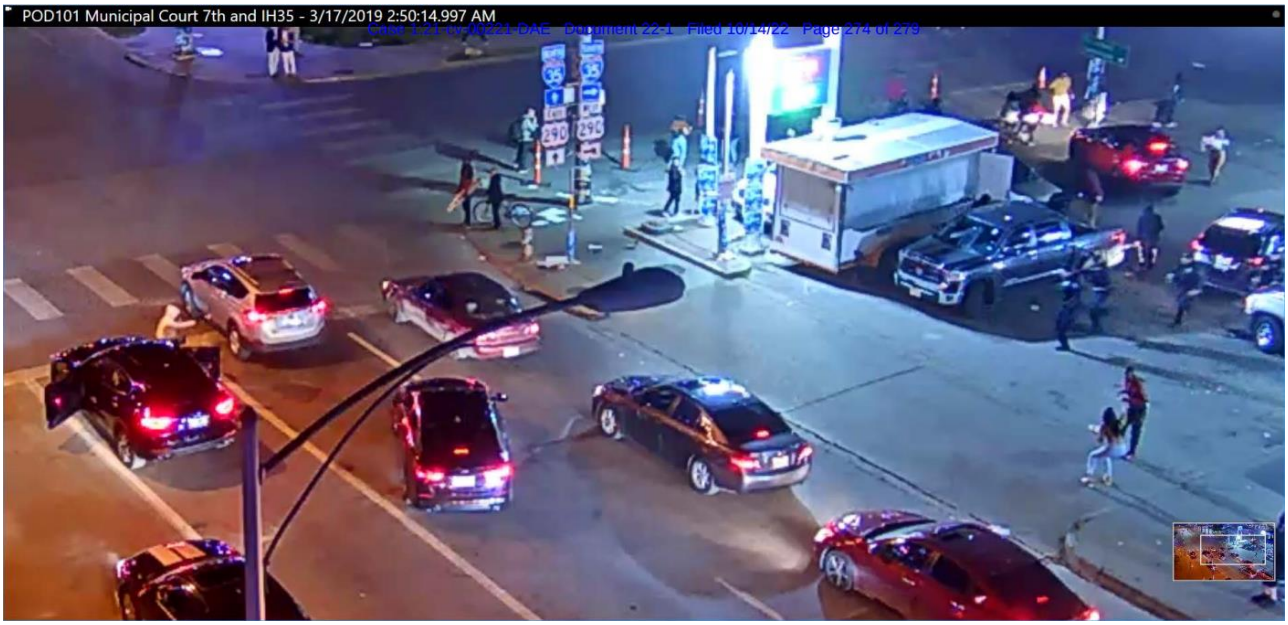
B. Hutchinson's possession or firing of a firearm

Plaintiffs similarly fail to raise a genuine issue of material fact as to whether Hutchinson possessed or fired a gun. According to Plaintiffs, "the footage doesn't definitively show that person to be in possession of a handgun, a fact which is supported by Officer Wright's testimony—which unquestionably shows that Officer Wright at no time observed the person circling in front of the vehicle to be in possession of a firearm." (Dkt. # 27 at 5.) This argument is untenable. First, the video evidence shows that Hutchinson had a gun—or at least an item that would have appeared to a reasonable officer to be a gun—as seen in the two screenshots below. The HALO camera footage also shows a muzzle flash. (HALO video at 2:50:15.)

[5] For example, Plaintiffs have not provided evidence as to what Hutchinson was found wearing. Plaintiffs rely only on the statements of two witnesses whose accounts are (understandably, given the chaotic scene) not consistent with the video evidence. A dispute is only genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248.


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(Dkt. # 22-1, Ex. 8.)

Second, Plaintiffs mischaracterize Wright's testimony: he testifed that he saw a muzzle flash "from what I believed was a gun in [Hutchinson's] hand." (Dkt. # 27-3 at 8 ("I don't recall being able to specifically see the gun. I . . . recall being able to see the actual muzzle flash, um, from what I believed was a gun in his hand.")) Wright's testimony undermines Plaintiffs' assertion of a genuine issue of material fact rather than supporting it.

Even assuming—contrary to the HALO camera footage evidence—that Hutchinson did not fire the gun, Hutchinson undoubtedly pointed a gun (or gun-like object) in Defendant Officers' direction. The Fifth Circuit has held that "officers use lethal force justifiably if they reasonably believe the individual is reaching for a gun" and has "adhered to this standard even in cases when officers had not yet seen a gun when they fired, or when no gun was ever found at the scene." Cloud v. Stone, 993 F.3d 379, 387 (5th Cir. 2021) (citations omitted). Plaintiffs' theory "fails to provide adequate deference to [D]efendants' snap judgment, in the heat of a perilous and rapidly evolving situation, about the danger [Hutchinson] posed." Garza v. Briones, 943 F.3d 740, 748 (5th Cir. 2019). Thus, there is no genuine issue of material fact about Hutchinson's possession or firing of a gun.

C. Shooting as SUV flees

In their Surreply, Plaintiffs assert that there is a genuine issue of material fact as to whether Defendant Officers "continued to use deadly force by firing repeated shots at the fleeing Maserati in which Hutchinson was a passenger." (Dkt. # 35 at 4.) To establish this, Plaintiffs point to the HALO camera footage and screenshots taken from this footage. (Dkt. # 22-1, Exs. 7 & 8.)

The footage is somewhat ambiguous as to when Defendant Officers were shooting. "[A] court should not discount the nonmoving party's story unless the video evidence provides so much clarity that a reasonable jury could not believe his account." Darden v. City of Fort Worth, 880 F.3d 722, 730 (5th Cir. 2018). The footage shows that as the SUV begins pulling away, the back passenger door appears to be slightly ajar, and officers still have their guns pointed toward the vehicle. (HALO video at 2:50:23.) Approximately one second later, one of the officers falls backwards.[6] (Id. at 2:50:24.) As the SUV pulls farther away, the view from the HALO camera shifts to focus in on the SUV, and the officers are no longer in view. About four seconds later, no officer had their gun pointed toward the SUV. (Id. at 2:50:29.)

[6] This officer is not named as a defendant in this suit. The deposition testimony indicates that he did not fire his weapon. (See, e.g., Dkt. # 22-1, Ex. 3 at 12:10–11.)

Two Defendant Officers thought that Defendant Nelson fired at the SUV as it was leaving. (Dkt. # 22-1, Ex. 1 at 103:5–6 (Wright: "As the vehicle was leaving the scene I believe that Detective Nelson discharged his firearm."), Ex. 2 at 34:14–17 (O'Neill: "I noticed one police officer shooting at the Maserati as it began to drive away . . . . Detective Nelson.")).

O'Neill and Nelson himself testified that Nelson stopped firing by the time the SUV reached the frontage road. According to O'Neill, "It was for a very short amount of time. By the time he got to the service road, which was only feet away, [Nelson] had stopped engaging." (Id., Ex. 2 at 44:4–6.) Nelson testified that he was the last officer firing. (Id., Ex. 3 at 113:25.) Nelson further stated:

> As the vehicle starts to move there's still two more shots that are fired, but it's not continuously fired upon as it's fleeing the scene under the, the highway. There's where I think we're, we're disagreeing. The number of rounds fired are accounted for before that vehicle hits the frontage road. So there's, there's not, there's not this continuous volume of fire. That's reflected in the investigator's report. I fired five rounds --
>
> . . . .
>
> I fired five rounds. The fifth one was fired before the vehicle finished getting across the front -- the southbound frontage road, like I previously stated.

(Id. at 102:7–15, 111:20–23.)

Plaintiffs have not adduced evidence controverting O'Neill and Nelson's testimony that Nelson (and all other Defendant Officers) stopped firing

by the time the SUV reached the frontage road. See Shumpert v. City of Tupelo, 905 F.3d 310, 324 (5th Cir. 2018), as revised (Sept. 25, 2018) ("Plaintiffs still have the burden of adducing evidence that contradicts [the officer's] description of the shooting."). But in any event, the Court does not find that firing at Hutchinson as the SUV fled was "clearly unreasonable" given the circumstances.

Defendant Officers confronted a "tense, uncertain, and rapidly evolving" situation during their twenty-second encounter with Hutchinson. Graham, 490 U.S. at 396–97. Nelson's uncontroverted testimony described a chaotic scene as the officers raced to respond the gunfire: "[p]eople were yelling, vehicles were driving, there was road noise, and we were being shot at." (Dkt. # 22-1, Ex. 3 at 68:17–19.) Hutchinson's gunfire could have struck the officers or innocent bystanders. Hutchinson then tried to evade arrest by flight. An officer fell to the ground as the SUV made its escape, which apparently caused another officer to believe that this officer had been shot. (Dkt. # 27-3, Ex. D, at 14.) These are circumstances in which a reasonable officer could well fear that Hutchinson posed a severe and continuing threat to public safety.

