

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALYSSA SANDERS,

Plaintiff

v.

CITY OF AUSTIN,

Defendant

§
§
§
§
§
§
§
§
§
§
§

CAUSE OF ACTION:
1:22-cv-314

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff Alyssa Sanders brings this 42 U.S.C. § 1983 case against the City of Austin for the brutal and excessive force inflicted on her by an Austin Police Department officer who shot her in the head as she was peacefully exercising her right to peaceably assemble and protest.

As a consequence of this unconscionable, deadly use of force and the City's practices that enabled it, Alyssa's skull fractured and she suffered a serious traumatic brain injury. Her life will never be the same.

I. PARTIES

1. Plaintiff Alyssa Sanders is a resident of Travis County, Texas.
2. Defendant City of Austin, is a municipality that operates the Austin Police Department. Defendant City of Austin may be served through its City Clerk at 301 W. 2nd Street, Austin, TX 78701. The City’s policymaker for policing matters was former Police Chief Brian Manley at the time of the incident and is currently Chief Joseph Chacon.

II. JURISDICTION AND VENUE

3. This Court has federal question jurisdiction over this 42 U.S.C. § 1983 action pursuant to 28 U.S.C. §§ 1331 and 1343.

4. This Court has general personal jurisdiction over Defendant as the Austin Police Department is in Travis County, Texas.

5. This Court has specific *in personam* jurisdiction over Defendant because this case arises out of conduct by Defendant that injured Plaintiff Alyssa Sanders, and which occurred in Travis County, Texas, which is within the Western District of Texas.

6. Venue of this cause is proper in the Western District pursuant to 28 U.S.C. § 1391(b) because a substantial portion of the events or omissions giving rise to Plaintiff's claims occurred in Travis County, which is within the Western District of Texas.

III. FACTS

7. Following the police killings of George Floyd in Minneapolis and Mike Ramos in Austin, demonstrators organized protests against police brutality throughout Austin on May 30 and on May 31, 2020.

8. Plaintiff Alyssa Sanders attended the demonstrations to lend her voice to the chorus demonstrating against police violence.

9. On May 30, 2020, APD officers overreacted numerous times and used chilling, excessive force on multiple peaceful demonstrators. Among others, APD's victims on May 30, 2020 included Nicole Underwood, Jason Gallagher, Jose Herrera, Tracy Cates, Levi Ayala, and Bomani Barton.

10. In fact, the officers that shot Ms. Underwood, Mr. Ayala, and Mr. Barton all have been indicted for aggravated assault by a public servant.

11. Officer John Siegel, who shot Nicole Underwood, also pepper sprayed Mr. Gallagher.

12. When asked why he shot Ms. Underwood, Officer Siegel pled the Fifth and refused to answer.

13. On May 30, 2020, Chief Manley, City Manager Spencer Cronk, Mayor Steve Adler, and other senior city leadership were explicitly told by then Austin City Council Member, Greg Casar, about horrific injuries caused by APD officers on May 30, 2020.

14. Casar specifically noted the injuries to Nicole Underwood and Levi Ayala and pleaded with APD and City leadership to put a stop to APD's violence.

15. Rather than correct APD's dangerous behavior and put a stop to his officers shooting people, Chief Manley and his senior leadership at APD continued to have officers fire less lethal weapons at protesters, often from unsafe distances and into crowds.

16. Thus, on the afternoon of May 31, 2020, Alyssa remained in potential danger simply because she was standing among protesters near APD officers at the intersection of Cesar Chavez St. and Guadalupe St., holding a water bottle and a sign that said, "Black Lives Matter."

17. After a bus passed between a line of APD officers and the protesters, APD officers pushed into the crowd.

18. The force they used was unnecessary and unreasonable.

19. More particularly, APD officers pepper sprayed the crowd indiscriminately and fired bean bag shotguns and 40mm less lethal guns into the crowd.

20. As a consequence of APD's actions, Sanders attempted to escape to safety.

21. Before she could do so, APD Officer Eric Heim fired his 40mm gun and shot Alyssa in the head.

22. Alyssa was doing absolutely nothing wrong.

23. Alyssa was doing absolutely nothing remotely threatening to any protester or officer around her.

24. Yet Officer Heim shot her in the head without any reason or justification.

25. Officer Heim's shot fractured Alyssa's skull and caused multiple brain bleeds.

26. Officer Heim has been indicted for the criminal offense of aggravated assault by a public servant.

27. Upon information and belief, Officer Heim, and APD leadership generally, resented and were substantially motivated by their opposition to the demonstrators' message that police violence must end and that Black Lives Matter.

28. Moreover, the attack by Heim and APD would chill a person of ordinary firmness from continuing to engage in protected speech and assembly.

29. Numerous officers were standing alongside Officer Heim, but not one interceded to stop him or the other officers firing.

30. As a consequence of APD and Heim's conduct, Alyssa has suffered significant and permanent pain, mental anguish, impairment, injury, and disfigurement.

31. Tragically, Alyssa was merely one of many innocent people APD officers used excessive force against on May 30 and May 31 who were doing nothing more than speaking out against police violence.

32. As noted earlier, on May 30, 2020, APD's victims of unreasonable force included, among others, Nicole Underwood, Jason Gallagher, Joe Herrera, Levi Ayala, and Bomani Barton.

33. APD Officer John Siegel used unreasonable force against Underwood and has been indicted for aggravated assault by a public servant.

34. APD Officer Nicholas Gebhart used unreasonable force against Ayala and has been indicted for aggravated assault by a public servant.

35. In fact, the City has agreed to pay Ayala a settlement of \$2,950,000.

36. APD Officers John Siegel, Salvador Gonzalez-Galvan, and Bryan McCulloch used unreasonable force against Gallagher.

37. APD Officer James Morgan used unreasonable force against Herrera.

38. And despite the fact that Morgan seriously injured Herrera, APD has not conducted an Internal Affairs investigation into the Herrera shooting, and has not identified Morgan as the shooter to the Travis County District Attorney's office.

39. APD Officer Kyu An used unreasonable force against Barton and has been indicted for aggravated assault by a public servant.

40. And these are just a few examples of APD's outrageous abuse preceding the attack on Ms. Sanders.

41. Despite then Councilman Casar's attempt on May 30, 2020 to stop the carnage, APD's leaders did not stop APD from firing less lethal weapons at protestors.

42. Thus, on May 31, 2020, APD officers continued to fire weapons at innocent protesters like Sanders with reckless abandon.

43. One of the many individuals shot on May 31, 2020 was Anthony Evans. Evans was hit in the face.

44. Evans was doing nothing wrong before being shot.

45. APD Officer Kyle Felton used unreasonable force against Evans and has been indicted for aggravated assault by a public servant.

46. The City agreed to pay a settlement to Mr. Evans of \$2,000,000.

47. Another of the many individuals APD shot in the head was Justin Howell, a twenty-year-old college student who also had done nothing that could possibly justify him being shot.

48. APD Officer Jeffrey Teng used unreasonable force against Howell.

49. Teng has been indicted for aggravated assault by a public servant and the City agreed to pay Howell a settlement of \$8,000,000.

50. And when given the opportunity to explain why he shot Justin, Teng pled his Fifth Amendment right not to incriminate himself.

51. After being shot in the head, Justin lay on the ground unconscious and bleeding.

52. No police officer came to help him.

53. Instead, protesters rushed to help Howell.

54. Incredibly, rather than assist those protesters get Justin emergency medical care, APD shot one of them.

55. In particular, APD officer Chance Bretches shot Meredith Drake, a medic with her hands in the air who was trying to get Justin help.

56. Drake posed no danger whatsoever to anyone.

57. APD Officer Chance Bretches used unreasonable force against Drake.

58. And when asked directly if he intentionally shot Ms. Drake while she posed no danger to anyone, Officer Bretches invoked his Fifth Amendment right not to incriminate himself.

59. And Bretches pled the Fifth to questions concerning his assault on another citizen in 2019 and on Arianna Chavez with a bean bag shotgun just a few hours earlier.

60. Upon information and belief, none of the individuals indicted for aggravated assault by a public servant, including Heim, have been disciplined by APD for their conduct.

61. Likewise, neither Chief Manley nor any of Heim's supervisors have been disciplined for tolerating, authorizing, or endorsing this type of despicable and unconstitutional conduct as well as the many other instances of excessive force and unconstitutional conduct that have been documented.

62. This lack of discipline as to senior leaders and Manley himself is all the more shocking as Chief Manley has acknowledged that Meredith Drake, Levi Brad Ayala, Justin Howell, and Anthony Evans were victims of unreasonable force by APD officers.

63. Equally disturbing, despite watching videos of several APD officers gun down innocent protesters, APD's current Chief, Joseph Chacon, ratified the wrongdoing of his officers by, among other things, claiming in a press conference that he had seen no evidence of criminal conduct by APD officers.

64. To date, Chief Chacon has refused to make public the videos showing criminal conduct and abhorrent violence by APD officers.

65. City Manager Cronk, who also ignored then Councilman Casar's pleas for help, further ratified APD's misconduct by telling the public that officers who had violated the law had not done so.

66. APD Chief of Police, Brian Manley, adopted policies that authorized or tolerated this unreasonable, unnecessary, and brutally excessive force even though Chief Manley had long known of the dangers of firing projectiles into crowds and at defenseless persons, and was actually aware that less lethal weapons had been unreasonably used multiple times on May 30, 2020 and multiple times again on May 31, 2020 prior to the attack on Sanders. Despite this,

Austin Police Department policies and practices – and Manley and APD leadership – authorized their continued use. And despite claims to the contrary, and knowing they resulted in numerous serious injuries, Chief Chacon continues to authorize the use of bean bag shotguns and 40 mm so called less lethal guns.

67. Chief Manley knew, as any reasonable policymaker capable of rational thought would also know, including but not limited to Chief Chacon now, that as a direct consequence of such practices, innocent people like Plaintiff would be injured and victimized, and their constitutional rights violated.

68. In fact, then Councilman Casar told him as much in a text message.

69. And numerous people in addition to Alyssa Sanders suffered severe and devastating injuries as a result of APD's practices and excessive force on May 30, 2020 and May 31, 2020.

70. According to Dell Medical Center's physicians, seven victims required surgical interventions and four victims retained less lethal rounds in their bodies/heads.

71. More particularly, victims suffered intercranial hemorrhages, depressed skull fractures, depressed frontal bone fracture, fractured jaws, brain damage, and post traumatic stress disorder.

72. After ignoring the pattern of excessive force that preceded the attack on Alyssa for several more days, multiple members of the City Council called for Manley to be removed as APD's Chief of Police.

73. Following the calls to remove him, Chief Manley acknowledged the obvious, the practices and policies at Austin Police Department of shooting individuals in crowds were dangerously flawed and he agreed to change them – a change any reasonable policymaker would

have made prior to Plaintiff being shot. But he and subsequent chiefs still continue to authorize the use of these potentially deadly weapons on citizens.

74. Additionally, APD under Manley's leadership has a long history of failing to discipline, re-train, or terminate officers known to have used excessive force.

75. Sadly, this practice has continued under Chief Chacon and City Manager Cronk.

IV. CAUSES OF ACTION

A. FIRST, FOURTH AND FOURTEENTH AMENDMENT § 1983 *MONELL* CLAIM

76. Plaintiff incorporates the preceding paragraphs as if alleged herein.

77. APD Officer, Eric Heim, while acting under color of law, used excessive and conscience shocking force on Alyssa Sanders when she posed no danger to anyone and in retaliation against her protected speech rights.

78. The City of Austin, had the following policies, practices, or customs in place when APD Officer Heim retaliated against and shot and injured Plaintiff Sanders without justification:

- a. Shooting less lethal weapons into crowds where innocent people could be injured;
- b. Shooting less lethal weapons at or near people who pose no danger to anyone;
- c. Using deadly force when it is not justified.
- d. Using, authorizing, and/or tolerating excessive force against non-violent protestors;
- e. Failing to adequately discipline officers;
- f. Failing to adequately supervise officers;
- g. Not interceding to stop excessive force or constitutional violations;
- h. Failing to adequately train officers concerning de-escalation of force, crowd control, use of force against non-violent protestors, and the use of less lethal weapons and the dangers associated therein;

- i. Retaliating against protestors;
- j. Failing to train officers regarding demonstrators' free speech and assembly rights;
- k. Failing to train officers to intervene to stop constitutional violations, including use of excessive force;
- l. Failing to train or instruct officers about specific incidents it considers unreasonable, excessive force, or in violation of the Constitution; and
- m. Training officers to act as paramilitary "warriors" and creating an "us vs. them" culture where officers were "at war" with the community they were supposed to be serving, which encouraged officers to use excessive force.

79. Each of the policies, practices, or customs delineated above was actually known, constructively known, approved, and/or ratified by City of Austin and its then policymaker for law enforcement purposes, Chief of Police, Brian Manley, and was promulgated with deliberate indifference to Sanders' First, Fourth and Fourteenth Amendment rights under the United States Constitution. Moreover, the known and obvious consequence of these policies, practices, or customs was that Austin Police Department officers would be placed in recurring situations in which the constitutional violations described within this complaint would result. Accordingly, these policies also made it highly predictable that the particular violations alleged here, all of which were under color of law, would result.

80. Consequently, the policies and conduct delineated above were a moving force of Plaintiff's constitutional deprivations and injuries, and proximately caused severe damages to Plaintiff.

81. Moreover, then Chief Manley, current Chief Chacon, and senior level APD superiors knew that multiple officers had violated individuals' right to speech and assembly, and had used excessive force at the protests the day before and earlier on May 31, but took no action to prevent further constitutional violations. As a consequence of them not stopping the abusive

tactics, they directly and proximately caused numerous people to suffer serious injuries. Rather, they condoned and ratified it until public opinion and multiple calls for his removal caused Manley to reverse the City's indefensible position – far too late for the many individuals that needlessly suffered serious injuries, including Plaintiff. Accordingly, the City is also liable directly for its policymakers' misconduct and failure to adequately supervise, train, and stop APD officers from using excessive and/or conscience shocking force and from violating protestors' First Amendment rights, which were a proximate cause of Plaintiff's deprivation of rights and injuries.

82. Plaintiff Sanders brings this claim pursuant to 42 U.S.C. § 1983.

V. DAMAGES

83. Plaintiff Sanders seeks the following damages:

- a. Past and future medical expenses;
- b. Past and future economic damages, including (but not limited to) loss of earning capacity;
- c. Past and future physical pain and mental anguish;
- d. Past and future impairment;
- e. Past and future disfigurement;
- f. Loss of consortium; and,
- g. Attorneys' fees pursuant to 42 U.S.C. § 1988.

VI. JURY DEMAND

84. Pursuant to Federal Rule of Civil Procedure 48, Plaintiff hereby requests a jury trial.

VII. PRAYER FOR RELIEF

85. To right this injustice, Plaintiff requests the Court:
- a. Award compensatory damages against Defendant;
 - b. Award Plaintiff costs and fees, including but not limited to expert fees and attorneys' fees, pursuant to 42 U.S.C. § 1988;
 - c. Award pre-judgment and post-judgment interest at the highest rate allowable under the law; and,
 - d. Award and grant such other just relief as the Court deems proper.

Dated: April 4, 2022.

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

ALYSSA SANDERS,	§	
	§	
Plaintiff,	§	
v.	§	CIVIL ACTION NO. 1:22-cv-00314-RP
	§	
CITY OF AUSTIN and ERIC HEIM,	§	
	§	
Defendants.	§	

DEFENDANT CITY OF AUSTIN’S MOTION TO STAY FURTHER PROCEEDINGS

Defendant the City of Austin (the “City”) files this motion to stay further proceedings and corresponding scheduling order deadlines in this matter, including discovery,¹ pretrial exchanges, dispositive motion deadlines, and trial, pending resolution of the criminal proceeding related to this cases that remains pending in Travis County criminal district court.

SUMMARY

This civil case has proceeded as far as it reasonably can before an overarching and inevitable question has been reached: How can the City effectively prepare its defenses, at summary judgment or trial, given the pendency of related criminal proceedings? As the Court is well aware, numerous Austin Police Department officers named as individual defendants in the above-captioned cases are under indictment in Travis County district court for alleged actions taken in response to conduct by protesters in Austin in May 2020. The overlapping nature of the criminal cases and this and other federal civil rights cases is plain from the federal and state dockets and corresponding pleadings:

¹This matter was consolidated for purposes of discovery under the *Gallagher* case. See Agreed Order to Consolidate for Discovery (Dkt. 59), *Gallagher v. City of Austin*, No. 1:20-cv-00901-RP (May 19, 2022).

Case Name:	Officers under indictment:	Criminal Docket Number:
<i>Jason Gallagher</i> (No. 1:20-CV-00901)	1. John Siegel	1. D-1-DC-20-900072 (no trial date).
<i>Alyssa Sanders</i> (No. 1:22-CV-314)	1. Eric Heim	1. D-1-DC-20-900076 (no trial date)
<i>Steven Arawn</i> (No. 1:20-CV-1118-RP)	1. Joshua Jackson 2. John Siegel 3. Nicholas Gebhart 4. Justin Berry	1. D-1-DC-22-900010 (no trial date) 2. D-1-DC-20-900072 (no trial date). 3. D-1-DC-20-900060 (no trial date) 4. D-1-DC-20-900055 (no trial date)
<i>Nicole Underwood</i> (No. 1:22-CV-00032)	1. John Siegel	1. D-1-DC-20-900072 (no trial date).

Copies of the state criminal indictments that correspond to the above chart are attached as **Exhibit**

1.

Plaintiff has brought excessive force claims against the officer defendant arising out of injuries Plaintiff alleges she sustained while participating in the protests in 2020, and has brought related *Monell* claims against the City over claimed policies and practices, among others, concerning use of force and protest response.