The Supreme Court established long ago that if "the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious

physical harm, deadly force may be used if necessary to prevent escape."[7] Garner, 471 U.S. at 11–12. Moreover, "if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers *need not stop shooting* until the threat has ended." Garza, 943 F.3d at 748 (citing Plumhoff v. Rickard, 572 U.S. 765, 777 (2014)) (emphasis added). Plaintiffs point out that Nelson testified that once the doors were closed on the SUV, none of the SUV's occupants fired gunshots from it. (Dkt. # 35 at 3.) But an officer on the scene could have still reasonably believed Hutchinson to be an imminent threat. Hutchinson was armed, had shot at the police—a serious crime—and was fleeing a scene that the officers were initially responding to because of a shooting.

Plaintiffs have therefore not carried their burden of establishing a genuine issue of material fact as to whether Defendant Officers violated Hutchinson's constitutional rights.[8] Defendant Officers are entitled to qualified immunity on this basis alone.

---

[7] If feasible, a warning should also be given. Garner, 471 U.S. at 12. But officers are not always required to give warnings in "fast-moving" situations, as was the case here. See Mendez v. Poitevent, 823 F.3d 326, 333–334 (5th Cir. 2016); Colston v. Barnhart, 130 F.3d 96, 100 (5th Cir. 1997).

[8] Plaintiffs provide no separate analysis for their Fourteenth Amendment claim. The Supreme Court has held that "[w]here a particular Amendment 'provides an explicit textual source of constitutional protection' against a particular sort of government behavior, 'that Amendment, not the more generalized notion of "substantive due process," must be the guide for analyzing these claims.'"

II. Clearly Established Law

Defendants are also entitled to qualified immunity because Plaintiffs have not shown a violation of clearly established law. A clearly established right, for qualified immunity, is one that is "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." Reichle v. Howards, 566 U.S. 658, 664 (2012). "Put simply, qualified immunity protects 'all but the plainly incompetent or those who knowingly violate the law.'" Mullenix v. Luna, 577 U.S. 7, 12 (2015) (quoting Malley v. Briggs, 475 U.S. 335 (1986)).

The Supreme Court has instructed courts "not to define clearly established law at a high level of generality." Ashcroft v. al-Kidd, 563 U.S. 731, 742 (2011). Preexisting precedent "must have placed the question 'beyond debate,' with 'the right's contours . . . sufficiently definite that any reasonable official in the [officer's] shoes would have understood that he was violating it.'" Baker v. Coburn, No. 21-10303, 2023 WL 3573302, at *3–4 (5th Cir. May 17, 2023), as revised (May 19, 2023) (quoting Rickard, 572 U.S. at 779).

This specificity requirement "assumes special significance in excessive force cases, where officers must make split-second decisions to use

---

Albright v. Oliver, 510 U.S. 266, 273 (1994) (quoting Graham, 490 U.S. at 395). The Fourth Amendment appropriately applies in this case.

force." Harmon, 16 F.4th at 1166. "The results 'depend very much on the facts of each case,' and thus police officers are entitled to qualified immunity unless existing precedent 'squarely governs' the specific facts at issue." Id. (quoting Kisela v. Hughes, 138 S. Ct. 1148, 1153 (2018)).

Plaintiffs have not met their burden of identifying relevant precedent that "squarely governs" the facts of this case. Plaintiffs rely on Tennessee v. Garner "to divine a clearly established prohibition on the use of deadly force 'where the suspect poses no immediate threat to the officer and no threat to others.'" Morrow v. Meachum, 917 F.3d 870, 878 (5th Cir. 2019) (quoting Garner, 471 U.S. at 11). But the Supreme Court has already rejected this argument and warned against extending Garner. Id. (citing Scott, 550 U.S. at 382; Mullenix, 577 U.S. at 12–13). Plaintiffs' case is "obviously not Garner 2.0" because "[a]s Garner recognized, the armed suspect here 'present[s] a different situation.'" Wilson v. City of Bastrop, 26 F.4th 709, 714 (5th Cir. 2022) (quoting Garner, 471 U.S. at 21).

Plaintiffs also cite Mace v. City of Palestine, 333 F.3d 621, 624 (5th Cir. 2003), in support of their argument that "shooting someone to death who could not under the circumstances present reasonably be considered a threat of serious physical harm to the officers or others" is "clearly unlawful." (Dkt. # 27 at 11.) But Mace involved "an intoxicated, violent and uncooperative individual who was

wielding a sword within eight to ten feet of several officers in a relatively confined space." 333 F.3d at 725. And the Fifth Circuit found in Mace that the officer's use of deadly force was *not* objectively unreasonable. Id. If anything, Mace hurts Plaintiffs' case.

Because Plaintiffs have not carried their summary judgment burden to show that Defendant Officers' use of force was objectively unreasonable in light of clearly established law at the time, Defendant Officers are entitled to qualified immunity on both prongs.

III. Municipal Liability Under § 1983

Municipalities and other local government units are among those "persons" to whom § 1983 applies. Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690 (1978). But "[a] municipality cannot be held liable when its employee[s] did not violate the Constitution." Malbrough v. Stelly, 814 Fed. App'x 798, 806 (5th Cir. 2020); see also Harmon, 16 F.4th at 1168 (dismissing municipal-liability claims because the plaintiffs "failed to allege a predicate constitutional violation by [the officer]").

Because the Court has already found that the use of force by Defendant Officers did not violate the Fourth Amendment, the City of Austin is entitled to summary judgment.

CONCLUSION

For these reasons, Plaintiffs' § 1983 claims against Defendant Officers and the City of Austin fail. The Court **GRANTS** Defendants' Motions for Summary Judgment (Dkts. ## 22, 23.)

IT IS SO ORDERED.

DATED: Austin, Texas, June 9, 2023.

David Alan Ezra
Senior United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHRISTINE SPRINGS-HUTCHINSON AND BENNY HUTCHINSON, ON BEHALF OF THEMSELVES AND THE ESTATE OF ISAIAH HUTCHINSON	§	
Plaintiffs,	§	
	§	**CIVIL ACTION NO. 1:21-CV-00221-LY**
v.	§	
	§	
THE CITY OF AUSTIN AND DEANDRE WRIGHT AND DANE O'NEILL AND ZACHARY WOODS AND THOMAS BERNARD NELSON, III,	§	
Defendants.	§	

PLAINTIFFS' NOTICE OF APPEAL

Notice is given that Plaintiffs, Christine Springs-Hutchinson and Benny Hutchinson, on Behalf Of Themselves and The Estate Of Isaiah Hutchinson, by and through their attorney of record herby appeals to the Fifth Circuit Court of Appeals the June 9, 2023 Order issued by the Western District of Texas Austin Division Court adopting the Report and Recommendation of the United States District Judge granting the Defendant City of Austin's and Defendants Deandre Wright's and Dane O'Neill's and Zachary Woods' and Thomas Bernard Nelson III's Motions for Summary Judgments.

Dated: 6/22/2023

Respectfully Submitted,

By: /s/ *Scott Ogle*
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Texas State Bar No.00797170
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LAW OFFICE OF SCOTT OGLE
2028 W. Ben White Blvd.
Austin, Texas 78704
Telephone: (512) 442-8833
Facsimile: (512) 442-3256

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that on this 22 day of June, 2023, a true and accurate copy of the foregoing document was served on counsel of record through the court's ECF system.

By: /s/ *Scott Ogle*
Scott Ogle

FILED
July 26, 2023
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY: klw
DEPUTY

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
July 26, 2023
Lyle W. Cayce
Clerk

No. 23-50471

CHRISTINE SPRINGS-HUTCHINSON, *on behalf of herself and the estate of Isaiah Hutchinson*; BENNY HURCHINSON, *on behalf of himself and the estate of Isaiah Hutchinson*,

Plaintiffs—Appellants,

versus

CITY OF AUSTIN; DEANDRE WRIGHT; DANE O'NEILL; ZACHARY WOODS; THOMAS BERNARD NELSON, III,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:21-CV-221 DAE

CLERK'S OFFICE:

Under 5TH CIR. R. 42.3, the appeal is dismissed as of July 26, 2023, for want of prosecution. The appellants' failed to timely order transcript and make financial arrangements with court reporter.