The Travis County District Attorney’s Office (“TCDAO”) announced the indictment of 19 APD officers publicly in February 2022—including the indictment of the officer defendant in this case—among other ways through an often-updated press release that contains the following introduction:

The following is a list of each officer-involved use of force or other misconduct matter involving injury to any person currently pending in the Office’s Civil Rights Unit.

Ex. 2. The TCDAO updated press release was most recently updated on January 27, 2023. **Ex. 3.**

None of the pending Travis County criminal cases related to the protests—including the one pending against the officer defendant in this case—has resulted in a trial or other disposition. None of the state criminal cases that overlap with the corresponding federal civil rights cases, including this one, is set for trial. **Ex. 3; Ex. 4** (copies of docket sheets from Travis County criminal proceedings).

There is no dispute, nor can there be, that the subject matter of the pending Travis County criminal case against the officer defendant here overlaps with the subject matter of Plaintiff's civil rights case. **Ex. 1; Ex. 2; Ex. 3.**

Keeping in mind the differences between claims against individual officers and the City,² the City has participated in as much discovery and pretrial proceedings as it reasonably can before getting to the point of confronting the inevitable question of how it can prepare and present its defenses in light of the pending criminal cases. The City has produced approximately one million documents in cases into which this one has been consolidated for purposes of discovery. The bulk of this production consists of internal Austin Police Department personnel and investigation files, emails from within APD and other City departments, and multimedia files. The City has also participated in myriad depositions. As has been shown along the way, discovery involving the individual officers—who are critical fact witnesses under indictment—has forced upon the individual officers the impossible choice of invoking their Fifth Amendment rights in light of the pending criminal cases or defending themselves against civil liability by waiving those rights and testifying. None of the officers in this predicament has chosen to waive Fifth Amendment

²*E.g., Martin v. Dallas County*, 822 F.2d 553, 555-56 (5th Cir. 1987); *Beltran v. City of Austin*, 2022 WL 11455897 (W.D. Tex. 2022); *Ramirez v. Escajeda*, 2022 WL 1744454 (W.D. Tex. 2022); *Rhoten v. Stroman*, 2020 WL 3545661 (W.D. Tex. 2020).

protections and testify. Written interrogatories and depositions in these civil cases have been likewise designed and intended to solicit invocations of the self-incrimination privilege.

Given the dilemma presented by the parallel proceedings, this Court has entered stays of discovery and/or other proceedings in recent matters arising out of the May 2020 protests, as well as in other cases involving parallel civil and criminal proceedings over officer conduct. *See, e.g.*, Order (Dkt. 39), *Sanders v. City of Austin*, No. 1:22-cv-00314-RP (W.D. Tex. Nov. 15, 2022) (Howell, M.J.) (staying all discovery against officer defendant); *Doe v. City of Austin*, No. 1:22-CV-00299-RP, 2022 WL 4234954, at *8 (W.D. Tex. Sept. 14, 2022) (Hightower, M.J.) (staying all discovery against city and officer defendant); *Kirsch v. City of Austin*, No. A-20-CV-01113-RP, 2022 WL 4280908, at *3 (W.D. Tex. Aug. 5, 2022) (Howell, M.J.) (staying all discovery against officer defendant); *DeSilva v. Taylor*, No. 1:21:cv-00129-RP, 2022 WL 545063, at *4 (W.D. Tex. Feb. 23, 2022) (Hightower, M.J.) (staying all discovery against officer defendants); Order Staying Case (Dkt. 89), *Ambler v. Williamson Cnty.*, No. 1:20-CV-1068-LY (W.D. Tex. July 27, 2021) (staying entire case). In fact, the *DeSilva* plaintiff (recognizing the same issue that underlies the City's motion here) has moved to stay his claim against all parties (including the City) pending resolution of the related criminal case. **Ex. 5.**

Given the lack of resolution of the criminal case that factually overlaps this one, it has now become readily apparent that the parties (including the City) will not be able to conduct additional and necessary discovery that is unavailable while the criminal case is pending. It has likewise become apparent that it is not possible to conduct expert discovery without the necessary and currently unavailable testimony of essential fact witnesses, as well as physical and other evidence in the possession of the TCDAO. It has become readily apparent that without this unavailable testimony and other evidence, the City will not be able to prepare its defenses for summary

judgment, much less for trial. The practical effects of the parallel criminal proceedings preclude the completion of expert disclosures and reports, summary judgment briefing, trial preparation, and presentation of the claims and defenses at trial. These roadblocks to a full and fair defense constitute a due process issue for the City.

The City therefore moves to stay all further proceedings in this case until the resolution of the corresponding parallel criminal proceedings pending against the various officer defendants who are essential witnesses in the case and until the ongoing issue of access to critical evidence is rectified.³ Once the overlapping criminal matters are resolved, the parties will be able to complete remaining discovery, summary judgment proceedings, and any pretrial preparations.

BACKGROUND

Travis County District Attorney Jose Garza (“DA Garza”), who took office on January 1, 2021, publicly campaigned on prosecution of law enforcement officers. *See, e.g.*, “Law Enforcement Accountability Policy,” Jose for DA, available at <https://www.joseforda.com/law-enforcement-accountability>. Campaign ads for DA Garza included footage from Austin’s May 2020 protests, showing protestors displaying signs reading “ACAB” (“All Cops Are Bastards”) while DA Garza provides voiceover criticizing the incumbent District Attorney for failing to prosecute law enforcement. *E.g.*, “Jose Garza for Travis County District Attorney,” Bernie Sanders YouTube (June 16, 2020), available at <https://www.youtube.com/watch?v=yMtzEAYWAuI>.

The Travis County District Attorney has followed through on his campaign promise to prosecute law enforcement officers, including with respect to conduct during the May 2020 protests. *See, e.g.*, “Travis County DA Jose Garza discusses cases related to May 2020 protests,”

³This request does not apply to the pending request for deposition of Austin City Manager Spencer Cronk, which is in the process of being scheduled.

KXAN (Feb. 17, 2022), available at <https://www.youtube.com/watch?v=yWY1bugSBIQ>; **Ex. 6** (“19 Austin police officers accused of excessive force during 2020 protests are indicted”); **Ex. 7** (“Here’s what we know about APD officers facing charges for using beanbag rounds in 2020 protests”). The TCDAO has also implemented policies to put law enforcement conduct before grand juries as a matter of course. *See, e.g.*, **Ex. 8** (describing DA Garza’s “promise to [the community] to take all officer involved excessive force cases to the grand jury”); **Ex. 9** (reporting on recruiting email from Travis County DA’s Office supervisor reading “I am reaching out in the hopes that you may be looking to prosecute police officers or that you know someone who is”).

As part of this prosecutorial practice, the TCDAO maintains the publicly available list of cases involving law enforcement personnel the TCDAO intends to present for indictment or has already presented for indictment. *E.g.*, **Ex. 2**; **Ex. 3**. For example, the press release contains the following description of the case pending against the officer whose actions are at issue in this case:

INDICTED: STATE OF TEXAS VS ERIC HEIM, D-1-DC-20-900076: At the time of the incident, Mr. Heim was employed as a police officer with the Austin Police Department. On Thursday, February 17, 2022, Mr. Heim was indicted for Aggravated Assault by Public Servant, a first-degree felony by the 390th Special Grand Jury. The case is pending in the 299th District Court.

Ex. 3.

Notwithstanding the ongoing criminal investigations and indictments, the City has participated in discovery in this and other cases consolidated for discovery, including a production that includes, among other things:

- Nearly one million emails that were responsive to a set of 251 agreed search terms run across 42 agreed custodial email accounts;
- Approximately 2,400 video files containing footage of the May 2020 protests, including from body-worn cameras, closed-circuit television systems, the City’s “HALO” cameras, and aerial cameras such as drones;
- The Austin Police Department’s documentary record of the protest response, including response-to-resistance reports, City policies, training materials, and

internal investigative reports concerning the conduct of individual officers as well as the City's broader response to the May 2020 protests; and

- Personnel and training records concerning the officers involved.

In addition to these materials, Plaintiff's counsel have also taken the deposition of numerous current and former APD employees and other City of Austin personnel, including former Chief of Police Brian Manley and former City of Austin Mayor Steve Adler. In some cases related to the 2020 protests, plaintiffs' counsel have even taken the depositions of individual officer defendants—including officers facing active criminal cases. Unsurprisingly, those depositions have not been productive. The below is a brief example of the way an officer's decision to assert his or her constitutional rights is being used in the civil cases:

10 Q. Other than Bomani Barton, who you currently
11 face indictment for a form of assault, did you assault
12 anyone else during the George Floyd protests?
13 A. **On the advice of counsel, sir, I invoke my
14 Fifth Amendment privilege and respectfully decline to
15 answer your question.**
16 Q. In fact, you did assault numerous other people
17 during the George Floyd protests; isn't that correct?
18 MR. LEAKE: Objection, form.
19 Go ahead.
20 A. **Sir, on the advice of counsel, I invoke my
21 Fifth Amendment privilege and respectfully decline to
22 answer your question, sir.**

See, e.g., Ex. 10 (Excerpts of Deposition of Officer K. An) at 12:10-22.

ARGUMENT

The City requests a stay of further proceedings in this matter pending resolution of the parallel criminal proceeding. The City did not file this motion immediately upon the case having been filed, or when the officer defendant was added to the case.⁴ This allowed the parties to make progress in paper discovery and limited deposition discovery without directly implicating any officer's right to defend himself in parallel criminal cases, or the City's ultimate ability to prepare and present its defenses. The discovery and proceedings have reached the point at which the City cannot prepare and mount a full and fair defense to the civil allegations against it.

I. This Court has the authority to stay discovery.

As this Court knows, federal courts often stay civil proceedings to allow overlapping and parallel criminal proceedings to run their course. As indicated above, this has been the case with this Court having recently imposed a stay with respect to proceedings against not only individual law enforcement officers but also the government entities with which the officers were employed during the time period at issue. *E.g.*, *Doe*, 2022 WL 4234954; *see also Javier Ambler v. Williamson Cnty.*, No. 1:20-CV-1068-LY (W.D. Tex. July 27, 2021).

This case presents the same issue and also warrants a stay. Federal district courts have “broad discretion to stay proceedings as an incident to [their] power to control [their] own docket[s].” *Clinton v. Jones*, 520 U.S. 681, 707 (1997). The United States Supreme Court has recognized that there are “special circumstances” in which “the interests of justice” support or even require temporary stays. *United States v. Kordel*, 397 U.S. 1, 12 & n.27 (1970); *SEC v. First Fin. Grp. of Tex., Inc.*, 659 F.2d 660, 668 (5th Cir. 1981) (stays may be necessary “to prevent a party from suffering substantial and irreparable prejudice”). In particular, stays are “common

⁴The officer defendant was added in the First Amended Complaint, which was filed June 16, 2022. Dkt. 12.

practice” when civil and criminal liability arise from the same incident because “criminal prosecutions often take priority over civil actions.” *Wallace v. Kato*, 549 U.S. 384, 394 (2007); *In re Grand Jury Subpoena*, 866 F.3d 231, 234 (5th Cir. 2017); *Kmart Corp v. Aronds*, 123 F.3d 297, 300 (5th Cir. 1997); *United States v. Little Al*, 712 F.2d 133, 136 (5th Cir. 1983) (“Certainly, a district court may stay a civil proceeding during the pendency of a parallel criminal proceeding.”).

The existence of parallel civil and criminal proceedings poses a unique constitutional danger because every person facing criminal liability has the constitutional right against self-incrimination provided by the Fifth Amendment. *Wehling v. Columbia Broad. Sys.*, 608 F.2d 1084, 1087-88 (5th Cir. 1979). At the same time, every person facing civil liability has a due process right to have that matter fully and fairly adjudicated. *Id.* Courts must avoid scenarios that “require a party to surrender one constitutional right in order to assert another.” *Id.* at 1088. A civil defendant invoking his Fifth Amendment rights “should suffer no penalty for his silence.” *Id.* (citing *Spevack v. Klein*, 385 U.S. 511, 515 (1967)). Temporary stays protect these competing rights by allowing the criminal process to resolve before the civil process. *Id.* at 1089 (reversing district court for refusing to stay case “for approximately three years” while criminal process was resolved).

Here, Plaintiff’s theories of municipal liability depend on a requested finding that the officers violated the constitutional rights of persons who participated in the protests. First Am. Complaint (Dkt. 12) at 13-14 (“APD Officer, Eric Heim, while acting under color of law, used excessive and conscience shocking force on Alyssa Sanders . . . in retaliation against her protected speech rights . . . the [City’s] policies and conduct delineated above were a moving force of Plaintiff’s constitutional deprivations and injuries, and proximately caused severe damages to Plaintiff.”). As pled and discovered to date, it is clear that the alleged actions of the individual

officers are the source of the claimed harm at issue in the civil cases consolidated for discovery, including this one. Testimony from those officers, including the officer defendant in this case, is not currently available, and testimony from other officers who were present but have not been indicted or sued is just an unreachable—just because those officers haven’t been indicted yet doesn’t preclude that from happening in the future. The Travis County District Attorney has made clear his office is still exploring the possibility of indicting other officers. The witness officers’ right against self-incrimination is therefore just as likely to prevent usable testimony. Without that essential testimony, from both defendants and witnesses, the City is precluded from essential factual information that would demonstrate that “a person has suffered no constitutional injury at the hands of the individual police officer.” *City of Los Angeles v. Heller*, 106 S. Ct. 1571, 1573 (1986). As the Supreme Court has stated:

But this was an action for damages, and neither *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978), nor any other of our cases authorizes the award of damages against a municipal corporation based on the actions of one of its officers when in fact the jury has concluded that the officer inflicted no constitutional harm.

Id.

In the circumstances of these cases, the City is precluded—by virtue of the lack of access an indicted officer’s testimony—from completing discovery that would allow it to marshal its defenses. Thus, a stay as to the City on Plaintiff’s *Monell* claims is appropriate. *See Doe*, 2022 WL 4234954 at * 7; *see also, e.g., Anderson v. City of Chicago*, 2016 WL 7240765 (N.D. Ill. 2016) (“Even if the City had a policy or practice of permitting its officers’ to coerce false confessions through force, the harm caused by the policy could only manifest itself through the officers’ actions.”); *Williams v. City of Chicago*, 315 F. Supp. 3d 1060, 1080 (N.D. Ill. 2018) (“Even if the City had a policy or practice of permitting its officers to coerce false testimony or to create false

investigative reports, the harm caused by the practice could only manifest itself through the officers' actions.”)

When tasked with determining the propriety of a stay in light of parallel civil and criminal proceedings, courts generally consider six factors:

- “(1) the extent to which the issues in the criminal case overlap with those presented in the civil case;
- (2) the status of the criminal case, including whether the defendants have been indicted;
- (3) the private interests of the plaintiffs in proceeding expeditiously, weighed against the prejudice to the plaintiffs caused by the delay;
- (4) the private interests of and burden on the defendants;
- (5) the interests of the courts; and
- (6) the public interest.”

Bean v. Alcorta, 220 F.3d 772, 775 (W.D. Tex. 2016); *Doe*, 2022 WL 4234954, at *4.

II. The Court should stay further proceedings here.

Each of the six factors identified above supports a stay of further proceedings here. As in *Doe*, *Sanders*, *Kirsch*, *DeSilva*, and other cases in which stays have been granted, the individual law enforcement officers named as defendants here are facing criminal prosecution regarding the same conduct at issue in the civil cases. *See Doe*, 2022 WL 4234954, at *5; *Kirsch*, 2022 WL 4280908, at *2; *DeSilva*, 2022 WL 545063, at *3. When previously faced with that overlap between civil and criminal issues, this Court has chosen to stay the civil cases, for both the officers and the City, based largely on that overlap and the resulting danger of civil discovery forcing the officers to incriminate themselves. *See Doe*, 2022 WL 4234954, at *6-7; *see also Ambler*, No. 1:20-CV-1068-LY (W.D. Tex. July 27, 2021) (staying entire case in light of officers' indictment

for crimes arising from facts similar to the civil case). The Court should exercise its discretion in favor of a stay in these cases as well.

A. There is complete overlap between the civil and criminal cases.

There is no dispute that there is complete overlap between the Plaintiff's allegations in this civil case and the allegations that undergird the indictment against the APD officer named as a co-defendant with the City. The indictment features prominently in the civil complaint, which allege that the precise conduct that the TCDAO contends constitutes aggravated assault also constitutes a use of excessive force. *See, e.g.*, First Am. Compl. (Dkt. 12) ¶¶ 10-11, 23-31, 39-40, 43, 45, 53. The complaints, including the one in this case, even attempt to imply guilt using officers' invocations of their Fifth Amendment rights, confirming that the conduct underlying the criminal and civil allegations overlaps completely. *See, e.g., id.* ¶¶ 58, 67. "The question is simple: do the facts overlap? Here, they undeniably do." *See* Order (Dkt. 39), at 4, *Sanders v. City of Austin*, No. 1:22-cv-00314-RP (W.D. Tex. Nov. 15, 2022) (Howell, M.J.).