LYLE W. CAYCE
Clerk of the United States Court
of Appeals for the Fifth Circuit

By: _____
Roeshawn Johnson, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

July 26, 2023

Mr. Philip Devlin
Western District of Texas, Austin
United States District Court
501 W. 5th Street
Austin, TX 78701-0000

No. 23-50471 Springs-Hutchinson v. City of Austin
USDC No. 1:21-CV-221

Dear Mr. Devlin,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Roeshawn Johnson, Deputy Clerk
504-310-7998

cc: Mr. Monte Lewis Barton Jr.
Mr. Scott Patrick Ogle

FILED
July 31, 2023
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY: klw
DEPUTY

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

July 31, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 23-50471 Springs-Hutchinson v. City of Austin USDC No. 1:21-CV-221 DAE

The court has granted appellants' motion to reinstate the appeal.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Roeshawn Johnson, Deputy Clerk
504-310-7998

Mr. Monte Lewis Barton Jr.
Mr. Philip Devlin
Mr. Mark McAdoo
Mr. Scott Patrick Ogle

No. 23-50471

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Christine Springs-Hutchinson, ***on behalf of herself and the estate of Isaiah Hutchinson*****; Benny Hutchinson,** ***on behalf of himself and the estate of Isaiah Hutchinson*****,**
Plaintiffs - Appellants,

v.

City of Austin; DeAndre Wright; Dane O'Neill; Zachary Woods; Thomas Bernard Nelson, III
Defendants - Appellees.

Appeal from the United States District Court for the
Western District of Texas in Cause No. 1:21-CV-221 DAE

APPELLANTS' UNOPPOSED MOTION TO REINSTATE APPEAL

TO THE HONORABLE COURT OF APPEALS:

COMES NOW, Plaintiffs–Appellees Christine Springs-Hutchinson, *on behalf of herself and the estate of Isaiah Hutchinson*; Benny Hutchinson, *on behalf of himself and the estate of Isaiah Hutchinson*, and files their Unopposed Motion to Reinstate Appeal, and in support thereof would show the following:

1) this appeals was dismissed on July 26, 2023 due to Appellants' failure

to timely order transcript and make financial arrangements with court reporter;

2) there were no hearings conducted in the district court in this case, thus there is no court reporter's record created;

3) As shown by the Transcript Order Form attached hereto as "Exhibit A," Plaintiffs–Appellants filed the Certificate of no Transcript Order in the District Court (where it was served on Defendants–Appellees) yet inadvertently failed to file said document in this Court;

4) Such failure was inadvertent and not intentional; rather, it was unintentional and was not the result of indifference or conscious disregard of this Court's Rules or the Federal Rules of Appellate Procedure; and

5) as shown by the Certificate of Conference attached hereto, counsel for Defendants–Appellees is not opposed to the granting of the relief requested in this Motion.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs-Appellants respectfully request that this Court grant the relief requested herein and reinstate this appeal on the Court's docket. Plaintiffs–Appellants respectfully request that they be granted any other such relief to which they may show

themselves entitled.

Respectfully Submitted,

/s/ Mark McAdoo
Mark McAdoo
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mark@mcadoolawllc.com

CERTIFICATE OF CONFERENCE

I hereby certify that on July 27, 2023, a conference regarding the foregoing Motion to Reinstate Appeal was held with counsel for the defendants, The Honorable Monte Barton, Jr., and said counsel is not opposed to the granting of the relief requested in this motion.

/s/ Mark McAdoo
Mark McAdoo

CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2023, I electronically filed the foregoing document with the clerk of the court for the United States Court of Appeals for the Fifth Circuit, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this notice as service of this document by electronic means.

/s/ Mark McAdoo
Mark McAdoo

TRANSCRIPT ORDER FORM (DKT-13) - READ INSTRUCTIONS ON LAST PAGE BEFORE COMPLETING

District Court Western District of Texas District Court Docket No. 1:21-CV-00221

Exhibit A

Short Case Title Springs-Hutchinson, et. al. v City of Austin, et.al.

ONLY ONE COURT REPORTER PER FORM Court Reporter NONE

Date Notice of Appeal Filed in the District Court 06/22/2023 Court of Appeals No. Not asigned at this time

PART I. (To be completed by party ordering transcript. Do not complete this form unless financial arrangements have been made, see instructions on page 2.)

A. Complete the Following:

■No hearings ☐Transcript is unnecessary for appeal purposes ☐Transcript is already on file in the Clerk's Office

OR

Check all of the following that apply, include date of the proceeding.

This is to order a transcript of the following proceedings: ☐Bail Hearing _____ ☐Voir Dire _____

☐Opening Statement of Plaintiff _____ ☐Opening Statement of Defendant _____

☐Closing Argument of Plaintiff _____ ☐Closing Argument of Defendant: _____

☐Opinion of court _____ ☐Jury Instructions _____ ☐Sentencing _____

Other proceedings not listed above:

Hearing Date(s)	Proceeding	Judge/Magistrate

Failure to specify in adequate detail those proceedings to be transcribed, or failure to make prompt satisfactory financial arrangements for transcript, are grounds for DISMISSAL OF APPEAL.

B. This is to certify satisfactory financial arrangements have been made. Method of Payment:

☐Private Funds; ☐Criminal Justice Act Funds (**Enter Authorization-24 via eVoucher**);

☐Other IFP Funds; ☐Advance Payment Waived by Reporter; ☐U.S. Government Funds

☐Other _____

Signature _____ Date Transcript Ordered 07/06/2022

Print Name Scott Ogle Phone 512 442 8833

Counsel for Christine Springs-Hutchinson and Benny Hutchinson on Behalf of Themselves and The Estate of Isaiah Hutchinson

Address 2028 W. Ben White Blvd., Austin, Texas 78704

Email of Attorney: soglelaw@peoplepc.com

PART II. COURT REPORTER ACKNOWLEDGMENT (To be completed by the court reporter and filed with the Court of Appeals within 10 days after receipt. Read instructions on page 2 before completing.)

Date Transcript Order Received	Date Satisfactory Arrangements for Payment were Made	Estimated Completion Date	Estimated Number of Pages

Payment arrangements have NOT been made or are incomplete.

Reason: ☐Deposit not received ☐Unable to contact ordering party ☐Awaiting creation of CJA 24 eVoucher

☐Other (Specify) _____

Date _____ Signature of Reporter _____ Tel. _____

Email of Reporter _____

Part III. NOTIFICATION THAT TRANSCRIPT HAS BEEN FILED IN THE DISTRICT COURT (To be completed by court reporter on date of filing transcript in the District Court. This completed form is to be-filed with the Court of Appeals.)

This is to certify that the transcript has been completed and filed at the District Court today.

Actual Number of Pages _____ Actual Number of Volumes _____

Date _____ Signature of Reporter _____

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

July 31, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 23-50471 Springs-Hutchinson v. City of Austin
USDC No. 1:21-CV-221

The court has granted appellants' motion to reinstate the appeal.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Roeshawn Johnson, Deputy Clerk
504-310-7998

Mr. Monte Lewis Barton Jr.
Mr. Philip Devlin
Mr. Mark McAdoo
Mr. Scott Patrick Ogle

No. 23-50471

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Christine Springs-Hutchinson, ***on behalf of herself and the estate of Isaiah Hutchinson*****; Benny Hutchinson,** ***on behalf of himself and the estate of Isaiah Hutchinson*****,**

Plaintiffs - Appellants,

v.

City of Austin; DeAndre Wright; Dane O'Neill; Zachary Woods; Thomas Bernard Nelson, III

Defendants - Appellees.

Appeal from the United States District Court for the
Western District of Texas in Cause No. 1:21-CV-221 DAE

APPELLANT'S BRIEF

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Attorneys for Appellants

No Oral Argument Requested

CERTIFICATE OF INTERESTED PERSONS

In compliance with Fed. R. App. P. 28.2.1 and Fifth Circuit Local Rule 28.2.1, Counsel notes the number and styling of this case, is as follows: No. 23-50471, In the United States Court of Appeals for the Fifth Circuit.

Christine Springs-Hutchinson, *on behalf of herself and the estate of Isaiah Hutchinson*; Benny Hutchinson, *on behalf of himself and the estate of Isaiah Hutchinson*

v.

City of Austin; DeAndre Wright; Dane O'Neill; Zachary Woods; Thomas Bernard Nelson, III

Further, and also in compliance with these rules, the undersigned counsel for Plaintiffs-Appellants certifies that they know of no other persons, associations of persons, firms, partnerships or corporations that have an interest in the outcome of this particular case save for the parties noted in the style of this case and their counsel of record. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

/s/ Mark McAdoo
Mark McAdoo

WAIVER OF ORAL ARGUMENT

Appellants suggest that the issue presented can be determined upon the record and that oral argument would not benefit the panel. The parties' positions are clear and the record uncomplicated. *See* FED. R. APP. P. 34(a)(3). Appellants Christine Springs-Hutchinson and Benny Hutchinson respectfully waive oral argument.

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STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under Section 1291, Title 28, United States Code, as an appeal from a final judgment in the United States District Court for the Western District of Texas. *See* 28 U.S.C. § 1291.[1]

The district court had jurisdiction over this 42 U.S.C. § 1983 lawsuit under 28 U.S.C. § 1331. *See* 28 U.S.C. § 1331.

The district court granted final judgment on Defendant's motion for summary judgment on June 9, 2023. [ROA.617]. Notice of appeal was timely filed in accordance with Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure on June 22, 2023. [ROA.618]. *See* FED. R. APP. P. 4(a)(1)(A).

[1]Unless set forth otherwise, all citations to statutory authority are to the current versions.

STATEMENT OF THE ISSUES

ISSUE NUMBER ONE

The District Court erred in granting Defendants' Motion for Summary Judgment.

STATEMENT OF THE CASE

A. *Proceedings Below*

Plaintiffs Christine Springs-Hutchinson and Benny Hutchinson ("Plaintiffs") brought suit against Defendants the City of Austin; DeAndre Wright; Dane O'Neill; Zachary Woods; and Thomas Bernard Nelson III, ("Defendants"), on March 9, 2021, under 42 U.S.C. § 1983for violations of Isaiah Hutchinson's Fourth and Fourteenth Amendment rights by use of excess force in the form of shooting him to death. [ROA.7–18].

After an appropriate amount of time for discovery, Defendants filed their Motions for Summary Judgment on October 14, 2022. [ROA.108, 407]. Plaintiffs filed their Response to Defendants' Motions for Summary Judgment on November 20, 2022. [ROA.426]. Defendants filed their Reply to Plaintiffs' Response on November 27, 2022. [ROA.516]. The District Court granted Defendants' motions for summary judgment on June 9, 2023, [ROA.595].

Plaintiffs timely filed their Notice of Appeal on June 22,

2023. [ROA.618].

B. ***Statement of Facts***

This lawsuit arises out of an officer-involved shooting which occurred during the South by Southwest Conference and Festival (SXSW) on March 17, 2019. The incident happened at approximately 2:50 AM, in the middle of the street at the intersection of East 7th Street and the southbound service road of Interstate Highway (IH) 35, in Austin, Texas. [ROA.428].

Competent summary judgment evidence showed that in the minutes leading up to the gunfire made the subject of this suit, the vehicle (a black Maserati SUV) occupied by Isaiah Hutchinson ("Isaiah") and being operated by Demarious Davis was rear-ended by another vehicle (a black Monte Carlo) while both were proceeding down 7th Street. [ROA.429, 448]. As traffic would not allow the vehicles to stop immediately and exchange information, Demarious stopped at the next light and exited the vehicle to exchange information with the driver of the Monte Carlo. [ROA.429, 448–449]. Sworn evidence from multiple witnesses

shows that the front-seat passenger in the black SUV accompanied Demarious to the Monte Carlo. [ROA.429, 449]. As shown by the footage from the city's HALO (High Activity Location Observation) cameras, after a short interaction between the drivers, the driver of the Monte Carlo fired at Demarious with a handgun. [ROA.111, 429, 449]. As Demarious and the front-seat passenger sprinted back to their vehicle, a group of police officers appear in the parking lot of the gas station to the right, and begin firing their handguns at the persons near the black SUV. [ROA.429, 444].

Contrary to Defendants' assertion in their motions for summary judgment, it is manifestly not clear that Isaiah ever pointed a firearm at any of the defendant officers, or that he ever discharged a firearm at the defendant officers: not only is it not possible to conclusively identify Isaiah from the HALO images, it is also not possible to conclusively identify all the persons who may or may not be in possession of a firearm.

First, sworn evidence shows that the Maserati front seat passenger accompanied Demarious to the Monte Carlo.

[ROA.449]. Second, there is no witness testimony which conclusively shows that it was Isaiah who discharged a firearm at the police officers. [ROA.444]. Ashley Nowlin is clear in her testimony that the ***driver*** of the black SUV was wearing a long-sleeve white shirt or sweater, and that was the only person from the black SUV which she observed pointing a firearm at the police officers. [ROA.444]. Further, even assuming contrary to the evidence that the person shown on the HALO footage running around the front of the black SUV is Isaiah, the footage doesn't definitively show that person to be in possession of a handgun, a fact which is supported by Officer Wright's testimony–which unquestionably shows that Officer Wright at no time observed the person circling in front of the vehicle to be in possession of a firearm. [ROA. 430, 467].

SUMMARY OF THE ARGUMENT

Because Plaintiffs raised a genuine issue of material fact on each element of their claims, the District Court erred in granting Defendants' motions for summary judgment.

ARGUMENT AND AUTHORITIES

ISSUE NUMBER ONE (RESTATED)

The District court erred in granting Defendants' Motion for Summary Judgment.

A. *Standard of Review*

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548 (1986); *Warfield v. Byron*, 436 F.3d 551, 557 (5th Cir. 2006); *see also* FED. R. CIV. P. 56(a).

The "movant bears the burden of identifying those portions of the record it believes demonstrate the absence of a genuine issue of material fact." *Triple Tee Golf, Inc. v. Nike, Inc.*, 485 F.3d 253, 261 (5th Cir. 2007) (citing *Celotex*, 477 U.S. at 322-25, 106 S.Ct. 2548). "A genuine issue of material fact exists when the evidence is such that a reasonable jury could return a verdict for the

non-moving party." *Fisk Elec. Co. v. DQSI, L.L.C.*, 894 F.3d 645, 650 (5th Cir. 2018) (internal quotations omitted); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505 (1986).

If the burden of proof at trial lies with the nonmoving party, the movant may satisfy its initial burden by "showing — that is, pointing out to the district court — that there is an absence of evidence to support the nonmoving party's case." *Celotex*, 477 U.S. at 325, 106 S.Ct. 2548. Although a plaintiff bears the burden of proof in the qualified immunity analysis, it is axiomatic that at the summary judgment stage "[w]e must accept all well-pleaded facts as true, draw all inferences in favor of the nonmoving party, and view all facts and inferences in the light most favorable to the nonmoving party." *Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 194 (5th Cir.2009).

"If the moving party fails to meet [its] initial burden, the motion [for summary judgment] must be denied, regardless of the nonmovant's response." *United States v. $92,203.00 in U.S. Currency*, 537 F.3d 504, 507 (5th Cir. 2008) (quoting *Little v. Liquid*

Air Corp., 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc)).

If the moving party has met its burden, in order to "avoid a summary judgment, the nonmoving party must adduce admissible evidence which creates a fact issue concerning the existence of every essential component of that party's case." *Thomas v. Price*, 975 F.2d 231, 235 (5th Cir. 1992).

B. ***Applicable Law***

1. Excessive Force Claim

The Fourth Amendment's right to be free from unreasonable seizures governs excessive-force claims. *Garza v. Briones*, 943 F.3d 740, 744–45 (5th Cir. 2019); *Graham v. Connor*, 490 U.S. 386, 395, 109 S.Ct. 1865 (1989) ("[A]ll claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard, rather than under a 'substantive due process' approach."). To prove an excessive-force claim, "a plaintiff must show (1) an injury, (2) which resulted directly and

only from the use of force that was clearly excessive, and (3) the excessiveness of which was clearly unreasonable." *Manis v. Lawson*, 585 F.3d 839, 843 (5th Cir. 2009) (quoting *Ontiveros v. City of Rosenberg*, 564 F.3d 379, 382 (5th Cir.2009)).

Excessive-force claims are "necessarily fact-intensive," so courts must "examine the totality of the circumstances to determine whether an officer's actions were objectively unreasonable." *Garza*, 943 F.3d at 745 (cleaned up). "The intent or motivation of the officer is irrelevant; the question is whether a reasonable officer in the same circumstances would have concluded that a threat existed justifying the particular use of force." *Roque v. Harvey*, 993 F.3d 325, 333 (5th Cir. 2021). Courts will only consider the facts "knowable to the defendant officers" at the time the officers used force, and courts must be "careful to avoid 'second-guessing a police officer's assessment, made on the scene, of the danger presented by a particular situation.'" *Roque*, 993 F.3d at 333 (quoting *Garza*, 943 F.3d at 745.

When an officer uses deadly force, that force is considered

excessive and unreasonable "unless the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others." *Romero v. City of Grapevine*, 888 F.3d 170, 176 (5th Cir. 2018) (quoting *Tennessee v. Garner*, 471 U.S. 1, 11, 105 S.Ct. 1694 (1985)). Further, "an exercise of force that is reasonable at one moment can become unreasonable in the next if the justification for the use of force has ceased." *Lytle v. Bexar Cnty.*, 560 F.3d 404, 413 (5th Cir. 2009).

2. Monell Claim

To establish *Monell* liability, a plaintiff must show that an official policy promulgated by a municipal policymaker was the moving force behind the violation of a constitutional right. *Peterson v. City of Fort Worth*, 588 F.3d 838, 847 (5th Cir. 2009). And to get past the pleading stage, a complaint's "description of a policy or custom and its relationship to the underlying constitutional violation cannot be conclusory; it must contain specific facts." *Peña v. City of Rio Grande City*, 879 F.3d 613, 622 (5th Cir. 2018) (quotation omitted). A "failure-to-train action is a

type of *Monell* claim." *Hutcheson v. Dallas Cnty.*, 994 F.3d 477, 482 (5th Cir. 2021). To establish *Monell* liability on a failure-to-train theory, a plaintiff must prove that: "(1) the city failed to train or supervise the officers involved; (2) there is a causal connection between the alleged failure to supervise or train and the alleged violation of the plaintiff's rights; and (3) the failure to train or supervise constituted deliberate indifference to the plaintiff's constitutional rights." *Id*.