This complete overlap of subject matter supports a stay because "[w]here there is significant overlap, self-incrimination is more likely" and Fifth Amendment concerns are at their greatest. *Bean*, 220 F. Supp. 3d at 776 ("significant and perhaps even complete overlap" between criminal and civil proceedings "weighs strongly in favor of staying the case"); *Meyers*, 2016 WL 393552, at *6 (factor favored stay where civil and criminal lawsuits arose "from the same facts"); *Shaw*, 2007 WL 1465850, at *2 (civil and criminal allegations "aris[ing] from the same set of operative facts . . . weighs heavily in favor of granting a stay"). For this reason, courts often describe this factor as the "most important" consideration for issuing a stay. *E.g., Doe*, 2022 WL 4234954, at *5; *DeSilva*, 2022 WL 545063, at *3 ("Because there is significant overlap between the issue presented in this case and Defendants' criminal proceedings . . . [t]he first and most

important factor weighs strongly in favor of staying the case.”); *Frierson v. City of Terrell*, No. 3:02CV2340-H, 2003 WL 21355969, at *3 (N.D. Tex. June 6, 2003) (staying case); *Librado v. M.S. Carriers, Inc.*, No. 3:02-CV-2095D, 2002 WL 31495988, at *2 (N.D. Tex. Nov. 5, 2002) (staying case).

It is no answer to this analysis to say that the City itself is not facing criminal charges. This Court rejected that argument in *Doe*. “Although the City is not a party to the criminal proceedings, the Court finds that Dodds’ oppression charge substantially overlaps with Doe’s *Monell* claims against the City.” *Doe*, 2022 WL 4234954, at *5. The same is true here. The *Monell* claims against the City allege that various City policies resulted in officers engaging in the exact conduct that undergirds the individual excessive force claims and the basis of the criminal charges. *See, e.g.*, First Am. Compl. (Dkt. 12) ¶¶ 109-112. And as in *Doe*, “the first and most important factor weighs strongly in favor of staying this case.” *Doe*, 2022 WL 4234954, at *5.

B. The officer defendants have been indicted and still face criminal liability.

As the plaintiffs in the cases consolidated for discovery allege, including Plaintiff in this case, each of the individual officer defendants has been indicted for aggravated assault by a public servant. *See, e.g.*, First Am. Compl. (Dkt. 12) ¶¶ 11, 30, 39-40, 43, 45, 53, 57, 70; *see also Ex. 2*. “A stay of a civil case is more appropriate where a party to the civil case has already been indicted for the same conduct.” *Bean*, 220 F. Supp. 3d at 776 (staying case when defendant’s criminal conviction was pending on appeal); *Doe*, 2022 WL 4234954, at *5 (staying case when indictment issued while motion to stay was pending); *Kirsch*, 2022 WL 4280908, at *2 (staying case when defendant was indicted); *DeSilva*, 2022 WL 545063, at *3 (same); *Meyers*, 2016 WL 393552, at *6 (same); *Shaw*, 2007 WL 1465850, at *2 (staying case when plaintiffs were indicted).

C. Plaintiff will suffer no prejudice beyond mere delay.

Stays by their very nature delay proceedings. A claim that stays cause delay or result in witness memories fading over time is not enough to affect the analysis. As this Court has recognized, that “is true in any case in which a stay is granted.” *Kirsch*, 2022 WL 4280908, at *2; *see also* Order (Dkt. 39) at 5 (rejecting arguments about “a COVID-19 induced backlog of criminal cases” in Travis County).

Instead, to avoid a stay, courts require plaintiffs to, *inter alia*, demonstrate “more prejudice than simply a delay” in resolving their pending claims. *DeSilva*, 2022 WL 545063, at *3; *Doe*, 2022 WL 4234954, at *5-6; *Bean*, 220 F. Supp. 3d at 776; *Meyers*, 2016 WL 393552, at *6. To meet this burden, a plaintiff could identify some specific “discovery that is available now but would be unavailable later should a stay be granted,” or identify specific “witnesses [who] will be unable to testify” after a stay is lifted. *DeSilva*, 2022 WL 545063, at *3.

Plaintiff cannot establish such prejudice here. Moreover, any discovery concerns are mitigated by the discovery the parties have already conducted in the case. This includes extensive production of the available documentary and multimedia records of the incidents and later investigations, the evidentiary value of which will not decay over time. To the contrary, the massive amount of reporting and video and audio evidence of the conduct at issue in these cases means the parties are less likely to need to rely exclusively on witnesses’ memories than in other types of cases in which stays might be more prejudicial. *See* Order (Dkt. 39) at 4.

D. Proceeding with the civil cases further would be highly prejudicial and potentially wasteful.

One of the fundamental goals of stays in this context is avoiding the natural prejudice that arises from forcing parties to defend litigation while also asserting their Fifth Amendment rights. The Fifth Amendment “privileges [a person] not to answer official questions put to him in any

other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.” *Baxter v. Palmigiano*, 425 U.S. 308, 316 (1976). A person cannot be compelled “to answer deposition questions, over a valid assertion of his Fifth Amendment right.” *Pillsbury Co. v. Conboy*, 459 U.S. 248, 256–57 (1983).

If this case continues, including through further officer depositions and on to disclosures of experts, filing of dispositive motions, and trial, these Fifth Amendment concerns will continue to be directly implicated. Each of the officer defendants—including the officer defendant named in this case—will face “a conflict between asserting his Fifth Amendment rights and fulfilling his legal obligations as a witness” and defendant in this civil case. *DeSilva*, 2022 WL 545063, at *4. The officers have an interest in preventing their defenses in these civil cases from providing evidence that the TCDAO may use in its prosecutions, and from prematurely disclosing to the TCDAO their defenses in the criminal cases. *Id.* (“Defendants have an interest in staying the civil trial to avoid exposing their criminal defense strategies to the prosecution.”). While these concerns are present—as as they continue to play out indisputably with officers refusing to testify—the prejudice to the City in preparing its defenses continues.

The prejudice the parties, including but not limited to the City, face is further illustrated by a recent letter from the TCDAO. Unsurprisingly, the TCDAO is in possession of physical evidence relevant to both his criminal prosecution and to these civil cases. *See Ex. 11* (“including 12-gauge shotguns, 40MM launchers, and ‘less lethal’ ammunition rounds”). The TCDAO is refusing to allow experts retained in these civil cases to access, inspect, or test this evidence until “the pending criminal investigations and matters collectively referred to as ‘The Protest Cases’” are resolved. *Id.* No party to these civil proceedings, including the City, can adequately prepare for trial without access to the relevant evidence, including evidence currently being held under the exclusive

control of DA Garza. Thus, it is not only lack of access to the testimony of the officers facing criminal charges but also lack of access to critical physical evidence that creates the prejudice to the City's efforts to prepare its defenses.

This factor favors a stay. *Id.*; *Doe*, 2022 WL 4234954, at *6; *Kirsch*, 2022 WL 4280908, at *3; *Bean*, 220 F. Supp. 3d at 777; *Meyers*, 2016 WL 393552, at *7 & n.3 (noting the potential for plaintiffs to use civil discovery to prejudice criminal defendants); *Librado*, 2002 WL 31495988, at *3.

E. A stay supports the Court's interests.

A stay also favors judicial economy and this Court's management of its docket. *Bean*, 220 F. Supp. 3d at 777; *Meyers*, 2016 WL 393552, at *7; *Librado*, 2002 WL 31495988, at *3. If the civil cases continue, more officers will be placed in a position to assert their Fifth Amendment rights. If the prospect of criminal liability has been eliminated before trial, they would likely then be in a position of withdrawing the privilege and testifying in their own defense and on behalf of the City in support of its defenses. *Davis-Lynch, Inc. v. Moreno*, 667 F.3d 539, 547-48 (5th Cir. 2012) (discussing circumstances in which "a party may withdraw its assertion of the Fifth Amendment privilege, even at a late stage in the litigation"). That withdrawal may raise new concerns of prejudice and delay, the prospect of additional depositions, extensions of expert discovery or *Daubert* deadlines, and more. *See id.* This Court can avoid any need to raise or resolve those legal questions by temporarily staying the proceedings. *See DeSilva*, 2022 WL 545063, at *4 (noting the possibility that resolution of the criminal case may also resolve or eliminate issues in the civil trial). Additionally, resolution of the criminal proceedings may help resolve the civil cases as well, in whole or in part, through encouraging settlement or through potential estoppel- or preclusion-type rulings. *Kirsch*, 2022 WL 4280908, at *3.

F. A stay supports the public's interests.

The public “has an interest in protecting the constitutional rights of criminal defendants” as well as in seeing both civil and criminal cases resolved promptly. *Bean*, 220 F. Supp. 3d at 778. The public interest factor weighs *against* a stay “only where, unlike here, a civil case is pending and no criminal investigation has begun.” *DeSilva*, 2022 WL 545063, at *4; *Meyers*, 2016 WL 393552, at *7. Here, the public’s interests are best served by temporarily staying civil discovery until the criminal process concludes so officers’ constitutional rights can be protected, along with the City’s rights to defend itself against claims for damages with all available evidence, including evidence from the officers. *DeSilva*, 2022 WL 545063, at *4; *Bean*, 220 F. Supp. 3d at 778; *Meyers*, 2016 WL 393552, at *7; *Shaw*, 2007 WL 1465850, at *2; *Librado*, 2002 WL 31495988.

The public is also served by both criminal and civil matters being resolved fairly and accurately. The Travis County District Attorney has told the public that it is important to ensure his office is “bringing the right person to trial with the right charges.” *See Ex. 12*. For example, the TCDAO dismissed an indictment it obtained against an officer after a prosecutor apparently “uncovered” exculpatory evidence from the prosecution’s own expert opining that the officer’s conduct was “justified and lawful.” *See Ex. 13; Ex. 14* (DA Garza offering previously indicted officer his “sincere apologies” for wrongfully indicting him). And merely obtaining an indictment does not mean the officers are guilty. A Travis County jury recently acquitted the first law enforcement officer brought to trial since the election of the current Travis County District Attorney. *See Ex. 15* (“Jury acquits former Austin police officer accused of misconduct in 2017 arrest,” [Austin American-Statesman](https://www.statesman.com/story/news/courts/2022/10/18/jury-acquits-former-austin-officer-nathaniel-stallings-in-misdemeanor-trial/69570141007/) (Oct. 18, 2022), *available at* <https://www.statesman.com/story/news/courts/2022/10/18/jury-acquits-former-austin-officer-nathaniel-stallings-in-misdemeanor-trial/69570141007/>).

The public has an interest in seeing these accusations against the City, against the officers, and against other non-defendant officers resolved based on all the evidence, not based on any rush to prosecute. The public also has an interest in avoiding a situation in which the City's rights to defend itself are limited by the pendency of the criminal cases. This interest can and should be protected by allowing the remaining criminal process to play out first.

III. The Court should stay these proceedings so the defendants can fully defend themselves, including through developing and presenting defenses.

The City, just like any other defendant, has a right to defend itself. A cornerstone of its defense will be whether the officer involved in the above-captioned civil rights case (or any other officers implicated in conduct Plaintiff claims affected her) committed a constitutional injury. If they did not, the related *Monell* claims against the City may fail. See *Lucky Tunes #3, L.L.C. v. Smith*, 812 Fed. Appx. 176, 183 (5th Cir. 2020) (citing *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986)). With the lack of access to the officer testimony and essential physical evidence, the City's defense will be hopelessly hamstrung.

A municipality cannot be found liable on a *Monell* claim if the plaintiff cannot show that the municipality's employees, here the officers, violated the Constitution. *Heller*, 475 U.S. at 796; *Malbrough v. Stelly*, 814 Fed. Appx. 798, n. 15 (5th Cir. 2020). The claims against the officers are thus linked by a common core of evidence to the claims against the City. *Doe*, 2022 WL 4232954, at *7. As the Court knows, the defense of qualified immunity "provides government officials with immunity from suit so long as they do not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Hutcheson v. Dallas Cnty., Tex.*, 994 F.3d 477, 480 (5th Cir. 2021) (internal quotations omitted). In this matter, the officers also have a right to pursue a qualified immunity defense, which will protect them against liability unless Plaintiff can prove both (1) that the officers involved violated her constitutional rights, and

(2) that the officers' actions were objectively unreasonable in light of clearly established law at the time. *Id.* This analysis includes what actions the officers took on the day in question—a matter on which each officer has unique personal knowledge, but to which they cannot testify without abrogating their rights against self-incrimination given the ongoing criminal cases.

Defending against a *Monell* claim that is based on claims of inadequate policies regarding the use of force and protest response, while the officers at issue are under criminal indictment awaiting trial, puts the City in an untenable position. The evidence the City needs to defend itself is evidence and testimony from the officers who, under advice of their counsel, have invoked and will continue to invoke their rights against self-incrimination. *E.g.*, **Ex. 10**. As this Court has noted before, when self-incrimination is at issue, neither the Plaintiff nor the City will be able to obtain the necessary discovery to prove, or disprove, their claims or defenses. *Doe*, 2022 WL 4232954, at *7. The only equitable solution at this point is a stay.

Other courts, presented with similar situations and facts, have chosen to stay *Monell* claims. *See, e.g., Trent v. Wade*, 3:12-cv-01244-P, 2013 WL 12176988, at *3 (N.D. Tex. 2013). A stay under these circumstances would be based in equity and due process. If the underlying issue of whether a constitutional violation occurred or not cannot be determined because of the threat of self-incrimination faced by essential witnesses, the correct response is not to force the issue and make either side litigate with half the facts. The correct response is a stay. *Doe*, 2022 WL 4232954, at *7.

CONCLUSION

For all these reasons, Defendant City of Austin respectfully requests the Court grant this motion, stay all further proceedings in each of these matters until after the resolution of the pending

parallel criminal proceeding, and award the City all other relief to which it may show itself to be entitled in connection with this motion.

Respectfully submitted,

BUTLER SNOW LLP

By: /s/ Eric J.R. Nichols

Eric J.R. Nichols
State Bar No. 14994900
eric.nichols@butlersnow.com
1400 Lavaca Street, Suite 1000
Austin, Texas 78701
Tel: (737) 802-1800
Fax: (737) 802-1801

**ATTORNEYS FOR DEFENDANT
CITY OF AUSTIN**

CERTIFICATE OF CONFERENCE

I hereby certify that I have conferred with counsel for Plaintiff and he is opposed to the relief sought in this motion. We have also conferred with counsel for co-defendant Eric Heim and understand that the co-defendant is unopposed to the relief requested in this motion.

/s/ Eric J.R. Nichols

Eric J.R. Nichols

CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2022, a true and correct copy of the foregoing document was served on all counsel of record by filing with the Court's CM/ECF system.

/s/ Eric J.R. Nichols

Eric J.R. Nichols

Exhibit 1

D.A. #D1DC20900072 MNI # 7973549 TRN: DPS: 13150010 Court: 147th

The State of Texas v. JOHN SIEGEL

INDICTMENT

**COUNT I - AGG ASSAULT BY PUBLIC SERVANT - PC 22.02(b)(2)(A) - F1
(OFFENSE CODE: 13150010)**

**COUNT II - AGG ASSAULT BY PUBLIC SERVANT - PC 22.02(b)(2)(A) -
F1 (OFFENSE CODE: 13150010)**

Bond \$

In The 390th Judicial District Court (Special) of Travis County, Texas

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURY, for the County of Travis, State of Texas, duly selected, empaneled, sworn, charged, and organized as such at the July Term, 2021, of the 390th Judicial District Court (Special) for said County, upon its oath presents in and to said Court at said term, that JOHN SIEGEL, on or about the 30th day of May, 2020, and before the presentment of this Indictment, in the County of Travis, and State of Texas, did then and there intentionally, knowingly, and recklessly cause serious bodily injury to NICOLE UNDERWOOD, by shooting Nicole Underwood with a firearm; to wit, a shotgun, and the Defendant was then and there a public servant, to wit: an Austin Police Department peace officer, acting under color of his office and employment,

Paragraph B

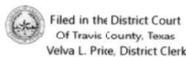
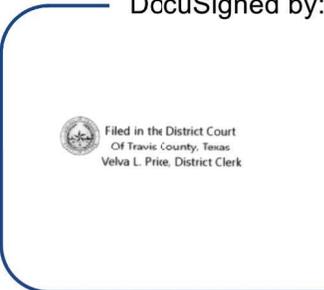
The Grand Jury further presents that JOHN SIEGEL on or about the 30th day of May, 2020, and before the presentment of this Indictment, in the County of Travis, and State of Texas, did then and there intentionally, knowingly, and recklessly cause bodily injury to NICOLE UNDERWOOD , by shooting Nicole Underwood with a firearm; to wit, a shotgun, and the Defendant did use and exhibit a deadly weapon, a firearm; to wit, a shotgun, during the commission of the assault, and the Defendant was then and there a public servant, to wit: an Austin Police Department peace officer, acting under the color of his office and employment,

COUNT II

The Grand Jury further presents that JOHN SIEGEL, on or about the 30TH DAY OF MAY, 2020, and before the presentment of this Indictment, in the County of Travis, and State of Texas, did then and there intentionally and knowingly threaten NICOLE UNDERWOOD, with imminent bodily injury by discharging a firearm; to wit, a shotgun, at and in the direction of Nicole Underwood, and the Defendant did use and exhibit a deadly weapon, a firearm, to-wit; a shotgun, during the commission of the assault, and the Defendant was then and there a public servant, to wit: an Austin Police Department peace officer, acting under color of his office and employment, against the peace and dignity of the State,

2/17/2022 | 10:27 AM CST

DocuSigned by:



DS
LE

DocuSigned by:

Jose Alvarado

7AB8BC812DCE4FD...

Foreperson of the Grand Jury

D.A. #D1DC20900055 MNI # 8919484 TRN: DPS: 13150010 Court: 390th

The State of Texas v. JUSTIN BERRY

INDICTMENT

**COUNT I -AGG ASSAULT BY PUBLIC SERVANT - PC 22.02(b)(2)(A) - F1
(OFFENSE CODE: 13150010)**

**COUNT II - AGG ASSAULT BY PUBLIC SERVANT - PC 22.02(b)(2)(A) -
F1 (OFFENSE CODE: 13150010)**

Bond \$

In The 390th Judicial District Court (Special) of Travis County, Texas

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURY, for the County of Travis, State of Texas, duly selected, empaneled, sworn, charged, and organized as such at the July Term, 2021, of the 390th Judicial District Court (Special) for said County, upon its oath presents in and to said Court at said term, that JUSTIN BERRY, on or about the 31st day of May, 2020, and before the presentment of this Indictment, in the County of Travis, and State of Texas, did then and there intentionally, knowingly, and recklessly cause serious bodily injury to CHRISTEN WARKOCZEWSKI , by shooting Christen Warkoczewski with a firearm; to wit, a shotgun, and the Defendant was then and there a public servant, to wit: an Austin Police Department peace officer, acting under color of his office and employment,

Paragraph B

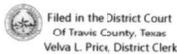
The Grand Jury further presents that JUSTIN BERRY, on or about the 31st day of May, 2020, and before the presentment of this Indictment, in the County of Travis, and State of Texas, did then and there intentionally, knowingly, and recklessly cause bodily injury to CHRISTEN WARKOCZEWSKI, by shooting Christen Warkoczewski with a firearm; to wit, a shotgun, and the Defendant did use and exhibit a deadly weapon, a firearm; to wit, a shotgun, during the commission of the assault, and the Defendant was then and there a public servant, to wit: an Austin Police Department peace officer, acting under the color of his office and employment,

COUNT II

The Grand Jury further presents that JUSTIN BERRY, on or about the 31st day of May, 2020, and before the presentment of this Indictment, in the County of Travis, and State of Texas, did then and there intentionally and knowingly threaten CHRISTEN WARKOCZEWSKI , with imminent bodily injury, and the Defendant did use and exhibit a deadly weapon to-wit: a shotgun, at and in the direction of Christen Warkoczewski, and the Defendant did use and exhibit a deadly weapon, a firearm, to wit; a shotgun,, during the commission of the assault, and the Defendant was then and there a public servant, to wit: an Austin Police Department peace officer, acting under color of his office and employment,
against the peace and dignity of the State,

2/17/2022 | 10:50 AM CST

DocuSigned by:



DS
LE

DocuSigned by:

Jose Alvarado

7AB8BC812DCE4FD...

Foreperson of the Grand Jury

D.A. #D1DC20900060 MNI # 7968486 TRN: DPS: 13150010 Court: 390th

The State of Texas v. NICHOLAS GEBHART

INDICTMENT

**COUNT I - AGG ASSAULT BY PUBLIC SERVANT - PC 22.02(b)(2)(A) - F1
(OFFENSE CODE: 13150010)**

**COUNT II - AGG ASSAULT BY PUBLIC SERVANT - PC 22.02(b)(2)(A) -
F1 (OFFENSE CODE: 13150010)**

Bond \$

In The 390th Judicial District Court (Special) of Travis County, Texas

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURY, for the County of Travis, State of Texas, duly selected, empaneled, sworn, charged, and organized as such at the July Term, 2021, of the 390th Judicial District Court (Special) for said County, upon its oath presents in and to said Court at said term, that NICHOLAS GEBHART, on or about the 30th day of May, 2020, and before the presentment of this Indictment, in the County of Travis, and State of Texas, did then and there intentionally, knowingly, and recklessly cause serious bodily injury to BRAD LEVI AYALA, by shooting Brad Levi Ayala with a firearm; to wit, a shotgun, and the Defendant was then and there a public servant, to wit: an Austin Police Department peace officer, acting under color of his office and employment,

Paragraph B

The Grand Jury further presents that NICHOLAS GEBHART, on or about 30th day of May, 2020, and before the presentment of this Indictment, in the County of Travis, and State of Texas, did then and there intentionally, knowingly, and recklessly cause bodily injury to BRAD LEVI AYALA , by shooting Brad Levi Ayala with a firearm; to wit, a shotgun, and the Defendant did use and exhibit a deadly weapon, a firearm; to wit, a shotgun, during the commission of the assault, and the Defendant was then and there a public servant, to wit: an Austin Police Department peace officer, acting under the color of his office and employment,

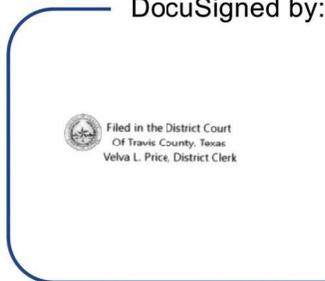
COUNT II

The Grand Jury further presents that NICHOLAS GEBHART, on or about the 30th day of May, 2020, and before the presentment of this Indictment, in the County of Travis, and State of Texas, did then and there intentionally and knowingly threaten BRAD LEVI AYALA, with imminent bodily injury, by discharging a firearm; to wit, a shotgun, at and in the direction of Brad Levi Ayala, and the Defendant did use and exhibit a deadly weapon to-wit: a shotgun, during the commission of the assault, and the Defendant was then and there a public servant, to wit: an Austin Police Department peace officer, acting under color of his office and employment,

against the peace and dignity of the State,

2/17/2022 | 10:40 AM CST

DocuSigned by:



 Filed in the District Court
Of Travis County, Texas
Velva L. Price, District Clerk

DS
LE

DocuSigned by:

Jose Alvarado
7AB8BC812DCE4FD...

Foreperson of the Grand Jury

D.A. #D1DC20900076 MNI # 7973551 TRN: DPS: 13150010 Court: 167th

The State of Texas v. ERIC HEIM

INDICTMENT

COUNT I - AGG ASSAULT BY PUBLIC SERVANT - PC 22.02(b)(2)(A) - F1 (OFFENSE CODE: 13150010)

COUNT II - AGG ASSAULT BY PUBLIC SERVANT - PC 22.02(b)(2)(A) - F1 (OFFENSE CODE: 13150010)

Bond \$

In The 390th Judicial District Court (Special) of Travis County, Texas

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURY, for the County of Travis, State of Texas, duly selected, empaneled, sworn, charged, and organized as such at the July Term, 2021, of the 390th Judicial District Court (Special) for said County, upon its oath presents in and to said Court at said term, that ERIC HEIM, on or about the 31st day of May, 2020, and before the presentment of this Indictment, in the County of Travis, and State of Texas, did then and there intentionally, knowingly, and recklessly cause serious bodily injury to ALYSSA SANDERS, by shooting Alyssa Sanders with a firearm; to wit, a 40 mm Launcher, and the Defendant was then and there a public servant, to wit: an Austin Police Department peace officer, acting under color of his office and employment,

Paragraph B

The Grand Jury further presents that ERIC HEIM, on or about the 31st day of May, 2020, and before the presentment of this Indictment, in the County of Travis, and State of Texas, did then and there intentionally, knowingly, and recklessly cause bodily injury to ALYSSA SANDERS , by shooting Alyssa Sanders with a firearm; to wit, a 40 mm Launcher, and the Defendant did use and exhibit a deadly weapon, a firearm; to wit, a 40 mm Launcher, during the commission of the assault, and the Defendant was then and there a public servant, to wit: an Austin Police Department peace officer, acting under the color of his office and employment,

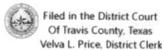
COUNT II

The Grand Jury further presents that ERIC HEIM, on or about the 31ST DAY OF MAY, 2020, and before the presentment of this Indictment, in the County of Travis, and State of Texas, did then and there intentionally and knowingly threaten ALYSSA SANDERS, with imminent bodily injury by discharging a firearm; to wit, a 40 mm Launcher, at and in the direction of Alyssa Sanders, and the Defendant did use and exhibit a deadly weapon, a firearm, to-wit; a 40 mm Launcher, during the commission of the assault, and the Defendant was then and there a public servant, to wit: an Austin Police Department peace officer, acting under color of his office and employment,

against the peace and dignity of the State,

2/17/2022 | 10:35 AM CST

DocuSigned by:



DS
LE

DocuSigned by:

Jose Alvarado

7AB8BC812DCE4FD...

Foreperson of the Grand Jury

D.A. #D1DC22900010 MNI # 7973742 TRN:

DPS: 13150010 Court: 390th

The State of Texas v. JOSHUA JACKSON

INDICTMENT

**COUNT I -AGG ASSAULT BY PUBLIC SERVANT - PC 22.02(b)(2)(A) - F1
(OFFENSE CODE:13150010)**

**COUNT II - AGG ASSAULT BY PUBLIC SERVANT - PC 22.02(b)(2)(A) -
F1 (OFFENSE CODE:13150010)**

Bond \$

In The 390th Judicial District Court (Special) of Travis County, Texas

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURY, for the County of Travis, State of Texas, duly selected, empaneled, sworn, charged, and organized as such at the July Term, 2021, of the 390th Judicial District Court (Special) for said County, upon its oath presents in and to said Court at said term, that JOSHUA JACKSON, on or about the 31st day of May, 2020, and before the presentment of this Indictment, in the County of Travis, and State of Texas, did then and there intentionally, knowingly, and recklessly cause serious bodily injury to CHRISTEN WARKOCZEWSKI, by shooting Christen Warkoczewski with a firearm; to wit, a shotgun, and the Defendant was then and there a public servant, to wit: an Austin Police Department peace officer, acting under color of his office and employment,

Paragraph B

The Grand Jury further presents that JOSHUA JACKSON, on or about the 31st day of May, 2020, and before the presentment of this Indictment, in the County of Travis, and State of Texas, did then and there intentionally, knowingly, and recklessly cause bodily injury to CHRISTEN WARKOCZEWSKI , by shooting Christen Warkoczewski with a firearm; to wit, a shotgun, and the Defendant did use and exhibit a deadly weapon, a firearm; to wit, a shotgun, during the commission of the assault, and the Defendant was then and there a public servant, to wit: an Austin Police Department peace officer, acting under the color of his office and employment,

COUNT II

The Grand Jury further presents that JOSHUA JACKSON, on or about the 31ST DAY OF MAY, 2020, and before the presentment of this Indictment, in the County of Travis, and State of Texas, did then and there intentionally and knowingly threaten CHRISTEN WARKOCZEWSKI, with imminent bodily injury by discharging a firearm; to wit, a shotgun, at and in the direction of Christen Warkoczewski, and the Defendant did use and exhibit a deadly weapon, a firearm, to-wit; a shotgun, during the commission of the assault, and the Defendant was then and there a public servant, to wit: an Austin Police Department peace officer, acting under color of his office and employment,

against the peace and dignity of the State,

2/17/2022 | 10:50 AM CST

DocuSigned by:

Filed in the District Court
Of Travis County, Texas
Velva L. Price, District Clerk

DS
LE

DocuSigned by:

Jose Alvarado
7AB8BC812DCE4FD...

Foreperson of the Grand Jury

Exhibit 2



OFFICE OF THE DISTRICT ATTORNEY

P.O. Box 1748, Austin, TX 78767

Telephone 512/854-9400

Telefax 512/854-4206

JOSÉ P. GARZA
DISTRICT ATTORNEY

TRUDY STRASSBURGER
FIRST ASSISTANT

Travis County DA Civil Rights Unit Case Summaries - FEBRUARY 14, 2022

The following is a current list of each officer-involved use of force or other misconduct matter involving injury to any person currently pending in the Office's Civil Rights Unit.

INDICTED CASES

INDICTED: STATE OF TEXAS VS. CHANCE BRETCHES, D-1-DC-20-900091: At the time of the incident, Mr. Bretches was employed as a police officer with the Austin Police Department. On Wednesday, January 20, 2021, Officer Bretches was indicted with Aggravated Assault by a Public Servant, Serious Bodily Injury/Deadly Weapon, a first-degree felony by the extended 147th Extended Special Grand Jury. The case is pending in the 299th District Court.

The next court setting is February 17, 2022.

INDICTED: STATE OF TEXAS VS. JAMES JOHNSON, D-1-DC-20-900070: At the time of the incident, Mr. Johnson was employed as a deputy with the Williamson County Sheriff's Office. On Monday, March 29, 2021, Deputy Johnson was indicted with Manslaughter, a second-degree felony, by the 147th Extended Special Grand Jury. The case is pending in the 299th District Court.

The next court setting is February 24, 2022.

INDICTED: STATE OF TEXAS VS. ZACHARY CAMDEN, D-1-DC-20-900069: At the time of the incident, Mr. Camden was employed as a deputy with the Williamson County Sheriff's Office. On Monday, March 29, 2021, Deputy Camden was indicted with Manslaughter, a second-degree felony, by the 147th Extended Special Grand Jury. The case is pending in the 299th District Court.

The next court setting is February 24, 2022.

INDICTED: STATE OF TEXAS VS. CHRISTOPHER TAYLOR, D-1-DC-19-900111: At the time of the incident, Mr. Taylor was employed as an officer for the Austin Police Department. On Thursday, August 26, 2021, Mr. Taylor was indicted for Murder, a first-degree felony, and for Deadly Conduct Discharge of Firearm, a third-degree felony by the 331st Special Grand Jury. The case is pending in the 167th District Court.

The next court setting is February 25, 2022.

INDICTED: STATE OF TEXAS VS. KARL KRYCIA, D-1-DC-21-900071: At the time of the incident, Mr. Krycia was employed as an officer for the Austin Police Department. On Thursday, August 26, 2021, Mr. Krycia was indicted for Murder, a first-degree felony, and for Deadly Conduct Discharge of Firearm, a third-degree felony by the 331st Special Grand Jury. The case is pending in the 167th District Court.

The next court setting is February 25, 2022.

INDICTED: STATE OF TEXAS VS. CHRISTOPHER TAYLOR, D-1-DC-20-900048: At the time of the incident, Mr. Taylor was employed as an officer with the Austin Police Department. On Wednesday, March 10, 2021, Officer Taylor was indicted with Murder, a first-degree felony, by the 147th Special Grand Jury. The case is pending in the 167th District Court.

The next court setting is February 25, 2022.

INDICTED: STATE OF TEXAS VS. SHANNON OWENS, D-1-DC-20-900003: At the time of the incident, Mr. Owens was employed as a corrections officer with the Travis County Sherriff's Office. On Wednesday, December 16, 2020, TCSO Deputy Owens was indicted with Aggravated Perjury, a third-degree felony, and Tampering with Governmental Record with the intent to defraud or harm another, a state jail felony by the 147th Special Grand Jury. The case is pending in the 450th District Court.

The next court setting is March 8, 2022.

INDICTED: STATE OF TEXAS VS LANDO HALL, D-1-DC-19-900105: At the time of the incident, Mr. Hall was employed as a police officer with the Austin Police Department. On Monday, January 4, 2021, APD Officer Lando Hall was indicted for the felony offense of Misuse of Official Information, a third-degree felony under Section 39.06(b) of the Texas Penal Code by the 147th Special Grand Jury – Extended July 2020 term. The case is pending in the 403rd Judicial District Court.

The next court setting is March 9, 2022.

INDICTED: STATE OF TEXAS VS. ROBERT CHODY, D-1-DC-21-904036: At the time of the incident, Mr. Chody was the elected Sheriff in Williamson County. On Wednesday, March 31, 2021, Mr. Chody was indicted Tampering with Physical Evidence with Intent to Impair, a third-degree felony by the 147th Extended Special Grand Jury. The case is pending in the 299th District Court.

The next court setting is March 29, 2022.

INDICTED: STATE OF TEXAS VS. JASON NASSOUR, D-1-DC-21-904035: At the time of the incident, Mr. Nassour was employed as General Counsel for the Williamson County Office. On Wednesday, March 31, 2021, Mr. Nassour was indicted Tampering with Physical Evidence with Intent to Impair, a third-degree felony by the 147th Extended Special Grand Jury. The case is pending in the 299th District Court.

The next court setting is March 29, 2022.

INDICTED: STATE OF TEXAS VS NATHANIEL STALLINGS, D-1-DC-19-904051, D-1-DC-21-904041: At the time of the incident, Mr. Stallings, then a licensed peace officer, was employed as a police officer with the Austin Police Department. On October 6, 2017, while on duty and in uniform in a fully marked Austin Police Department patrol vehicle, Mr. Stallings is alleged to have caused bodily injury to a civilian. Mr. Stallings was indicted on June 25, 2018, and charged with Assault and Abuse of Official Capacity. Both cases are pending in the 450th District Court.

This next court setting is April 25, 2022.

Note: Due to COVID-19 restrictions, there are currently no criminal jury trials in Travis County

UNINDICTED

COMPLAINANT: NAME WITHHELD / SUBJECT OFFICERS: NICHOLAS GEBHART (Date of Incident: 05/30/2020): On May 30, 2020, Complainant, a Minor, was attending a protest in downtown Austin following the deaths of George Floyd and Michael Ramos that occurred in downtown Austin and was struck with “bean bag” ammunition and “rubber bullets.”

The investigation into and review of the use of force allegations arising out of the May 30 and May 31, 2020 protests is still underway. The cases are expected to be presented to a Travis County grand jury in the early fall of 2021 and continue into the winter of 2022.

COMPLAINANT: BOMANI RAY BARTON / SUBJECT OFFICER: KYU AN (Date of Incident: 05/30/2020): On May 31, 2020, Mr. Barton, attending a protest in downtown Austin following the deaths of George Floyd and Michael Ramos, was struck with “bean bag” ammunition.

The investigation into and review of the use of force allegations arising out of the May 30 and May 31, 2020 protests is still underway. The cases are expected to be presented to a Travis County grand jury in the early fall of 2021 and continue into the winter of 2022.

COMPLAINANT: GEMICAH VOLTER-JONES / SUBJECT OFFICER: DERRICK LEHMAN & EDWARD BOUDREAU (Date of Incident: 5/30/2020): On May 30, 2020, Mr. Volter-Jones, attending a protest in downtown Austin following the deaths of George Floyd and Michael Ramos, was struck by “bean bag” ammunition.