C. *Discussion*

1. Excessive Force

Under the circumstances present here, the officers were unjustified in gunning down Isaiah unless and until it was shown that he posed a threat of serious physical harm to the officers or others. *See Romero*, 888 F.3d at 176 (citing *Tennessee v. Garner*, 471 U.S. at 11). Competent summary judgment evidence fails to show that Isaiah possessed a firearm during the police shooting episode. [ROA. 430, 467]. Officer Wright admitted in his affidavit that he never saw a firearm in the possession of the person he shot

at–merely a muzzle flash. [ROA.467]. While the videos provide background information, they do not definitively identify Isaiah, or even which civilians–if any–were in possession of a firearm during the altercation.

Utilizing the proper standard by view all facts and inferences in the light most favorable to the nonmoving party, if Isaiah did not possess a firearm during the relevant time period, then he could not have posed a threat of serious physical harm to the police officers or others. *See Club Retro*, 568 F.3d at 194; *see also Romero*, 888 F.3d at 176 (citing *Tennessee v. Garner*, 471 U.S. at 11). Since the officers could not have had probable cause to believe that Isaiah posed a threat of serious physical harm to the officers or others, the use of deadly force was excessive and unreasonable. *See Romero*, 888 F.3d at 176 (citting *Tennessee v. Garner*, 471 U.S. at 1).

The facts here, taken in the light most favorable to Appellants, show that the officers violated a "clearly established" constitutional right protected by the Fourth Amendment to be

free from excessive force and unreasonable seizure. *See Price*, 256 F.3d at 369; *see also Graham v. Connor*, 490 U.S. at 395, 109 S.Ct. 1865; *Garza*, 943 F.3d at 744–45. As shooting someone to death who could not under the circumstances present reasonably be considered a threat of serious physical harm to the officers or others is clearly unlawful, qualified immunity does not shield the officers here. *See Tennessee v. Garner*, 471 U.S. at 10; *Mace v. City of Palestine*, 333 F.3d 621, 624 (5th Cir. 2003).

The District Court therefore erred in granting Defendant officers motion for summary judgment.

2. <u>Monell Claim</u>

It is well established that "a municipality's policy of failure to train" its personnel can give rise to liability under 42 U.S.C. § 1983. *See Sanders–Burns v. City of Plano*, 594 F.3d 366, 380 (5th Cir.2010) (citation and internal quotation marks omitted); *Zarnow v. City of Wichita Falls, Tex.*, 614 F.3d 161, 170 (5th Cir.2010). In particular, to succeed on a *Monell* claim arising from a municipality's failure to adopt an adequate training policy, a

plaintiff must demonstrate that: "(1) [the municipality's] training policy procedures were inadequate, (2) [the municipality] was deliberately indifferent in adopting its training policy, and (3) the inadequate training policy directly caused [the constitutional violation]. *Sanders–Burns*, 594 F.3d at 381 (citing *Baker v. Putnal*, 75 F.3d 190, 200 (5th Cir.1996)).

Under the applicable case law, one way in which a plaintiff can establish a municipality's deliberate indifference to the need for proper training is to demonstrate that a municipality had "[n]otice of a pattern of similar violations," which were "fairly similar to what ultimately transpired" when the plaintiffs own constitutional rights were violated. *See Sanders–Burns*, 594 F.3d at 381.

The City of Austin has a long history of police department use of excessive force. Attached to Plaintiffs' summary judgment response as Exhibit E was the City of Austin's Officer Involved Shooting Report published in June of 2009. [RPA.472–500]. In that report, it is revealed that there were twelve officer-involved

shooting in Austin in 2018. [ROA.475]. Each separate incident is discussed in the report. Notably, seven of the officer-involved shootings were fatal; with five of the deaths being directly attributed to police gunfire. [ROA.475]. The report's conclusion provides ample illustration of the shortcoming of the training provided by the City of Austin to its Police Department, stating:

> Officer-involved shootings are the most absolute representation of the power that police officers hold as a result of their positions. Consequently, every single incident requires a thorough analysis and review. The fact that the Austin Police Department was involved in 12 officer-involved shooting (OIS) incidents in 2018 makes that year especially important to review given this historically high number.
> The OPO's review of the 2018 officer-involved shooting incidents highlights disconcerting patterns that APD must acknowledge and address to provide transparency and accountability to the community. Officers' apparent failure to use de-escalation tactics in many of the incidents, as well as their failure to use "less-lethal" force options in all but one incident, is deeply troubling and requires further explanation by the department. Moreover, the 2018 data clearly reveals a disparate concentration of officer-involved shooting incidents affecting individuals who are ethnic minorities, as well as in areas of Austin that are historically minority-majority. APD must account for these demographic and geographic disparities. Increased accountability related to critical incidents will be an essential part of any foundation upon

> which APD might hope to effectuate the community policing model it endeavors to achieve.

[ROA.492].

Such a troubling conclusion can be grafted neatly into the situation at bar. Here, the police officers failed to identify themselves before they started firing. Officer Wright admitted that he issued no commands or warning before resorting to the use of deadly force. [ROA.462]. Then, without any attempt whatsoever at de-escalation, the defendant police officers instituted a hail of gunfire which caused the death of Isaiah.

Regrettably, the Austin Police Department has not demonstrated that it's willing to ratchet down the death and destruction criticized in the report, as Exhibits F and G to Plaintiffs's summary judgment response are releases describing the facts and circumstances pertaining to police involved shootings which occurred in September and October of this year. [ROA.501, 505]. Unfortunately, the police involved shooting which occurred in September of 2022 was fatal–yet another minority male who died at the hands of the Austin Police

Department. [ROA.502–03].

While Defendant City of Austin claims that its training protocol is sufficient, the fact do not bear that claim out. The conclusion to the June 2020 report serves to accuse the City of Austin of failing in its forthright obligation to properly train its police force to stop killing its citizens. The report sets forth specific areas where the City of Austin has failed to correct the issues raised in the report, namely in the dearth of de-escalation practices and tactics and the failure to develop and use less lethal methods of force. [ROA.492].

Having shown that a genuine issue of material fact exists regarding each and every element of their *Monell* claim, the District Court erred in granting Defendant the City of Austin's motion for summary judgment.

CONCLUSION

PREMISES CONSIDERED, Appellants respectfully requests that this Court sustain the issues raised in this Brief and remand for trial. Plaintiffs further prays that they be granted any relief,

either in law or at equity, to which they may show themselves justly entitled.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2023, I electronically filed the foregoing document with the clerk of the court for the United States Court of Appeals for the Fifth Circuit, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record set forth below who have consented in writing to accept this notice as service of this document by electronic means.

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

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Dated: October 10, 2023.

NO. 23-50471

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CHRISTINE SPRINGS-HUTCHINSON, ON BEHALF OF HERSELF AND THE ESTATE OF ISAIAH HUTCHINSON; BENNY HUTCHINSON, ON BEHALF OF HIMSELF AND THE ESTATE OF ISAIAH HUTCHINSON,
Plaintiffs - Appellants

v.

CITY OF AUSTIN; DEANDRE WRIGHT, DANE O'NEILL; ZACHARY WOODS; THOMAS BERNARD NELSON, III,
Defendants - Appellees

Appeal from Cause No. 1:21-CV-221
In the United States District Court, Western District of Texas
Honorable David Ezra, Presiding

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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RECORD CITATIONS AND ABBREVIATIONS

This brief uses the following abbreviations and record citations:

ROA.123. Record on appeal.

AT Br ___ Brief of Appellant

STATEMENT REGARDING ORAL ARGUMENT

Appellees do not request oral argument. Appellees believe that the issues are clear as briefed and that oral argument would not assist in the disposition of the issues presented by this appeal. FED. R. APP. P. 34(a)(1).

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STATEMENT OF ISSUES

Did the District Court err in finding that there is no genuine factual dispute to show a constitutional violation.

STATEMENT OF THE CASE

This lawsuit arises out of an officer-involved shooting which occurred during the South by Southwest Conference and Festival (SXSW) in Austin, Texas, on March 17, 2019, at approximately 2:50 AM. ROA.401. As clearly recorded and shown by the City of Austin HALO video camera ROA.391, the decedent, Isaiah Hutchinson, was shot by the officers after he first pointed a gun and shot at them. ROA.401. The shooting took place in the middle of the street at the intersection of East 7th Street and the southbound frontage service road of Interstate Highway 35. Video evidence conclusively shows all relevant events. ROA.391. The Officers' respective actions were objectively reasonable and did not violate Hutchinson's constitutional rights. ROA.613.

There is no genuine dispute as to any material fact. The Appellees are entitled to judgment as a matter of law. ROA.617.

I. Procedural History

Appellants filed suit on March 9, 2021, against both the City of Austin and the officers. ROA.7. The Amended Complaint was filed on August 3, 2021. ROA.52. In the complaint, Appellants allege violations of decedent Hutchinson's

Fourth and Fourteenth Amendment rights and a violation of §1983 by the City. ROA.52. Defendants-Appellees, the City and the individual police officers, filed separate motions for summary judgment on October 14, 2022, arguing that videos of the interaction show no genuine material dispute as to the alleged misconduct. ROA.108 (City's Mot. Summ. J.); ROA.407 (Defendant Officers' Mot. Summ. J.). Appellees' respective motions and their subsequent reply memorandum are incorporated herein. ROA.108, ROA.407, ROA.516.

On June 9, 2023, the District Court found there was no genuine factual dispute as to whether decedent Hutchinson's constitutional rights were violated and granted summary judgment as to all claims against the Defendants-Appellees, the Officers and the City. ROA.595,613,616,617.

On June 22, 2023, Appellants filed the notice of appeal. ROA.618.

On August 1, 2023, the Electronic Record on Appeal was filed (Docket 23-50471 entry no. 20). ROA.1-626 (23-50471.1 through 23-50471.626). The HALO video (Exhibit 7) referenced at ROA.391, ROA.595-617, is a video exhibit on file with the District Court. ROA.4.

II. Statement of the Facts

Record on Appeal References for Summary Judgment Evidence by Appellees

ROA.108-127 - City of Austin Motion for Summary Judgment;
ROA.128-171 - Exhibit 1 - Deposition of Officer Deandre Wright;
ROA.172-202 - Exhibit 2 - Deposition of Officer Dane O'Neill;
ROA.203-241 - Exhibit 3 - Deposition of Officer Thomas Nelson;

ROA.242-273 - Exhibit 4 - Deposition of Officer Zachary Woods;
ROA.391 - Exhibit 7 placeholder for APD HALO video [Bates No. COA 5047 and COA 003](video exhibit on file with the District Court. ROA.4);
ROA.392-406 - Exhibit 8 - Screen Shot Photos from APD HALO Video [Bates No. COA 5047];
ROA.407-418 - Police Officers' Combined Motion for Summary Judgment;
ROA.426-441 - Plaintiffs Response Opposing Summary Judgment;
ROA.442-446 - Exhibit A - Affidavit of Amy M. Nowlin;
ROA.447-450 - Exhibit B- Affidavit of Amanda Estrada;
ROA.451-470 - Exhibit D- Affidavit of Deandre Wright;
ROA.516-523 - Defendants' Reply in Support of Summary Jdt;
ROA.595-617 - Order Granting Summary Judgment

Background

Appellants' decedent, Isaiah Hutchinson (Hutchinson), the son of Christine Springs-Hutchinson and Benny Hutchinson (Plaintiff-Appellants), died from the injuries he sustained during an officer-involved shooting on March 17, 2019. ROA.52.

Appellants asserted claims under 42 U.S.C. §1983 against the individual police officers (Appellee Defendant Officers) for violating Hutchinson's Fourth and Fourteenth Amendment rights. ROA.52 (Dkt. # 11 ¶¶ 6.01–6.03.) Plaintiffs also assert a § 1983 claim against the City of Austin (the "City"), alleging that Hutchinson's rights were violated due to City practices that include discriminatory policing and failing to train and discipline police officers. ROA.52 (Id. ¶¶ 6.07–6.11.)

Summary Judgment Evidence

This shooting took place in the early hours of March 17, 2019, in Austin, Texas. Hutchinson was a passenger in a black Maserati SUV that was rear-ended by a Chevrolet Monte Carlo while both vehicles traveled on East 7th Street. ROA.52 (Dkt. # 11 ¶ 4.02.) Footage from the City of Austin's High Activity Location Observation ("HALO") cameras captured the collision and subsequent events. ROA.23. ROA.108. ROA.391 (Exhibit 7 placeholder for HALO video exhibit on file with the District Court. ROA.4).

Following the collision, the driver of the Maserati SUV, Demarious Davis ("Davis"), stopped at the intersection of East 7th Street and the southbound service road of Interstate 35. ROA.391 (Exhibit 7 placeholder for HALO video exhibit on file with the District Court. ROA.4) ("HALO video," Dkt. # 22-1, Ex. 7 at 2:49:43.). Davis and Hutchinson both exited the SUV and walked to the driver's side of the Monte Carlo, which had stopped behind and to the left of the SUV. ROA.391 (*Id*. at 2:50:06.) Davis appears to punch the driver of the Monte Carlo twice through the open car window. ROA.391(*Id*. at 2:50:07.). The Monte Carlo driver can be seen opening fire on Davis and Hutchinson from inside the vehicle, firing several gunshots. ROA.391 (*Id*. at 2:50:09.). Davis and Hutchinson ran back toward the SUV. ROA.391 (*Id*. at 2:50:10.).

As explained below, the Court correctly found that the Appellants did not raise a genuine issue of material fact as to whether this individual was Hutchinson. The Court noted that Appellants appeared to concede this point in Plaintiffs' Surreply to Defendants' Reply. ROA.597 (See n.1, quoting ROA.543 (Dkt. # 35 at 2–3) ("The HALO video ... reveals that Hutchinson re-entered the Maserati in which he had been riding after being fired upon by the officers.").

Austin Police Department Officers, including the Appellee-Defendant Officers, "were working on foot nearby as crowd control for the South by Southwest music festival." ROA.597 (quoting ROA.52 (Dkt. # 11 ¶ 4.04.) The Officers heard the gunfire "and responded rapidly on foot to the scene." ROA.597 (*Id*.). Hutchinson ran along the driver's side of the SUV and around the front end of the vehicle, making his way to the passenger's side. ROA.391 (HALO video at 2:50:13.) As Hutchinson reached the front right side of the SUV, he pointed a gun in the direction of the approaching officers and fired at least one shot. ROA.391(*Id*. at 2:50:15.). The Court explained this finding based on its review of Defendants' summary judgment evidence—in particular, the video evidence. ROA.598.

The Court properly found and determined that Appellants had not raised a genuine issue of material fact as to whether Hutchinson fired a gun at the officers, as explained below. The Appellee Officers fired multiple shots at Hutchinson as he entered the rear passenger seat of the SUV. (ROA.391 at 2:50:16–2:50:27; and

ROA.52 (Dkt. # 11 ¶ 4.04.)) The SUV began to flee the scene, accelerating down 7th Street toward the freeway entrance ramp. ROA.391 (HALO video at 2:50:23.) The SUV was found abandoned later that day. ROA.52 (Dkt. # 11 ¶ 4.06.) Hutchinson, "deceased from apparent gunshot wounds," was in the back seat. ROA.52 (*Id*.)

SUMMARY OF ARGUMENT

The District Court did not err in granting summary judgment and dismissing the lawsuit against the Appellee Officers and The City. ROA.617. For the reasons explained in the District Court's order, the pleadings and the law are clear that there is no genuine factual dispute supporting a constitutional violation. Final Judgment was proper as to all claims against the Appellees. ROA.595-617. Further, Appellees' respective motions and their subsequent reply memorandum are incorporated herein. ROA.108 (City's Mot. Summ. J.); ROA.407 (Defendant Officers' Mot. Summ. J.), ROA.516 (Reply memorandum).

ARGUMENT

The District Court did not err in finding that there is no genuine factual dispute to show a constitutional violation. Final Judgment was proper as to all claims against the Appellees.

Appellee Officers contend that Plaintiffs' §1983 claims are barred by the defense of qualified immunity. ROA.407 (Dkt. # 23.) Qualified immunity protects government officials "from liability for civil damages insofar as their conduct does

not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). To determine whether a government official is entitled to qualified immunity, a court decides (1) whether a plaintiff has alleged facts sufficient to establish a constitutional violation, and (2) whether the right at issue was clearly established at the time of the defendant's alleged misconduct. *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). A court has discretion to determine the order in which it considers those questions. *Id*. at 236. In the present case, the Court first considered and properly determined that the appellants had not adequately alleged a constitutional violation. ROA.613.

I. Constitutional Violation

Appellants have not met their burden to show a violation of the Constitution. Summary judgment is appropriate when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–25 (1986). A dispute regarding a material fact is "genuine" if the evidence is such that a reasonable jury could return a verdict in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

Because it is a common element necessary for Appellants' claims against both the City and the individual police officers, the District Court analyzed

whether decedent Hutchinson's constitutional rights were violated. ROA.600-613. The Court correctly found that his constitutional rights were not violated. ROA.613.