The investigation into and review of the use of force allegations arising out of the May 30 and May 31, 2020 protests is still underway. The cases are expected to be presented to a Travis County grand jury in the early fall of 2021 and continue into the winter of 2022.

COMPLAINANT: MEREDITH WILLIAMS / SUBJECT OFFICER: JOSEPH CAST (Date of Incident: 5/30/2020): On May 30, 2020, Ms. Williams, attending a protest in downtown Austin following the deaths of George Floyd and Michael Ramos, was struck by “bean bag” ammunition.

The investigation into and review of the use of force allegations arising out of the May 30 and May 31, 2020 protests is still underway. The cases are expected to be presented to a Travis County grand jury in the early fall of 2021 and continue into the winter of 2022.

COMPLAINANT: NICOLE UNDERWOOD / SUBJECT OFFICER: JOHN SIEGEL (Date of Incident: 5/30/2020): On May 30, 2020, Mr. Underwood, attending a protest in downtown Austin following the deaths of George Floyd and Michael Ramos, was struck by “bean bag” ammunition.

The investigation into and review of the use of force allegations arising out of the May 30 and May 31, 2020 protests is still underway. The cases are expected to be presented to a Travis County grand jury in the early fall of 2021 and continue into the winter of 2022.

COMPLAINANT: MEREDITH DRAKE / SUBJECT OFFICER: CHANCE BRETCHES (Date of Incident: 05/31/2020): On May 31, 2020, Mr. Drake, attending a protest in downtown Austin following the deaths of George Floyd and Michael Ramos, was struck by “bean bag” ammunition. Officer Bretches was indicted on 1/20/2021 on Aggravated Assault by Public Servant on an unrelated case.

The investigation into and review of the use of force allegations arising out of the May 30 and May 31, 2020 protests is still underway. The cases are expected to be presented to a Travis County grand jury in the early fall of 2021 and continue into the winter of 2022.

COMPLAINANT: ANTHONY EVANS / SUBJECT OFFICER: KYLE FELTON (Date of Incident: 05/31/2020): On May 31, 2020, Mr. Evans, attending a protest in downtown Austin following the deaths of George Floyd and Michael Ramos, was struck by “bean bag” ammunition.

The investigation into and review of the use of force allegations arising out of the May 30 and May 31, 2020 protests is still underway. The cases are expected to be presented to a Travis County grand jury in the early fall of 2021 and continue into the winter of 2022.

COMPLAINANT: JUSTIN HOWELL / SUBJECT OFFICER: JEFFREY TENG (Date of Incident: 5/31/2020): On May 31, 2020, Mr. Howell, attending a protest in downtown Austin following the deaths of George Floyd and Michael Ramos, was struck by “bean bag” ammunition.

The investigation into and review of the use of force allegations arising out of the May 30 and May 31, 2020 protests is still underway. The cases are expected to be presented to a Travis County grand jury in the early fall of 2021 and continue into the winter of 2022.

COMPLAINANT: SAMUEL KIRSCH / SUBJECT OFFICER: ROLAN RAST (Date of Incident: 5/31/2020): On May 31, 2020, Mr. Kirsch, attending a protest in downtown Austin following the deaths of George Floyd and Michael Ramos, was struck by “bean bag” ammunition.

The investigation into and review of the use of force allegations arising out of the May 30 and May 31, 2020 protests is still underway. The cases are expected to be presented to a Travis County grand jury in the early fall of 2021 and continue into the winter of 2022.

COMPLAINANT: CHRISTEN WARKOCZEWSKI / SUBJECT OFFICERS: JUSTIN BERRY; ALEXANDER LOMOSTEV, TODD GIBLERTSON, STANLEY VICK, CHRISTIAN IRWIN, JEREMY FISHER, JOSHUA JACKSON, BRETT TABIEROU and JOSH BLAKE (Date of Incident: 5/31/2020): On May 31, 2020, Ms. Williams, attending a protest in downtown Austin following the deaths of George Floyd and Michael Ramos, was struck by “bean bag” ammunition.

The investigation into and review of the use of force allegations arising out of the May 30 and May 31, 2020 protests is still underway. The cases are expected to be presented to a Travis County grand jury in the early fall of 2021 and continue into the winter of 2022.

COMPLAINANT: TYREE TALLEY/SUBJECT OFFICER: NAME WITHHELD (Date of Incident: 5/31/2020): On May 31, 2020, Mr. Talley attended a protest in downtown Austin following the deaths of George Floyd and Michael Ramos was struck by “bean-bag” ammunition.

The investigation into and review of the use of force allegations arising out of the May 30 and May 31, 2020 protests is still underway. The cases are expected to be presented to a Travis County grand jury in the early fall of 2021 and continue into the winter of 2022.

COMPLAINANT: MODESTO RODRIGUEZ/SUBJECT OFFICER: NAME WITHHELD (Date of Incident: 5/31/2020): On May 31, 2020, Mr. Rodriguez attended a protest in downtown Austin following the deaths of George Floyd and Michael Ramos was struck by “bean-bag” ammunition.

The investigation into and review of the use of force allegations arising out of the May 30 and May 31, 2020 protests is still underway. The cases are expected to be presented to a Travis County grand jury in the early fall of 2021 and continue into the winter of 2022.

DECEDENT: ENRIQUE QUIROZ / SUBJECT OFFICERS: EDUARDO PINEDA, SPENCER HANNA, ZANE DOWDELL, LUCAS PARKER, MARK YALETCHKO and TRINITHAD GARCIA (Date of Incident: 03/21/2020): Mr. Quiroz died while in the custody of the Austin Police Department after an encounter with multiple officers on March 31, 2020.

We expect that this case will be presented to a grand jury in the early spring of 2022.

COMPLAINANT: F. ZIMMERMAN (Pseudonym) / SUBJECT OFFICER: WALTER DODDS (Date of Incident: 04/18/2020): On April 18, 2020, while responding to a service call involving Ms. Zimmerman, Mr. Dodds, then an Austin Police Department officer encountered Ms. Zimmerman and is alleged to have later returned to her residence and alleged to have sexually assaulted her.

The case is currently under investigation in a joint investigation conducted by the Travis County District Attorney's Sexual Assault Unit and the Civil Rights Unit. This case is expected to be presented to a Travis County grand jury in the early spring of 2022.

DECEDENT: ALEXANDER GONZALES / SUBJECT OFFICER: LUIS SERRATO AND GABRIEL GUTIERREZ (Date of Incident: 01/05/2021): On January 5, 2021, Mr. Alexander Gonzales died as a result of multiple gunshot wounds in an incident involving an off-duty Austin Police Department officer and another officer who was on duty, both of whom discharged their weapons striking Mr. Gonzales.

The case is currently under investigation in a joint investigation involving the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit. Our Office expects that the investigation should be concluded within a time frame that will allow the case to be presented to a grand jury in a manner consistent with our policies and in the order of its chronological occurrence not later than early spring of 2022.

COMPLAINANT: NAME WITHHELD/SUBJECT OFFICER: NAME WITHHELD (Date of Incident: 3/12/2021): On March 12, 2021, the civilian was arrested for an active warrant. While officers attempted to place the civilian under arrest, the civilian victim was struck by a baton and tased.

The case is currently under investigation in a joint investigation involving the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit. Our Office expects that the investigation should be concluded within a time frame that will allow the case to be presented to a grand jury in a manner consistent with our policies and in the order of its chronological occurrence not later than early spring of 2022.

COMPLAINANT: NAME WITHHELD/SUBJECT OFFICER: NAME WITHHELD (Date of Incident: 11/26/2020): On November 26, 2020, the civilian was arrested for interfering with a crime scene which was investigated by Austin Police Department. The victim was struck by the subject officer while being handcuffed.

The case is currently under investigation in a joint investigation involving the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit. Our Office expects that the investigation should be concluded within a time frame that will allow the case to be presented to a grand jury in a manner consistent with our policies and in the order of its chronological occurrence not later than early spring of 2022.

SUBJECT OFFICERS: MICHAEL BARBA/JASON CUMMINS/DERRICK LEHMAN (Date of Incident: 08/19/2021): On August 19, 2021, a civilian was shot and tased by Austin Police Department Officers. The civilian is expected to recover from his injuries.

The case is currently under investigation in a joint investigation involving the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit. Our Office expects that the investigation should be concluded within a time frame that will allow the case to be presented to a grand jury in a manner consistent with our policies and in the order of its chronological occurrence not later than early spring of 2022.

DESCENDANT: RONALD ZAVAGLIA/SUBJECT OFFICER: IAN CLARK (Date of Incident: 08/19/2021): On August 19, 2021, Mr. Zavaglia died as a result of a gunshot wound in an incident with the Pflugerville Police Department.

The case is currently under investigation in a joint investigation involving the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit. Our Office expects that the investigation should be concluded within a time frame that will allow the case to be presented to a grand jury in a manner consistent with our policies and in the order of its chronological occurrence not later than early spring of 2022.

COMPLAINANT: NAME WITHHELD/SUBJECT OFFICER: NAME WITHHELD (Date of Incident: 09/18/2021): On September 18, 2021, the civilian was struck by an Austin Police Department Officer after multiple requests to leave the area.

The case is currently under investigation in a joint investigation involving the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit. Our Office expects that the investigation should be concluded within a time frame that will allow the case to be presented to a grand jury in a manner consistent with our policies and in the order of its chronological occurrence not later than early spring of 2022.

DECENDENT: MICHAEL CAROTHERS/SUBJECT OFFICER: NAME WITHHELD (Date of Incident: 10/09/2021): On October 09, 2021, there was gunfire between civilians. Subsequently, an officer discharged his weapon. Mr. Carothers died as a result of a gunshot wound.

The case is currently under investigation in a joint investigation involving the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit. Our Office expects that the investigation should be concluded within a time frame that will allow the case to be presented to a grand jury in a manner consistent with our policies and in the order of its chronological occurrence not later than early summer of 2022.

DECENDENT: ROBERT RICHART/SUBJECT OFFICERS: ERIC STRNAD (Date of Incident: 10/27/2021) On October 27, 2021, Mr. Richart died as a result of a gunshot wound fired by an Austin Police Department officer on October 27, 2021.

The case is currently under investigation in a joint investigation involving the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit. Our Office expects that the investigation should be concluded within a time frame that will allow the case to be presented to a grand jury in a manner consistent with our policies and in the order of its chronological occurrence not later than early summer of 2022.

COMPLAINANT: NAME WITHHELD/SUBJECT OFFICER: JAVIER RODRIGUEZ (Date of Incident: 12/24/2021) On 12/24/2021, a civilian was shot by Austin Police Department Officers. The civilian is expected to recover from his injuries.

The case is currently under investigation in a joint investigation involving the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit. Our Office expects that the investigation should be concluded within a time frame that will allow the case to be presented to a grand jury in a manner consistent with our policies and in the order of its chronological occurrence not later than early summer of 2022.

COMPLAINT: NAME WITHHELD/SUBJECT OFFICER: NAME WITHHELD (Date of Incident: June 24, 2021): On June 24, 2021, the juvenile civilian was struck by "bean bag" ammunition, a less-lethal while officers were executing a search warrant and arrest warrant.

The case is currently under investigation with the Travis County District Attorney's Office Civil Rights Unit. Our Office expects that the investigation should be concluded within a timeframe that will allow the case to be presented to a grand jury in a manner consistent with our policies and in the order of its chronological occurrence no later than early fall of 2022.

COMPLAINANT: SIMONE GRIFFITH/ SUBJECT OFFICER: NAME WITHHELD (Date of Incident: 10/30/2021): On October 30, 2021, Ms. Griffith was arrested for criminal trespass. While officers attempted to place Ms. Griffith under arrest, she was struck by Austin Police Department Officers.

The case is currently under investigation with the Travis County District Attorney's Office Civil Rights Unit. Our Office expects that the investigation should be concluded within a timeframe that will allow the case to be presented to a grand jury in a manner consistent with our policies and in the order of its chronological occurrence no later than early fall of 2022.

COMPLAINANT: NAME WITHHELD/SUBJECT OFFICER: NAME WITHHELD (Date of Incident 01/29/2022) On 1/29/2022, a civilian was shot by Austin Police Department Officers. The civilian is expected to recover from his injuries.

The case is currently under investigation in a joint investigation involving the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit. Our Office expects that the investigation should be concluded within a time frame that will allow the case to be presented to a grand jury in a manner consistent with our policies and in the order of its chronological occurrence not later than early fall of 2022.

Exhibit 3



OFFICE OF THE DISTRICT ATTORNEY

P.O. Box 1748, Austin, TX 78767

Telephone 512/854-9400

Telefax 512/854-4206

JOSÉ P. GARZA
DISTRICT ATTORNEY

TRUDY STRASSBURGER
FIRST ASSISTANT

Travis County DA Civil Rights Unit Case Summaries - January 27, 2023

The following is a current list of each officer-involved use of force or other misconduct matter involving injury to any person currently pending in the Office's Civil Rights Unit.

INDICTED CASES

INDICTED: STATE OF TEXAS VS ROLAN RAST, D-1-DC-20-900080: At the time of the incident, Mr. Siegel was employed as a police officer with the Austin Police Department. On Thursday, February 17, 2022, Mr. Siegel was indicted for Aggravated Assault by Public Servant, a first-degree felony, by the 390th District Court Special Grand Jury. The case is pending in the 331st District Court.

The next court setting is January 27, 2023

INDICTED: STATE OF TEXAS VS JAMES MORGAN, D-1-DC-22-900053: At the time of the incident, Mr. Morgan was employed as a police officer with the Austin Police Department. On Thursday May 26, 2022, Mr. Morgan was indicted for Aggravated Assault by Public Servant, a first-degree felony, by the 460th District Court Special Grand Jury. The case is pending in the 427th District Court.

The next court setting is January 30, 2023

INDICTED: STATE OF TEXAS VS. KARL KRYCIA, D-1-DC-21-900071: At the time of the incident, Mr. Krycia was employed as an officer for the Austin Police Department. On Thursday, August 26, 2021, Mr. Krycia was indicted for Murder, a first-degree felony, and for Deadly Conduct Discharge of Firearm, a third-degree felony, by the 331st District Court Special Grand Jury. The case is pending in the 167th District Court.

The next court setting is January 30, 2023

INDICTED: STATE OF TEXAS VS JOHN SIEGEL, D-1-DC-20-900072: At the time of the incident, Mr. Siegel was employed as a police officer with the Austin Police Department. On Thursday, February 17, 2022, Mr. Siegel was indicted for Aggravated Assault by Public Servant, a first-degree felony, by the 390th District Court Special Grand Jury. The case is pending in the 147th District Court.

The next court setting is January 31, 2023

INDICTED: STATE OF TEXAS VS. WALTER DODDS, D-1-DC-20-301555: At the time of the incident, Mr. Dodds was employed as a police officer with the Austin Police Department. On Tuesday, August 30, 2022, Mr. Dodds was indicted by the 427th District Court Grand Jury for one count of Aggravated Sexual Assault, and two counts of Burglary Habitation Intend Sex Offense, all of which are first-degree felonies Mr. Dodds was also indicted for two counts of Official Oppression, both of which are class-A misdemeanors. The case is pending in the 460th District Court.

The next court setting is February 2, 2023

INDICTED: STATE OF TEXAS VS JOSHUA BLAKE, D-1-DC-22-900019: At the time of the incident, Mr. Blake was employed as a police officer with the Austin Police Department. On Thursday, February 17, 2022, Mr. Blake was indicted for Aggravated Assault by Public Servant, a first-degree felony, by the 390th District Court Special Grand Jury. The case is pending in the 147th District Court.

The next court setting is February 2, 2023

INDICTED: STATE OF TEXAS VS JOSHUA JACKSON, D-1-DC-22-900010: At the time of the incident, Mr. Jackson was employed as a police officer with the Austin Police Department. On Thursday, February 17, 2022, Mr. Jackson was indicted for Aggravated Assault by Public Servant, a first-degree felony, by the 390th District Court Special Grand Jury. The case is pending in the 390th District Court.

The next court setting is February 10, 2023

INDICTED: STATE OF TEXAS VS STANLEY VICK, D-1-DC-22-900009: At the time of the incident, Mr. Vick was employed as a police officer with the Austin Police Department. On Thursday, February 17, 2022, Mr. Vick was indicted for Aggravated Assault by Public Servant, a first-degree felony, by the 390th District Court Special Grand Jury. The case is pending in the 390th District Court.

The next court setting is February 10, 2023

INDICTED: STATE OF TEXAS VS JUSTIN BERRY, D-1-DC-20-900055: At the time of the incident, Mr. Berry was employed as a police officer with the Austin Police Department. On Thursday, February 17, 2022, Mr. Berry was indicted for Aggravated Assault by Public Servant, a first-degree felony, by the 390th District Court Special Grand Jury. The case is pending in the 390th District Court.

The next court setting is February 10, 2023

INDICTED: STATE OF TEXAS VS JOSEPH CAST, D-1-DC-20-900061: At the time of the incident, Mr. Cast was employed as a police officer with the Austin Police Department. On Thursday, February 17, 2022, Mr. Cast was indicted for Aggravated Assault by Public Servant, a first-degree felony, by the 390th District Court Special Grand Jury. The case is pending in the 390th District Court.

The next court setting is February 10, 2023

INDICTED: STATE OF TEXAS VS. ROBERT CHODY, D-1-DC-21-904036: At the time of the incident, Mr. Chody was the elected Sheriff in Williamson County, Texas. On Wednesday, March 31, 2021, Mr. Chody was indicted for Tampering with Physical Evidence with Intent to Impair, a third-degree felony by the 147th District Court Extended Special Grand Jury. The case is pending in the 299th District Court.