The use of deadly force to apprehend a person suspected of a criminal offense "is a seizure subject to the reasonableness requirement of the Fourth Amendment." *Tennessee v. Garner*, 471 U.S. 1, 7 (1985). To prevail on a Fourth Amendment excessive-force claim, a plaintiff must show "(1) an injury, (2) which resulted directly and only from the use of force that was clearly excessive, and (3) the excessiveness of which was clearly unreasonable." *Malbrough v. Stelly*, 814 F. App'x 798, 802–03 (5th Cir. 2020) (citing *Ramirez v. Knoulton*, 542 F.3d 124, 128 (5th Cir. 2008)). The analyses of whether a use of force is "clearly excessive" or "clearly unreasonable ... are often intertwined." *Poole v. City of Shreveport*, 691 F.3d 624, 628 (5th Cir. 2012).

When assessing reasonableness, a court must consider the totality of the circumstances in each case, 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." *Graham v. Connor*, 490 U.S. 386, 396 (1989). "The threat-of-harm factor typically predominates the analysis when deadly force has been deployed." *Harmon v. City of Arlington*, 16 F.4th 1159, 1163 (5th Cir. 2021). The Fifth Circuit has held that

"[a]n officer's use of deadly force is not excessive, and thus no constitutional violation occurs, when the officer reasonably believes that the suspect poses a threat of serious harm to the officer or to others." Id. (citing *Manis v. Lawson*, 585 F.3d 839, 843 (5th Cir. 2009)).

The District Court further explained that because of the difficulty of "split-second judgments," reasonableness is judged "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id*. (quoting *Graham*, 490 U.S. at 396). Courts "should be cautious about second-guessing a police officer's assessment, made on the scene, of the danger presented by a particular situation." Id. (quoting *Ryburn v. Huff*, 565 U.S. 469, 477 (2012)).

Appellants asserted three genuine issues of material fact precluded summary judgment. The Court addressed each in turn and properly found none of them to apply. ROA.602-613.

A. Identity of the passenger

Appellants argue that there is a genuine issue of material fact as to whether Hutchinson was the passenger who shot at the police. ROA.426 (Dkt. # 27 at 4.) In support of their assertion, Appellants point to sworn statements provided to police by Ashley Nowlin and Amanda Estrada, who both witnessed the incident from a nearby car. ROA.442-446 (Nowlin) and ROA.447-450 (Estrada) (Dkt. # 27, Exs. A

& B.) The Court reviewed and explained that Nowlin's statement focuses on the driver of the SUV:

> There were a total of 4 males in the car. I only remember the driver wearing a white long sleeve shirt or sweater. It was distinctive because it was white. I think it also had a print on it.
> ....
>
> [I] heard [a] gunshot. I looked and saw the two black males run to their car. Amanda told me, "That Hispanic male just shot at them!" I do not remember how many shots there were at that time. I ducked a little and saw the two males get back into their vehicle. I looked and could see a police officer run up to the right front side of my vehicle with his gun out. I looked at the SUV and could see the black male drive[r] with the sweater pointing a gun at what I thought was the windshield of my car. That's when I saw the officer shooting at the SUV. I could tell that the SUV was hit because the passenger side back window was shattered.
> ....
>
> The Black SUV was a 4[door] with 4 black males inside. The driver was the one in the white sweater and had a gun in his hand. I could not tell which hand it was in. I could not see if the black male was shooting. I only saw the black male pointing the gun in my direction. I was scared for my life.

ROA.442-446 (Nowlin) (Dkt. # 27, Ex. A.) The HALO camera footage shows that the driver of the SUV returned directly to the driver's seat of the SUV after the Monte Carlo driver opened fire. ROA. 391. (HALO video at 2:50:12.) Though both the SUV driver and passenger were wearing light-colored sweaters or hoodies—as shown in the video screenshot located at ROA.392,398, the Court based its findings on the video evidence, not screenshots. ROA.603 (citing *Dawes v. City of Dallas*, No. 3:17-CV-1424-X, 2022 WL 3273833, at *2 (N.D. Tex. Aug. 11, 2022) (stating same).

The district court properly concluded that the passenger, not the SUV driver, is clearly the individual who goes around to the passenger side of the SUV and fires toward the officers. ROA.603.

Estrada, meanwhile, stated in pertinent part:

> I then heard a gunshot and saw sparks flying out of the Monte Carlo driver's window. The SUV driver grabbed his left shoulder/chest area with his right hand. I took that to mean that the SUV driver had been shot. The SUV driver then ran back to his SUV around the front of it to the passenger side. At the same time the SUV front passenger that was with him at the Monte Carlo must have had a gun because it sounded like he was returning fire. (The sounds of the gunshots were from where he was standing.) Almost at the same time again the back passengers of the SUV got out and I then heard multiple gun shots. I took this to mean that those passengers also had guns and were returning fire.
>
> By now Ashley and I were trying to duck so we wouldn't get hit. I then heard the police yelling and they were coming from the direction of the Gulf Gas Station. I am not sure what they were yelling but I knew they were the police. Then a lot of gunfire happened. ***I did see one of the SUV people (not sure which one since I was ducking) shot in the direction of the police. I did see that person had his arm extended and a gun in his hand***. The gun looked to be black since I did not see anything shiny on it. The SUV occupants ended up getting back in the SUV and taking off with the doors still open.

ROA.447-450. (Dkt. # 27, Ex. B.) (emphasis added)

The HALO camera footage definitively shows that the SUV driver did not run around the front of the SUV toward the passenger side. ROA.391 and ROA.605 (HALO video at 2:50:12.) "Although evidence is reviewed in the light most favorable to the nonmoving party, the Fifth Circuit has instructed that courts

assign greater weight, even at the summary judgment stage, to the facts evident from video recordings taken at the scene." *Carnaby v. City of Houston*, 636 F.3d 183, 187 (5th Cir. 2011). In addition, although Estrada identified the individual who accompanied the driver as "the SUV front passenger," she could only say that it was "one of the SUV people" who "shot in the direction of the police." ROA.447-450.

"[C]onclusional allegations and denials, speculation, improbable inferences, unsubstantiated assertions, and legalistic argumentation do not adequately substitute for specific facts showing a genuine issue for trial." *Coleman v. BP Expl. & Prod., Inc.*, 19 F.4th 720, 726 (5th Cir. 2021). Even though Hutchinson's identity is not an issue for which Appellants should have trouble presenting competent evidence, they have mustered only an unsubstantiated allegation. Instead, they rely only on the statements of two witnesses whose accounts are (understandably, given the chaotic scene) not consistent with the video evidence. A dispute is only genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson,* 477 U.S. at 248. The Court was absolutely correct in finding there was no genuine issue of material fact. ROA.606.

B. Hutchinson's possession or firing of a firearm

The Court found that Appellants had also failed to raise a genuine issue of material fact as to whether Hutchinson possessed or fired a gun. ROA.606-609.

The Court reviewed the HALO video (ROA.391) and explained, first, the video evidence showed that Hutchinson had a gun—or at least an item that would have appeared to a reasonable officer to be a gun—as seen in the following referenced screenshots. ROA.392,398,400,401,608. The HALO camera footage also shows a muzzle flash. (HALO video at 2:50:15.)

Second, Appellants mischaracterize Wright's testimony: he testified that he saw a muzzle flash "from what I believed was a gun in [Hutchinson's] hand." ROA.609, ROA.451 (Dkt. # 27-3 at 8 ("I don't recall being able to specifically see the gun. I ... recall being able to see the actual muzzle flash, um, from what I believed was a gun in his hand.")) Wright's testimony undermines Plaintiffs' assertion of a genuine issue of material fact rather than supporting it.

The Court observed that even if -- contrary to the HALO camera footage evidence -- it is assumed for the sake of argument that Hutchinson did not fire the gun, Hutchinson undoubtedly pointed a gun (or gun-like object) in Appellee Officers' direction. ROA.609. The Fifth Circuit has held that "officers use lethal force justifiably if they reasonably believe the individual is reaching for a gun" and has "adhered to this standard even in cases when officers had not yet seen a gun when they fired, or when no gun was ever found at the scene." *Cloud v. Stone,* 993 F.3d 379, 387 (5th Cir. 2021) (citations omitted). Appellant's theory "fails to provide adequate deference to [D]efendants' snap judgment, in the heat of a

perilous and rapidly evolving situation, about the danger [Hutchinson] posed." ROA.609 (citing *Garza v. Briones*, 943 F.3d 740, 748 (5th Cir. 2019). Thus, the Court properly concluded that there is no genuine issue of material fact about Hutchinson's possession or firing of a gun. ROA.609.