The next court setting is February 13, 2023

INDICTED: STATE OF TEXAS VS. JASON NASSOUR, D-1-DC-21-904035: At the time of the incident, Mr. Nassour was employed as General Counsel for the Williamson County Attorney's Office. On Wednesday, March 31, 2021, Mr. Nassour was indicted for Tampering with Physical Evidence with Intent to Impair, a third-degree felony by the 147th District Court Extended Special Grand Jury. The case is pending in the 299th District Court.

The next court setting is February 13, 2023

INDICTED: STATE OF TEXAS VS ALEXANDER LOMOVSTEV, D-1-DC-21-900126: At the time of the incident, Mr. Lomovstev was employed as a police officer with the Austin Police Department. On Thursday, February 17, 2022, Mr. Lomovstev was indicted for Aggravated Assault by Public Servant, a first-degree felony, by the 390th District Court Special Grand Jury. The case is pending in the 427th District Court.

The next court setting is February 15, 2023.

INDICTED: STATE OF TEXAS VS ERIC HEIM, D-1-DC-20-900076: At the time of the incident, Mr. Heim was employed as a police officer with the Austin Police Department. On Thursday, February 17, 2022, Mr. Heim was indicted for Aggravated Assault by Public Servant, a first-degree felony, by the 390th District Court Special Grand Jury. The case is pending in the 299th District Court.

The next court setting is February 16, 2023

INDICTED: STATE OF TEXAS VS. CHANCE BRETCHES, D-1-DC-20-900091: At the time of the incident, Mr. Bretches was employed as a police officer with the Austin Police Department. On Wednesday, January 20, 2021, Officer Bretches was indicted with Aggravated Assault by a Public Servant, Serious Bodily Injury/Deadly Weapon, a first-degree felony, by the extended 147th District Court Extended Special Grand Jury. The case is pending in the 299th District Court.

The next court setting is February 16, 2023

INDICTED: STATE OF TEXAS VS JEFFREY TENG, D-1-DC-22-900005: At the time of the incident, Mr. Teng was employed as a police officer with the Austin Police Department. On Thursday, February 17, 2022, Mr. Teng was indicted for Aggravated Assault by Public Servant, a first-degree felony, by the 390th District Court Special Grand Jury. The case is pending in the 299th District Court.

The next court setting is February 16, 2023

INDICTED: STATE OF TEXAS VS CHANCE BRETCHES, D-1-DC-20-900056: At the time of the incident, Mr. Bretches was employed as a police officer with the Austin Police Department. On Thursday May 26, 2022, Mr. Bretches was indicted for Aggravated Assault by Public Servant, a first-degree felony, by the 460th District Court Special Grand Jury. The case is pending in the 299th District Court.

The next court setting is February 16, 2023

INDICTED: STATE OF TEXAS VS BRETT TABLERIOU, D-1-DC-22-900018: At the time of the incident, Mr. Tableriou was employed as a police officer with the Austin Police Department. On Thursday, February 17, 2022, Mr. Tableriou was indicted for Aggravated Assault by Public Servant, a first-degree felony, by the 390th District Court Special Grand Jury. The case is pending in the 460th District Court.

The next court setting is February 16, 2023

INDICTED: STATE OF TEXAS VS. ZACHARY CAMDEN, D-1-DC-20-900069: At the time of the incident, Mr. Camden was employed as a deputy with the Williamson County Sheriff's Office. On Monday, March 29, 2021, Mr. Camden was indicted with Manslaughter, a second-degree felony, by the 147th District Court Extended Special Grand Jury. The case is pending in the 299th District Court.

The next court setting is February 21, 2023

INDICTED: STATE OF TEXAS VS. JAMES JOHNSON, D-1-DC-20-900070: At the time of the incident, Mr. Johnson was employed as a deputy with the Williamson County Sheriff's Office. On Monday, March 29, 2021, Mr. Johnson was indicted for Manslaughter, a second-degree felony, by the 147th District Court Extended Special Grand Jury. The case is pending in the 299th District Court.

The next court setting is February 21, 2023

INDICTED: STATE OF TEXAS VS KYU AN, D-1-DC-20-900057: At the time of the incident, Mr. An was employed as a police officer with the Austin Police Department. On Thursday, February 17, 2022, Mr. An was indicted for Aggravated Assault by Public Servant, a first-degree felony by the 390th District Court Special Grand Jury. The case is pending in the 403rd District Court.

The next court setting is February 23, 2023

INDICTED: STATE OF TEXAS VS DERRICK LEHMAN, D-1-DC-20-900071: At the time of the incident, Mr. Lehman was employed as a police officer with the Austin Police Department. On Thursday, February 17, 2022, Mr. Lehman was indicted for Aggravated Assault by Public Servant, a first-degree felony by the 390th District Court Special Grand Jury. The case is pending in the 450th District Court.

The next court setting is February 28, 2023

INDICTED: STATE OF TEXAS VS KYLE FELTON, D-1-DC-20-900054 / D-1-DC-20-900059: At the time of the incident, Mr. Felton was employed as a police officer with the Austin Police Department. On Thursday, February 17, 2022, Mr. Felton was indicted for Aggravated Assault by Public Servant, a first-degree felony, by the 390th District Court Special Grand Jury. The case is pending in the 299th District Court.

The next court setting is March 9, 2023

INDICTED: STATE OF TEXAS VS JEREMY FISHER, D-1-DC-22-900011: At the time of the incident, Mr. Fisher was employed as a police officer with the Austin Police Department. On Thursday, February 17, 2022, Mr. Fisher was indicted for Aggravated Assault by Public Servant, a first-degree felony, by the 390th District Court Special Grand Jury. The case is pending in the 403rd District Court.

The next court setting is March 27, 2023

INDICTED: STATE OF TEXAS VS TODD GILBERTSON, D-1-DC-21-900125: At the time of the incident, Mr. Gilbertson was employed as a police officer with the Austin Police Department. On Thursday, February 17, 2022, Mr. Gilbertson was indicted for Aggravated Assault by Public Servant, a first-degree felony, by the 390th District Court Special Grand Jury. The case is pending in the 167th District Court.

The next court setting is March 27, 2023

INDICTED: STATE OF TEXAS VS EDWARD BOUDREAU, D-1-DC-22-900020: At the time of the incident, Mr. Boudreau was employed as a police officer with the Austin Police Department. On Thursday, February 17, 2022, Mr. Boudreau was indicted for Aggravated Assault by Public Servant, a first-degree felony, by the 390th District Court Special Grand Jury. The case is pending in the 450th District Court.

The next court setting is March 30, 2023

INDICTED: STATE OF TEXAS VS NICHOLAS GEBHART, D-1-DC-20-900060: At the time of the incident, Mr. Gebhart was employed as a police officer with the Austin Police Department. On Thursday, February 17, 2022, Mr. Gebhart was indicted for Aggravated Assault by Public Servant, a first-degree felony, by the 390th District Court Special Grand Jury. The case is pending in the 450th District Court.

The next court setting is March 30, 2023

INDICTED: STATE OF TEXAS VS CHRISTOPHER IRWIN, D-1-DC-22-900012: At the time of the incident, Mr. Irwin was employed as a police officer with the Austin Police Department. On Thursday, February 17, 2022, Mr. Irwin was indicted for Aggravated Assault by Public Servant, a first-degree felony, by the 390th District Court Special Grand Jury. The case is pending in the 450th District Court.

The next court setting is March 30, 2023

INDICTED: STATE OF TEXAS VS. CHRISTOPHER TAYLOR, D-1-DC-19-900111: At the time of the incident, Mr. Taylor was employed as an officer for the Austin Police Department. On Thursday, August 26, 2021, Mr. Taylor was indicted for Murder, a first-degree felony, and for Deadly Conduct Discharge of Firearm, a third-degree felony, by the 331st District Court Special Grand Jury. The case is pending in the 167th District Court.

The next court setting is May 17, 2023

INDICTED: STATE OF TEXAS VS. CHRISTOPHER TAYLOR, D-1-DC-20-900048: At the time of the incident, Mr. Taylor was employed as an officer with the Austin Police Department. On Wednesday, March 10, 2021, Officer Taylor was indicted with Murder, a first-degree felony, by the 147th District Court Special Grand Jury. The case is pending in the 167th District Court.

The next court setting is May 17, 2023

UNINDICTED

COMPLAINANT: TYREE TALLEY/SUBJECT OFFICER: NAME WITHHELD (Date of Incident: 05/31/2020): On May 31, 2020, Mr. Talley was struck by less-lethal ammunition while attending a protest in downtown Austin following the deaths of George Floyd and Michael Ramos.

The investigation into, and review of, the use of force allegations arising out of the May 30 and May 31, 2020, protests is still underway.

GRAND JURY TERM OF PRESENTATION: TBD

COMPLAINANT: SAMUEL KIRSCH/SUBJECT OFFICERS: NAME WITHHELD (Date of Incident: 5/31/2020): On May 31, 2020, Mr. Kirsch was struck by less-lethal ammunition while attending a protest in downtown Austin following the deaths of George Floyd and Michael Ramos.

The investigation into, and review of, the use of force allegations arising out of the May 30 and May 31, 2020, protests is still underway.

GRAND JURY TERM OF PRESENTATION: TBD

DECEDENT: ENRIQUE QUIROZ/SUBJECT OFFICERS: EDUARDO PINEDA, SPENCER HANNA, ZANE DOWDELL, LUCAS PARKER, MARK YALETCHKO and TRINITHAD GARCIA (Date of Incident: 03/21/2020): Mr. Quiroz died while in the custody of the Austin Police Department after an encounter with multiple officers on March 31, 2020.

The case is being jointly investigated by the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit.

GRAND JURY TERM OF PRESENTATION: TBD

COMPLAINANT: NAME WITHHELD/SUBJECT OFFICER: NAME WITHHELD (Date of Incident: 03/12/2021): On March 12, 2021, the complainant was arrested for an active warrant. While officers attempted to place the complainant under arrest, the complainant was struck with a baton and tased.

The case is being jointly investigated by the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit.

GRAND JURY TERM OF PRESENTATION: TBD

COMPLAINANT: NAME WITHHELD/SUBJECT OFFICER: NAME WITHHELD (Date of Incident: 11/26/2020): On November 26, 2020, the complainant was arrested by the Austin Police Department for interfering with a crime scene. The complainant was struck by the subject officer while being handcuffed.

The case is being jointly investigated by the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit.

GRAND JURY TERM OF PRESENTATION: TBD

COMPLAINANT: NAME WITHHELD/SUBJECT OFFICERS: MICHAEL BARBA/JASON CUMMINS/DERRICK LEHMAN (Date of Incident: 08/19/2021): On August 19, 2021, the complainant was shot and tased by Austin Police Department Officers. The civilian is expected to recover from his injuries.

The case is being jointly investigated by the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit.

GRAND JURY TERM OF PRESENTATION: TBD

COMPLAINANT: NAME WITHHELD/SUBJECT OFFICER: NAME WITHHELD (Date of Incident: 09/18/2021): On September 18, 2021, the complainant was struck by an Austin Police Department Officer after multiple requests to leave the area.

The case is being jointly investigated by the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit.

GRAND JURY TERM OF PRESENTATION: JANUARY 2023 TERM

DECEDENT: MICHAEL CAROTHERS/SUBJECT OFFICER: NAME WITHHELD (Date of Incident: 10/09/2021): On October 9, 2021, there was gunfire between civilians. Subsequently, an officer discharged his weapon. Mr. Carothers died from a gunshot wound.

The case is being jointly investigated by the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit.

GRAND JURY TERM OF PRESENTATION: TBD

COMPLAINANT: JUVENTINO NAVEJAR/SUBJECT OFFICER: JAVIER RODRIGUEZ (Date of Incident: 12/24/2021) On December 24, 2021, Mr. Navejar was shot by an Austin Police Department Officer. Mr. Navejar is expected to recover from his injuries.

The case is being jointly investigated by the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit.

GRAND JURY TERM OF PRESENTATION: TBD

COMPLAINT: NAME WITHHELD/SUBJECT OFFICER: NAME WITHHELD (Date of Incident: 06/24/2021): On June 24, 2021, the juvenile complainant was struck by less-lethal ammunition while officers were executing a search warrant and arrest warrant.

The case is currently under investigation by the Travis County District Attorney's Office Civil Rights Unit.

GRAND JURY TERM OF PRESENTATION: TBD

COMPLAINANT: SIMONE GRIFFITH/SUBJECT OFFICER: NAME WITHHELD (Date of Incident: 10/30/2021): On October 30, 2021, Ms. Griffith was arrested for criminal trespass. While officers attempted to place Ms. Griffith under arrest, she was struck by Austin Police Department Officers.

The case is currently under investigation with the Travis County District Attorney's Office Civil Rights Unit.

GRAND JURY TERM OF PRESENTATION: TBD

COMPLAINANT: TERRY GONZALES/SUBJECT OFFICER: JON RIORDAN (Date of Incident 01/29/2022) On January 29, 2022, Mr. Gonzales sustained a gunshot wound during an incident with Austin Police Department Officers. Mr. Gonzales is expected to recover from his injuries.

The case is being jointly investigated by the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit.

GRAND JURY TERM OF PRESENTATION: TBD

DECEDENT: MIGUEL RIVERA/SUBJECT OFFICERS: BRITTON TAYLOR and CHARLES WESLEY (Date of Incident: 03/06/2022) On March 6, 2022, Mr. Rivera died as a result of a gunshot wound sustained during an incident involving Austin Police Department Officers.

The case is being jointly investigated by the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit.

GRAND JURY TERM OF PRESENTATION: JANUARY 2023 TERM

DECEDENT: ROBERT HAMMITT/SUBJECT OFFICERS: NAME WITHHELD (Date of Incident: 05/26/2022) On May 26, 2022, Mr. Hammitt died from gunshot wounds sustained during an incident involving Austin Police Department Officers.

The case is being jointly investigated by the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit.

GRAND JURY TERM OF PRESENTATION: JANUARY 2023 TERM

DECEDENT: CARLOS ELI CHACON-CASTILLO/SUBJECT OFFICERS: JOHN ZAVALA, SPENCER BRADLEY, and DENNIS KERLIN (Date of Incident: 06/12/2022) On June 12, 2022, Mr. Chacon-Castillo died as a result of a gunshot wound sustained during an incident with Austin Police Department Officers.

The case is being jointly investigated by the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit.

GRAND JURY TERM OF PRESENTATION: JANUARY 2023 TERM

DECEDENT: MICHAEL CRATER/SUBJECT OFFICERS: NAME WITHHELD (Date of Incident:

06/14/2022) On June 14, 2022, Mr. Crater died as a result of a gunshot wound sustained during an incident involving a Leander Police Department Officer.

The case is being jointly investigated by the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit.

GRAND JURY TERM OF PRESENTATION: JANUARY 2023 TERM

COMPLAINANT: BRANDON MUNOZ/SUBJECT OFFICER: NAME WITHHELD (Date of Incident 08/08/2022) On August 8, 2022, Mr. Munoz was sustained a gunshot wound during an incident involving an Austin Police Department Officer and a Texas Department of Public Safety Trooper. Mr. Munoz is expected to recover from his injuries.

The case is being jointly investigated by the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit.

GRAND JURY TERM OF PRESENTATION: TBD

COMPLAINANT: CLATEACHIA STEWART/SUBJECT OFFICER: ZACHARY MAINI (Date of Incident: 08/28/2022): On August 28, 2022, Ms. Stewart was pulled over for an alleged traffic violation. During the encounter, Ms. Stewart was tased by DPS Trooper Zachary Maini.

The case is currently under investigation with the Travis County District Attorney's Office Civil Rights Unit.

GRAND JURY TERM OF PRESENTATION: TBD

DECEDENT: ANTONIO GONZALES/SUBJECT OFFICER: NAME WITHHELD (Date of Incident: 09/23/2022): On September 23, 2022, a civilian died following an incident during which shots were fired by Austin Police Department Officer.

The case is being jointly investigated by the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit.

GRAND JURY TERM OF PRESENTATION: TBD

COMPLAINANT: EMEKA WILLIAMS/SUBJECT OFFICER: NAME WITHHELD (Date of Incident: 10/23/2022): On October 23, 2022, a civilian was shot following an incident during which shots were fired by Austin Police Department Officers. Mr. Williams is expected to recover from his injuries.

The case is being jointly investigated by the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit.

GRAND JURY TERM OF PRESENTATION: TBD

DECEDENT: RAJAN DAVID MOONESINGHE/SUBJECT OFFICER: DANIEL SANCHEZ (Date of Incident: 11/15/2022): On November 15, 2022, a civilian died following an incident during which shots were fired by Austin Police Department Officer.

The case is being jointly investigated by the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit.

GRAND JURY TERM OF PRESENTATION: TBD

DECEDENT: ANTHONY MARUIS FRANKLIN/SUBJECT OFFICER: NAME WITHHOLD (Date of Incident: January 15, 2023): On January 15, 2023, a civilian died following an incident during which shots were fired by Austin Police Department Officer.

The case is being jointly investigated by the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit.

GRAND JURY TERM OF PRESENTATION: TBD

Exhibit 4

147th District Court

Case Summary

Case No. D-1-DC-20-900072

State of Texas, State of Texas Vs. SIEGEL, JOHN

§
§
§Location: **147th District Court**
Judicial Officer: **147TH, DISTRICT COURT**
Filed on: **02/18/2022**

Case Information

Offense	Degree	Offense Date	Filed Date	Case Type:	Case Status:
1. AGG ASSAULT BY PUBLIC SERVANT	F1	05/30/2020	02/18/2022	DISTRICT ATTORNEY NO COMPLAINT	02/21/2022 Indictment
2. AGG ASSAULT BY PUBLIC SERVANT	F1	05/30/2020	02/18/2022		

Bonds

CRIMINAL SURETY BOND #00003300
02/21/2022 Posted
Counts: 1, 2

Party Information

State State of Texas
State of Texas **GILL, RAMAN Retained**

Defendant SIEGEL, JOHN **ENGLISH, JASON SPEER Retained**
DRYMALLA, LAURIE HESS Retained

Case Events

02/17/2022  INDICTMENT 390TH GRAND JURY
BOND AMOUNT \$5000.00

02/17/2022 SPECIAL FINDINGS INDICTMENT
TO WIT: A SHOTGUN

02/18/2022  SIGNED ORDER
SIGNED ORDER FOR ISSUANCE OF CAPIAS

02/18/2022  CAPIAS/WARRANT

02/21/2022  WARRANT RETURNED EXECUTED

02/22/2022  NTC:OF APPEARANCE OF COUNSEL

03/02/2022  APPLICATION FOR SUBPOENA
ATTN: CUSTODIAN OF RECORDS FOR DELL SETON MEDICAL CENTER @ UT

Case Summary

Case No. D-1-DC-20-900072

- 03/04/2022  EXECUTED SUBPOENA
ATTN: CUSTODIAN OF RECORDS FOR DELL SETON MEDICAL CENTER @ UT
- 03/21/2022  APPLICATION FOR SUBPOENA
STATE: CUSTODIAN OF RECORDS AUSTIN POLICE DEPARTMENT
- 03/22/2022  EXECUTED SUBPOENA
ATTN: RENEE MOORE - AUSTIN POLICE DEPARTMENT
- 06/10/2022  MTN:MOTION
STATE'S NOTICE OF WITNESSES WHO APPEARED BEFORE THE GRAND JURY AND MOTION TO DISCLOSE GRAND JURY TRANSCRIPTS AND EXHIBITS
- 06/14/2022  SIGNED ORDER
ORDER ON STATE'S MOTION TO DISCLOSE GRAND JURY TRANSCRIPTS AND EXHIBITS -GRANTED
- 10/25/2022  RESPONSE
DECLARATION REGARDING WEAPON INVOLVED IN THIS MATTER, AND NOTICE PURSUANT TO BRADY V. MARYLAND AND TEXAS CODE OF CRIMINAL PROCEDURE, ART. 39.14
- 10/31/2022  MOTION
MOTION TO FILE BRADY AND TEXAS CODE OF CRIMINAL PROCEDURE 39.14 DICLOSURE UNDER SEAL
- 11/03/2022  SIGNED ORDER
ON STATE'S MOTION TO FILE BRADY AND TX CCP 39.14 DISCLOSURE UNDER SEAL/GRANTED
- 11/07/2022 OTHER/NOTICE
SEALED BY ORDER

Hearings

- 03/07/2022 **CANCELED First Appearance-Criminal Court Administration** (9:30 AM) (Judicial Officer: Criminal Court Administration, CCA)
Reset
- 02/14/2023 **Pre-Trial Hearing** (9:15 AM) (Judicial Officer: 147TH, DISTRICT COURT)

299th District Court

Case Summary

Case No. D-1-DC-20-900076

State of Texas, State of Texas Vs. HEIM, ERIC

§
§
§Location: **299th District Court**
Judicial Officer: **299TH, DISTRICT COURT**
Filed on: **02/18/2022**

Case Information

Offense	Degree	Offense Date	Filed Date	Case Type:	DISTRICT ATTORNEY NO COMPLAINT
1. AGG ASSAULT BY PUBLIC SERVANT	F1	05/31/2020	02/18/2022	Case Status:	02/21/2022 Indictment
2. AGG ASSAULT BY PUBLIC SERVANT	F1	05/31/2020	02/18/2022		

Party Information

State	State of Texas	
	State of Texas	GILL, RAMAN Retained
Defendant	HEIM, ERIC	ERVIN, KENNETH WAYNE Retained O'CONNELL, DOUGLAS K Retained

Case Events

02/17/2022	 INDICTMENT 390TH GRAND JURY BOND AMOUNT \$5000.00
02/17/2022	SPECIAL FINDINGS INDICTMENT TO WIT: A 40MM LAUNCHER
02/18/2022	 SIGNED ORDER SIGNED ORDER FOR ISSUANCE OF CAPIAS
02/18/2022	 CAPIAS/WARRANT
02/18/2022	 WARRANT RETURNED EXECUTED
02/18/2022	 FELONY BOND CARD Bond set \$1.00
03/02/2022	 APPLICATION FOR SUBPOENA Custodian of Records for: Dell Seton Medical Center @ UT
03/04/2022	 EXECUTED SUBPOENA ATTN: CUSTODIAN OF RECORDS FOR DELL SETON MEDICAL CENTER @ UT
03/11/2022	MTN:TO COMPEL —

Case Summary**Case No. D-1-DC-20-900076**

03/21/2022  APPLICATION FOR SUBPOENA
STATE: CUSTODIAN OF RECORDS AUSTIN POLICE DEPARTMENT

03/22/2022  EXECUTED SUBPOENA
ATTN: RENEE MOORE - AUSTIN POLICE DEPARTMENT

04/01/2022 RESPONSE
STATE S RESPONSE TO DEFENSE MOTION TO COMPEL DISCLOSURE OF GRAND JURY WITNESSES

05/11/2022 RESPONSE
DEFENDANT'S REPLY TO STATE'S RESPONSE TO MOTION TO COMPEL DISCLOSURE OF GRAND JURY WITNESSES

05/11/2022 RESPONSE
DEFENDANT'S REPLY TO STATE'S RESPONSE TO MOTION TO COMPEL DISCLOSURE OF GRAND JURY WITNESSES

05/17/2022  MTN:MOTION
DEFENDANT'S MOTION FOR THE TRAVIS COUNTY DISTRICT ATTORNEY TO APPEAR AND SHOW CAUSE

05/18/2022  MTN:MOTION
STATE'S DISCLOSURE IN COMPLIANCE WITH COURT'S ORDER AND MOTION FOR CLARIFICATION OR RECONSIDERATION OF COURT'S RULING REQUIRING ENDORSEMENT OF PROSECUTORS' NAMES ON INDICTMENT

06/13/2022  MTN:MOTION
MOTION FOR ACCESS TO EVIDENCE FOR INEPENDENT FORENSIC TESTING

06/29/2022  APPLICATION FOR SUBPOENA
ATTN: CUSTODIAN OF RECORDS FOR CITY OF AUSTIN

06/30/2022  EXECUTED SUBPOENA
ATTN: CUSTODIAN OF RECORDS FOR CITY OF AUSTIN

07/15/2022  MTN:TO QUASH

08/10/2022  ORDER

10/25/2022  RESPONSE
DECLARATION IN RESPONSE TO COURT S ORDER ON DEFENDANT S MOTION FOR ACCESS TO EVIDENCE, AND NOTICE PURSUANT TO BRADY V. MARYLAND AND TEXAS CODE OF CRIMINAL PROCEDURE, ART. 39.14

12/09/2022  MTN:MOTION
MTN:TO DISCLOSE GRANDJURY PROCEEDINGS

12/13/2022  SIGNED ORDER
ORDER ON MOTION TO DISLCOSE GRAND JURY PROCEEDINGS

12/22/2022  MTN:TO QUASH

01/04/2023  RESPONSE
RESPONSE TO DEFENDANT S MOTION TO QUASH INDICTMENT

Hearings

04/07/2022 **CANCELED First Appearance-Criminal Court Administration** (9:30 AM) (Judicial Officer: Criminal Court)

Case Summary

Case No. D-1-DC-20-900076

Administration, CCA)
Reset

05/11/2022 **Pretrial With Witness** (9:15 AM)

02/16/2023 **Pre-Trial Hearing** (9:30 AM) (Judicial Officer: 299TH, DISTRICT COURT)

390th District Court

Case Summary

Case No. D-1-DC-22-900010

State of Texas Vs. JACKSON, JOSHUA DAVID

§
§
§Location: **390th District Court**
Judicial Officer: **390TH, DISTRICT COURT**
Filed on: **02/18/2022**

Case Information

Offense	Degree	Offense Date	Filed Date	Case Type:	Case Status:
1. AGG ASSAULT BY PUBLIC SERVANT	F1	05/31/2020	02/18/2022	DISTRICT ATTORNEY NO COMPLAINT	02/18/2022 Indictment
2. AGG ASSAULT BY PUBLIC SERVANT	F1	05/31/2020	02/18/2022		

Party Information

State State of Texas

Defendant JACKSON, JOSHUA DAVID PEEK, JEFFREY ALAN
Retained

Case Events

02/17/2022 NO COMPLAINT

02/17/2022  INDICTMENT 390TH GRAND JURY
BOND AMOUNT \$1.00

02/17/2022 SPECIAL FINDINGS INDICTMENT
TO WIT:SHOTGUN

02/18/2022  SIGNED ORDER
SIGNED ORDER FOR THE ISSUANCE OF CAPIAS

02/18/2022  CAPIAS/WARRANT

02/18/2022  WARRANT RETURNED EXECUTED

02/23/2022  LETTER/EMAIL/CORR
LETTER OF REPRESENTATION

03/07/2022  SETTING NOTICE

03/21/2022  APPLICATION FOR SUBPOENA
STATE: CUSTODIAN OF RECORDS AUSTIN POLICE DEPARTMENT

03/22/2022  EXECUTED SUBPOENA
ATTN: RENEE MOORE - AUSTIN POLICE DEPARTMENT

04/25/2022  MTN:TO REQUIRE DISCLOSURE
STATE'S NOTICE OF WITNESSES WHO APPEARED BEFORE THE GRAND JURY AND MOTION TO DISCLOSE

Case Summary

Case No. D-1-DC-22-900010

- 04/25/2022  NTC:NOTICE
TEXAS CODE OF CRIMINAL PROCEDURE ARTICLE 39.14 ARTICLE
- 04/26/2022  SIGNED ORDER
SIGNED ORDER OF VOLUNTARY RECUSAL
- 06/07/2022  ORDER
ORDER OF ASSIGNMENT - JUDGE SID HARLE TO 390TH IN D-1-DC-22-9000010
- 10/25/2022 
RESPONSE
DECLARATION REGARDING WEAPON INVOLVED IN THIS MATTER, AND NOTICE PURSUANT TO BRADY V. MARYLAND AND TEXAS CODE OF CRIMINAL PROCEDURE, ART. 39.14
- 11/01/2022  MOTION
TO FILE BRADY AND TX CCP 39.14 DISCLOSURE UNDER SEAL
- 11/01/2022  SIGNED ORDER
ON STATE'S MOTION TO FILE BADA AND TX CCP 39.14 DISCLOSURE UNDER SEAL/GRANTED
- 11/01/2022  OTHER/NOTICE
SEALED

Hearings

- 06/24/2022 **CANCELED Pre-Trial Hearing** (9:15 AM) (Judicial Officer: 390TH, DISTRICT COURT)
Reset
- 06/29/2022 **CANCELED Pre-Trial Hearing** (1:30 PM) (Judicial Officer: 390TH, DISTRICT COURT)
Reset
- 10/31/2022 **Pre-Trial Hearing** (9:15 AM) (Judicial Officer: 390TH, DISTRICT COURT)
- 02/10/2023 **Pre-Trial Hearing** (9:15 AM) (Judicial Officer: 390TH, DISTRICT COURT)

450th District Court

Case Summary

Case No. D-1-DC-20-900060

State of Texas, State of Texas Vs. GEBHART, NICHOLAS §
 §
 §

Location: 450th District Court
 Judicial Officer: 450TH, DISTRICT COURT
 Filed on: 02/18/2022

Case Information

Offense	Degree	Offense Date	Filed Date	Case Type:	Case Status:
1. AGG ASSAULT BY PUBLIC SERVANT	F1	05/30/2020	02/18/2022	DISTRICT ATTORNEY NO COMPLAINT	02/18/2022 Indictment
2. AGG ASSAULT BY PUBLIC SERVANT	F1	05/30/2020	02/18/2022		

Bonds

CRIMINAL SURETY #00003277
 BOND
 02/18/2022 Posted
 Counts: 1, 2

Party Information

State	State of Texas	
	State of Texas	GILL, RAMAN <i>Retained</i>
Defendant	GEBHART, NICHOLAS	ERVIN, KENNETH WAYNE <i>Retained</i> O'CONNELL, DOUGLAS K <i>Retained</i>

Case Events

02/17/2022	 INDICTMENT 390TH GRAND JURY BOND AMOUNT \$5000.00
02/17/2022	SPECIAL FINDINGS INDICTMENT TO WIT: A SHOTGUN
02/18/2022	 SIGNED ORDER SIGNED ORDER FOR ISSUANCE OF CAPIAS
02/18/2022	 CAPIAS/WARRANT
02/18/2022	 WARRANT RETURNED EXECUTED
03/01/2022	 APPLICATION FOR SUBPOENA ATTN: CUSTODIAN OF RECORDS FOR DELL CHILDREN'S MEDICAL CENTER
03/01/2022	 APPLICATION FOR SUBPOENA

Case Summary

Case No. D-1-DC-20-900060

ATTN: CUSTODIAN OF RECORDS FOR DELL SETON MEDICAL CENTER @ UT

03/04/2022



EXECUTED SUBPOENA

ATTN: CUSTODIAN OF RECORDS FOR DELL CHILDREN'S MEDICAL CENTER

03/04/2022



EXECUTED SUBPOENA

ATTN: CUSTODIAN OF RECORDS FOR DELL SETON MEDICAL CENTER @ UT

03/21/2022



APPLICATION FOR SUBPOENA

STATE: CUSTODIAN OF RECORDS AUSTIN POLICE DEPARTMENT

03/22/2022



EXECUTED SUBPOENA

ATTN: RENEE MOORE - AUSTIN POLICE DEPARTMENT

04/25/2022



MTN:TO REQUIRE DISCLOSURE

STATE'S NOTICE OF WITNESSES WHO APPEARED BEFORE THE GRAND JURY AND MOTION TO DISCLOSE GRAND JURY TRANSCRIPTS AND EXHIBITS

05/16/2022



MTN:TO SUBSTITUTE COUNSEL

05/23/2022



ORD:TO SUBSTITUTE COUNSEL

06/10/2022



NTC:NOTICE

STATE'S NOTICE OF WITHDRAWAL OF MOTION TO FIND "PARTICULARIZED NEED," AND NOTICE OF AGREEMENT TO DISCLOSE SPECIFICALLY ENUMERATED GRAND JURY MATERIALS IN COMPLIANCE WITH DISCOVERY OBLIGATIONS UNDER TEXAS CODE OF CRIMINAL PROCEDURE 39.14

06/13/2022



MTN:MOTION

MOTION FOR ACCESS TO EVIDENCE FOR INDEPENDENT FORENSIC TESTING

06/29/2022



APPLICATION FOR SUBPOENA

ATTN: CUSTODIAN OF RECORDS FOR CITY OF AUSTIN

06/30/2022



EXECUTED SUBPOENA

ATTN: CUSTODIAN OF RECORDS FOR CITY OF AUSTIN

07/15/2022



MTN:TO QUASH

MOTION TO QUASH SUBPOENA DUCES TECUM

09/27/2022



MTN:MOTION

MOTION FOR ACCESS TO LOCATION OF ALLEGED CRIME FOR INDEPENDENT FORENSIC TESTING

10/25/2022



RESPONSE

DECLARATION REGARDING WEAPON INVOLVED IN THIS MATTER, AND NOTICE PURSUANT TO BRADY V. MARYLAND AND TEXAS CODE OF CRIMINAL PROCEDURE, ART. 39.14

12/09/2022



MTN:MOTION

MTN:TO DISCLOSE GRAND JURY PROCEEDINGS

12/13/2022



SIGNED ORDER

ORDER TO DISCLOSE GRAND JURY PROCEEDINGS

12/22/2022



MTN:TO QUASH



Case Summary

Case No. D-1-DC-20-900060

01/04/2023



RESPONSE

RESPONSE TO DEFENDANT S MOTION TO QUASH INDICTMENT

Hearings

01/17/2023 **Pretrial With Witness** (1:15 PM) (Judicial Officer: 450TH, DISTRICT COURT)

03/30/2023 **Pre-Trial Hearing** (9:15 AM) (Judicial Officer: 450TH, DISTRICT COURT)

390th District Court

Case Summary

Case No. D-1-DC-20-900055

State of Texas, State of Texas Vs. BERRY, JUSTIN

§
§
§Location: **390th District Court**
Judicial Officer: **390TH, DISTRICT COURT**
Filed on: **02/18/2022**

Case Information

Offense	Degree	Offense Date	Filed Date	Case Type:	Case Status:
1. AGG ASSAULT BY PUBLIC SERVANT	F1	05/31/2020	02/18/2022	DISTRICT ATTORNEY NO COMPLAINT	02/18/2022 Indictment
2. AGG ASSAULT BY PUBLIC SERVANT	F1	05/31/2020	02/18/2022		

Party Information

State	State of Texas	
	State of Texas	GILL, RAMAN <i>Retained</i>
Defendant	BERRY, JUSTIN	ERVIN, KENNETH WAYNE <i>Retained</i>