C. Shooting as SUV flees

The Court also found that Appellants failed to prove that there is a genuine issue of material fact as to whether Appellee Officers "continued to use deadly force by firing repeated shots at the fleeing Maserati in which Hutchinson was a passenger." ROA.610. The Appellants cited to the HALO camera footage and screenshots taken from this footage. ROA.610 (Dkt. # 22-1, Exs. 7 & 8.).

The Court reviewed the footage and noted that as the SUV begins pulling away, the back passenger door appears to be slightly ajar, and officers still have their guns pointed toward the vehicle. (HALO video at 2:50:23.) As a point of reference, the Court noted that approximately one second later, one of the officers falls backwards. (HALO Video at 2:50:24.) As the SUV pulls farther away, the view from the HALO camera shifts to focus in on the SUV, and the officers are no longer in view. About four seconds later, no officer had their gun pointed toward the SUV. ROA.610 (*Id.* at 2:50:29.)

Two Defendant Officers thought that Defendant Nelson fired at the SUV as it was leaving. ROA.611 (ROA.128 at 103:5–6 (Wright: "As the vehicle was

leaving the scene I believe that Detective Nelson discharged his firearm."), ROA.172-202 (Ex. 2 at 34:14–17 (O'Neill: "I noticed one police officer shooting at the Maserati as it began to drive away .... Detective Nelson.")).

O'Neill and Nelson himself testified that Nelson stopped firing by the time the SUV reached the frontage road. According to O'Neill, "It was for a very short amount of time. By the time he got to the service road, which was only feet away, [Nelson] had stopped engaging." (*Id.*, Ex. 2 at 44:4–6.) Nelson testified that he was the last officer firing. (ROA.203-241, Nelson Depo at 113:25.) Nelson further stated:

> As the vehicle starts to move there's still two more shots that are fired, but it's not continuously fired upon as it's fleeing the scene under the, the highway. There's where I think we're, we're disagreeing. The number of rounds fired are accounted for before that vehicle hits the frontage road. So there's, there's not, there's not this continuous volume of fire. That's reflected in the investigator's report. I fired five rounds --
> ....
> I fired five rounds. The fifth one was fired before the vehicle finished getting across the front --the southbound frontage road, like I previously stated.

(ROA.203-241 at 102:7–15, 111:20–23.)

The Court explained that the Appellants "have not adduced evidence controverting O'Neill and Nelson's testimony that Nelson (and all other Defendant Officers) stopped firing by the time the SUV reached the frontage road." ROA.612. *See Shumpert v. City of Tupelo*, 905 F.3d 310, 324 (5th Cir. 2018), as revised (Sept. 25, 2018) ("Plaintiffs still have the burden of adducing evidence that contradicts

[the officer's] description of the shooting."). The Court concluded that in any event, the Court does not find that firing at Hutchinson as the SUV fled was "clearly unreasonable" given the circumstances. ROA.612.

The Appellee Officers confronted a "tense, uncertain, and rapidly evolving" situation during their twenty-second encounter with Hutchinson. *Graham*, 490 U.S. at 396–97. Nelson's uncontroverted testimony described a chaotic scene as the officers raced to respond the gunfire: "[p]eople were yelling, vehicles were driving, there was road noise, and we were being shot at." (ROA.203-241 at 68:17–19.) Hutchinson's gunfire could have struck the officers or innocent bystanders. Hutchinson then tried to evade arrest by flight. An officer fell to the ground as the SUV made its escape, which apparently caused another officer to believe that this officer had been shot. These are circumstances in which a reasonable officer could well fear that Hutchinson posed a severe and continuing threat to public safety. ROA.612.

The Supreme Court established long ago that if "the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape." If feasible, a warning should also be given. *Garner*, 471 U.S. at 11-12. But officers are not always required to give warnings in "fast-moving" situations, as was the case here. See

Mendez v. Poitevent, 823 F.3d 326, 333–334 (5th Cir. 2016); *Colston v. Barnhart*, 130 F.3d 96, 100 (5th Cir. 1997). Moreover, "if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended." *Garza,* 943 F.3d at 748 (citing *Plumhoff v. Rickard*, 572 U.S. 765, 777 (2014)). Officers on the scene could have reasonably believed Hutchinson to be an imminent threat. Hutchinson was armed, had shot at the police—a serious crime—and was fleeing a scene that the officers were initially responding to because of a shooting. ROA.613.

Appellants, the Court determined, have therefore not carried their burden of establishing a genuine issue of material fact as to whether Appellee Defendant Officers violated Hutchinson's constitutional rights. The Court properly determined that the Appellee Officers are entitled to qualified immunity. ROA.613.

II. Clearly Established Law

The Appellees are also entitled to qualified immunity because Appellants have not shown a violation of clearly established law. A clearly established right, for qualified immunity, is one that is "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Reichle v. Howards*, 566 U.S. 658, 664 (2012). "Put simply, qualified immunity protects 'all but the plainly incompetent or those who knowingly violate the law.' " *Mullenix v.*

Luna, 577 U.S. 7, 12 (2015) (quoting *Malley v. Briggs*, 475 U.S. 335 (1986)). ROA.614.

The Supreme Court has instructed courts "not to define clearly established law at a high level of generality." *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011). Preexisting precedent "must have placed the question 'beyond debate,' with 'the right's contours ... sufficiently definite that any reasonable official in the [officer's] shoes would have understood that he was violating it.' " *Baker v. Coburn*, No. 21-10303, 2023 WL 3573302, at *3–4 (5th Cir. May 17, 2023), as revised (May 19, 2023) (quoting *Rickard*, 572 U.S. at 779).

This specificity requirement "assumes special significance in excessive force cases, where officers must make split-second decisions to use force." *Harmon*, 16 F.4th at 1166. "The results 'depend very much on the facts of each case,' and thus police officers are entitled to qualified immunity unless existing precedent 'squarely governs' the specific facts at issue." *Id*. (quoting *Kisela v. Hughes*, 138 S. Ct. 1148, 1153 (2018)).

The Court was correct in finding that the Appellants have not met their burden of identifying relevant precedent that "squarely governs" the facts of this case. Appellants rely on *Tennessee v. Garner* "to divine a clearly established prohibition on the use of deadly force 'where the suspect poses no immediate threat to the officer and no threat to others.' " *Morrow v. Meachum*, 917 F.3d 870,

878 (5th Cir. 2019) (quoting *Garner*, 471 U.S. at 11). But the Supreme Court has already rejected this argument and warned against extending *Garner*. Id. (citing *Scott v. Harris*, 550 U.S. 372, 382 (2007); *Mullenix*, 577 U.S. at 12–13). Appellants case in the present situation is "obviously not *Garner* 2.0" because "[a]s *Garner* recognized, the ***armed suspect*** here 'present[s] a different situation.' " *Wilson v. City of Bastrop*, 26 F.4th 709, 714 (5th Cir. 2022) (quoting *Garner*, 471 U.S. at 21) (emphasis added).

Appellants also cite *Mace v. City of Palestine*, 333 F.3d 621, 624 (5th Cir. 2003), in support of their arguments. But *Mace* involved "an intoxicated, violent and uncooperative individual who was wielding a sword within eight to ten feet of several officers in a relatively confined space." 333 F.3d at 725. And the Fifth Circuit found in *Mace* that the officer's use of deadly force was not objectively unreasonable. *Id*. If anything, *Mace* hurts Appellants' case.

The Court determined that because Appellants have not carried their summary judgment burden to show that the Officers' use of force was objectively unreasonable in light of clearly established law at the time, the Officers were entitled to qualified immunity on both prongs.

III. Municipal Liability Under § 1983

The Court also properly dismissed the §1983 *Monell* claims against the City.

The Court explained that although municipalities and other local government units are among those "persons" to whom § 1983 applies, "[a] municipality cannot be held liable when its employee[s] did not violate the Constitution." *Malbrough v. Stelly*, 814 Fed. App'x 798, 806 (5th Cir. 2020); see also *Harmon*, 16 F.4th at 1168 (dismissing municipal-liability claims because the plaintiffs "failed to allege a predicate constitutional violation by [the officer]").

The Court explained that because the Court had already found that the use of force by Defendant Officers did not violate the Fourth Amendment, the City of Austin was entitled to summary judgment. ROA.616.

CONCLUSION

Appellants have plead only legal conclusions couched as factual allegations, and their allegations are devoid of factual support or legal authorities to overcome summary judgment in favor of the appellee officers and the City. ROA.617.

The District Court reviewed videos and evidence and found that Hutchinson suffered no cognizable constitutional violation. Appellants' burden was to provide evidence that goes beyond mere inference, and they have not met this burden. Accordingly, because there is no genuine factual dispute as to whether Hutchinson's constitutional rights were violated, the Court properly granted the respective Motions for Summary Judgment by the Appellees.

As a result, the Appellees respectfully request that this Court affirm the District Court's Final Judgment.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Fed. R. of App. P. 32(a)(7)(B) because this brief contains 4,850 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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