Case Events

02/17/2022	 INDICTMENT 390TH GRAND JURY <i>BOND AMOUNT \$1.00</i>
02/17/2022	SPECIAL FINDINGS INDICTMENT <i>TO WIT: A SHOTGUN</i>
02/18/2022	 SIGNED ORDER <i>SIGNED ORDER FOR ISSUANCE OF CAPIAS</i>
02/18/2022	 CAPIAS/WARRANT
02/18/2022	 WARRANT RETURNED EXECUTED
03/01/2022	 APPLICATION FOR SUBPOENA <i>ATTN: CUSTODIAN OF RECORDS FOR DELL SETON MEDICAL CENTER @ UT</i>
03/04/2022	 EXECUTED SUBPOENA <i>ATTN: CUSTODIAN OF RECORDS FOR DELL SETON MEDICAL CENTER @ UT</i>
03/11/2022	 MTN: TO COMPEL
03/21/2022	 APPLICATION FOR SUBPOENA <i>STATE: CUSTODIAN OF RECORDS AUSTIN POLICE DEPARTMENT</i>
	—

Case Summary**Case No. D-1-DC-20-900055**

03/22/2022  EXECUTED SUBPOENA
ATTN: RENEE MOORE - AUSTIN POLICE DEPARTMENT

04/25/2022  MTN:TO REQUIRE DISCLOSURE
STATE'S NOTICE OF WITNESSES WHO APPEARED BEFORE THE GRAND JURY AND MOTION TO DISCLOSE

04/25/2022  NTC:NOTICE
TEXAS CODE OF CRIMINAL PROCEDURE ARTICLE 39.14 ARTICLE

04/26/2022  SIGNED ORDER
SIGNED ORDER OF VOLUNTARY RECUSAL

06/07/2022  ORDER
ORDER OF ASSIGNMENT - JUDGE SID HARLE TO 390TH IN D-1-DC-20-900055

06/10/2022  MTN:MOTION
MOTION FOR ACCESS TO EVIDENCE FOR INDEPENDENT FORENSIC TESTING

06/10/2022  MTN:TO COMPEL
STATES SECOND RESPONSE TO DEFENSE MOTION TO COMPEL DISCLOSURE OF GRAND JURY WITNESSES AND STATES NOTICE OF AGREEMENT TO DISCLOSE GRAND JURY TRANSCRIPTS AND EXHIBITS

06/13/2022  OTHER/NOTICE
STATES REQUEST FOR CONFLICTS HEARING

06/29/2022  APPLICATION FOR SUBPOENA
ATTN: CUSTODIAN OF RECORDS FOR CITY OF AUSTIN

06/30/2022  EXECUTED SUBPOENA
ATTN: CUSTODIAN OF RECORDS FOR CITY OF AUSTIN

07/15/2022  MTN:TO QUASH

08/01/2022  SIGNED ORDER
ORDER RELEASING FIREARM EVIDENCE FOR TESTING

08/01/2022  NTC:NOTICE
STATE'S NOTICE OF DECLARATION OF CHARLES HERRING JR. IN SUPPORT OF STATE'S PREVIOUSLY FILED REQUEST FOR CONFLICTS HEARING

08/08/2022  LETTER

09/27/2022  MTN:MOTION
MOTION FOR ACCESS TO LOCATION OF ALLEGED CRIME FOR INDEPENDENT FORENSIC TESTING

10/25/2022  RESPONSE
DECLARATION IN RESPONSE TO COURT'S ORDER ON DEFENDANT'S MOTION FOR ACCESS TO EVIDENCE, AND NOTICE PURSUANT TO BRADY V. MARYLAND AND TEXAS CODE OF CRIMINAL PROCEDURE, ART. 39.14

11/01/2022  MOTION
MOTION TO FILE BRADY AND TX CCP 39.14 DISCLOSURE UNDER SEAL

11/01/2022  SIGNED ORDER
TO SEAL STATE'S MOTION TO FILE BRADY AND TX CCP 39.14 DISCLOSURE UNDER SEAL/GRANTED

Case Summary

Case No. D-1-DC-20-900055

11/01/2022 OTHER/NOTICE
SEALED

11/21/2022  SIGNED ORDER
ORDER ON MOTION TO QUASH & PROTECTIVE ORDER

12/09/2022  MTN:MOTION
MOTION TO DISCLOSE GRAND JURY PROCEEDINGS

12/14/2022  SIGNED ORDER
ORDER ON MOTION TO DISCLOSE GRAND JURY PROCEEDINGS

12/22/2022  MTN:TO QUASH

01/04/2023  RESPONSE
RESPONSE TO DEFENDANT S MOTION TO QUASH INDICTMENT

Hearings

03/18/2022 **CANCELED First Appearance-Criminal Court Administration** (9:30 AM) (Judicial Officer: Criminal Court Administration, CCA)
Reset

06/24/2022 **CANCELED Pre-Trial Hearing** (9:00 AM) (Judicial Officer: 390TH, DISTRICT COURT)
Reset

08/24/2022 **Pre-Trial Hearing** (9:00 AM)

10/31/2022 **Pre-Trial Hearing** (9:15 AM)

02/10/2023 **Pre-Trial Hearing** (9:15 AM) (Judicial Officer: 390TH, DISTRICT COURT)

Exhibit 5

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ATHIGE DENZIL DESILVA,
individually, as heir at law to the
ESTATE OF DR. MAURIS DESILIVA,
and on behalf of ALL WRONGFUL DEATH
BENEFICIARIES,

Plaintiff,

Case No. 1:21-cv-00129-RP

v.

Jury Trial

CHRISTOPHER TAYLOR,
KARL KRYCIA, and
THE CITY OF AUSTIN,

Defendants.

**PLAINTIFF'S UNOPPOSED MOTION TO STAY THE CASE
PENDING THE RESOLUTION OF THE TRIAL OF
DEFENDANTS, TAYLOR AND KRYCIA**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, Athige Denzil DeSilva, files his motion to stay the case pending the resolution of the pending criminal case against Defendants, Christopher Taylor, and Karl Krycia, and respectfully shows the Court the following:

Magistrate Judge Hightower granted Defendants Taylor and Krycia's Motion to Stay Discovery pending resolution of their criminal case on February 23, 2022 (Dkt. 23). The Plaintiff filed his Motion for Continuance and Motion for Entry of Agreed Amended Scheduling Order on April 14, 2022 (Dkt. 25). The Court entered the agreed First Amended Scheduling Order on April 16, 2022 (Dkt. 26) setting the jury trial for June 20, 2023.

A. The Issue

1. The Magistrates' Order (Dkt. 23) ruled:

“The Court temporarily STAYS all discovery in this case *involving* Defendants Taylor and Krycia pending the resolution of their criminal proceedings.” [Emphasis supplied]

2. A proper interpretation of the word, “involving” means, “related to, part of, or connected with,” discovery in the case such that any fact that merely touches upon or could be used by the prosecution about conduct of the Defendants implicates their 5th Amendment rights.

3. Rather than move to stay the whole case, Plaintiff's former lead counsel, Dunaway, sought to only continue some deadlines (Dkt. 26).

4. Plaintiff has been diligently conducting what limited discovery he can under the First Amended Scheduling Order.

5. Because Plaintiff's meeting the scheduling deadline to file his designated use-of-force expert's report is based on some discovery that must center on the overlapping issue of “exigent circumstances,” it “involves” the use of discovery against the Defendants.

6. Plaintiff filing his use-of-force expert report will then trigger Taylor and Krycia to file of their expert's report in response “involving” their use of discovery on the overlapping issue of “exigent circumstances” placing Plaintiff in violation of the Court's Order (Dkt. 23).

7. This scheduling order deadline shows that the Plaintiff is placed into an untenable position when he simultaneously conducts limited discovery but must

comply with the Stay Order's discovery limitation *involving* the Defendant's because it makes the Plaintiff's discovery unavoidably fragmented, unduly burdensome, and expensive and continuing discovery will likely draw objections such as the one set forth below relating to the production of the Medical Examiner's Office autopsy report file.

8. Continued discovery efforts are problematic because Plaintiff cannot intuit nor guess what facts to be discovered will be negatory, explanatory, or exculpatory, arguably "involving" discovery that implicates the Defendants' 5th Amendment rights.

B. Relief Requested

9. Because of this dilemma Plaintiff respectfully shows he has good cause that the case be stayed pending the outcome of the criminal prosecutions and this request for a stay is not merely for delay as shown by the facts set forth below.

10. In the alternative, if a stay is not granted, Plaintiff requests the First Amended Scheduling order be vacated pending the resolution of the criminal cases.

C. Facts

11. **Due diligence.** Due to the nature of this case, all discovery arguably "involves" the Defendants.

12. Plaintiff obtained over 21 gigabytes of discovery from the City of Austin on September 19, 2022 that was subject to Court's Protective Order (Dkt.14) but further use of such discovery arguably "involves" the Defendants.

13. Plaintiff has served subpoenas for employment, health, and medical records, including one to the Travis County Medical Examiner's Office for the autopsy records that are necessary to further inform Plaintiff's use of force expert.

14. The physician conducting the autopsy needs to be identified and designated by the October 28, 2022 deadline as a non-testifying expert whose autopsy file would constitute a report that requires disclosure under Fed. R. Civ. P. 26(a)(2)(B).

15. Applicable and recent 5th Circuit case law requires Plaintiff be able to amend his Complaint relying on discovery of details necessary to comply with such law relying on Plaintiff's use-of-force expert's amended report that must arguably "involve" the same facts that would be used to prosecute Taylor and Krycia, i.e., facts relating to the overlapping liability-guilt-defense issue of "exigent circumstances."

16. The Travis County Attorney's Office initially blocked the subpoena to the Medical Examiner but later, after negotiation and agreement of all counsel in this case, Plaintiff re-issued his subpoena pursuant to an "Agreement of Counsel" on October 12, 2022 in compliance with the Court's Protective Order.

17. Previously, on September 16, 2022, all of Plaintiff's counsel met with Josh Smalley, chief of the Travis County District Attorney's Civil Rights unit conducting the prosecution of Taylor and Krycia to determine a trial date and to broadly learn what categories of evidence would be involved in these Defendant prosecution understanding that the "investigation" phase had ended with the Grand Jury indictment.

18. On October 13, 2022 the Attorney General's office posted to Plaintiff's lead counsel a copy of its letter to Matthew Entsminger of the Travis County Sheriff's Office withholding from disclosure ME19-03804; 1065744-1 (the DeSilva autopsy file records) because it relates to an ongoing criminal investigation even though an agreement had

just been reached on such discovery illustrates the need for resolution of the criminal case before proceeding with the civil case.

19. This meeting with the District Attorney's Office confirmed that although 60 Austin police officers had been indicted since April 2022, mostly for use of force, there has only been one prosecution and that resulted in a mistrial.

20. To properly amend its pleadings, Plaintiff also filed an Application for Letters of Administration pending in Austin County Probate Court No 1, Case No. C-1-22-001418 (Estate of Mauris DeSilva) to be able to amend the Complaint for damages to enable the Decedent's Estate to validate its claim.

21. Because the Decedent died intestate, an attorney ad litem had to be appointed as necessary for the declaration of heirship. Although the attorney ad litem has answered and filed her investigation report, the testifying witnesses are in Minnesota. Plaintiff is a necessary witness who must be personally present.

22. Plaintiff, Athige DeSilva, is 77 years old and the sole care giver for his wife who is not mobile, causing a delay until arrangements can be made for him and the others to give testimony.

23. Defense counsel do not oppose this motion.

24. **Good cause.** The above facts show good cause. Also, although some discovery has occurred any further discovery will certainly "involve" the Defendants and Plaintiff does not want to violate the Court's Order implicating the 5th Amendment rights of Taylor and Krycia or repeat discovery because they were deprived of the opportunity to cross-examine or to participate in that discovery.

25. Fragmented discovery causes undue burden and expense to the Plaintiff as well as to Taylor and Krycia and frustrates determining the correct proportionality of discovery and costs to all parties

26. **No undue delay.** The District Attorney advises the trial date for Taylor and Krycia will not occur before the summer of 2023 and public knowledge of the ongoing exodus of experienced trial attorneys from that office questions trial scheduling. The current jury trial setting in this case is for June 20, 2023.

27. From their visit with chief of the civil rights division prosecutor, Josh Smalley, Plaintiff's counsel understands the trial of Taylor and Krycia has no priority and is likely dependent on the District Attorney achieving prior convictions of at least some of the 60 pending indictments of Austin police officers.

D. Argument

28. The Court's Order (Dkt. 23) hinders this Plaintiff's further compliance with the First Amended Scheduling Order requiring either a complete stay of the case or guidance from the Court.

29. "[A] district court may stay a civil proceeding during the pendency of a parallel criminal proceeding. *United States v. Little Al*, 712 F.2d 133, 136 (5th Cir. 1983) (citing *SEC v. First Fin. Grp. of Tex., Inc.*, 659 F.2d 660, 668 (5th Cir. Oct. 1981)). "Such a stay contemplates 'special circumstances' and the need to avoid 'substantial and irreparable prejudice.'" *Id.* Because the Court has already ruled on Taylor and Krycia's special circumstances, i.e., having to choose between preserving their

privilege against self-incrimination or losing the civil suit, the requirement of a showing of special circumstances has been met.

30. **Civil and criminal liability are intertwined and overlapping.** Even though the burdens of proof are different in the two cases, the central issue is the same for civil or criminal liability; facts that determine whether “exigent circumstances” existed.

31. “The stay of a pending matter is ordinarily within the trial court's wide discretion to control the course of litigation.” *In re Ramu Corp.*, 903 F.2d 312, 318 (5th Cir. 1990) (common sense, fact bound analysis), *See United States v. Krodel*, 397 U.S. 1, 12, n. 27 (1970). The standard for the exercise of a court’s discretion has been held as follows:

“As the Fifth Circuit has instructed, in ruling on requests for stays of the civil side of parallel civil/criminal proceedings, “[j]udicial discretion and procedural flexibility should be utilized to harmonize the conflicting rules and to prevent the rules and policies applicable to one suit from doing violence to those pertaining to the other. In some situations it may be appropriate to stay the civil proceeding ...”

United States v. Gieger Transfer Serv., Inc., 174 F.R.D. 382, 385 (S.D. Miss. 1997) (quoting *Campbell v. Eastland*, 307 F.2d 478, 487 (5th Cir. 1962)).

32. At this juncture, Plaintiff agrees with Defendants Taylor and Krycia that the critical issues in the criminal case overlap with those needed to prevail in the civil case. Because the central issue of “exigent circumstances” forms the commonsense

basis for indictment as well as for civil liability that constitutes a central overlapping issue to both cases requiring a stay.

33. Prior case law placed some weight on the Speedy Trial Act for staying the civil case because that seemed to guarantee a fast resolution of the criminal charges but also because of the dangers already noted in the order to limit discovery such that:

“A stay of a civil case is most appropriate where a party to the civil case has already been indicted for the same conduct for two reasons: first, the likelihood that a defendant may make incriminating statements is greatest after an indictment has issued, and second, the prejudice to the plaintiffs in the civil case is reduced since the criminal case will likely be quickly resolved due to Speedy Trial Act considerations. *See In re Par Pharmaceutical, Inc.*, 133 F.R.D. at 13 (“The weight of authority in this Circuit indicates that courts will stay a civil proceeding when the criminal investigation has ripened into an indictment”) (citing cases); *Parallel Proceedings*, 129 F.R.D. at 203-04; *Volmar*, 152 F.R.D. 39 (citing *Dresser*, 628 F.2d at 1375-76).

Trustees of Plumbers Pen. v. Transworld, 886 F. Supp. 1134, 1139 (S.D.N.Y. 1995)

E. Conclusion

34. Due to changing circumstances, if the District Attorney later confirms that he is unwilling or unable to continue the prosecution of the Defendants, then Plaintiff reserves the right to move the Court to reweigh the special circumstances to avoid prejudicial delay to Plaintiff and Defendants and the public interest in justice.

35. In requesting this stay, Plaintiff contends that the resolution of the criminal case first operates to serve judicial economy and lifts from Plaintiff the burden of fragmented discovery. Moreover, the criminal prosecution discovery can be used later

in the civil case and the risk of loss of evidence is low due to the criminal investigation. Certainly, resolution of the criminal case should simplify the issues that impinge on “exigent circumstances.” See “*Texaco Inc. v. Borda*, 383 F.2d 607, 609 (3d Cir.1967). (“It may well be that the trial of the criminal case will reduce the scope of discovery in the civil action. And perhaps it might also simplify the issues.” fn. omitted.)

F. Prayer

For the reasons set forth herein, Plaintiff, Athige Denzil DeSilva, respectfully requests that this Court grant his motion for stay and for all other relief to which he may be entitled in law or equity. In the alternative, if the stay is denied, then Plaintiff requests the First Amended Scheduling Order be vacated until the resolution of the criminal cases.

Respectfully submitted,

/s/ Lamar Treadwell, Pro hac vice

Lamar Treadwell

SBN: 20205000

1308 E. Common Street, Suite 205

New Braunfels, Texas 78130

Cell: 505/ 660-0602

E-Fax 505/ 213-0094

Lamar@treadwelltriallaw.com

SMITH & VINSON LAW FIRM

1411 West Ave., Suite 124

Austin, Texas 78701

Tel: 512/ 368-9044

Fax 512/ 368-8265

J. Bradley Vinson, Partner

SBN: 24100021

Brad@smithandvinson.com

Jarrod L. Smith, Partner
24094095
jarrod@smithandvinson.com

Certificate of Conference

Counsel for the Plaintiff has complied with the requirement to confer. Previously in discussions, and this week, Plaintiff's counsel conferred by e-mail and by telephone with all counsel and upon conferring, all counsel of record are unopposed / opposed.

/s/ Lamar Treadwell
Lamar Treadwell

Certificate Of Service

I certify that on the 27th day of October 2022, a true and correct copy of the above and foregoing Motion was electronically filed with the Clerk of the Court using the C/ECF system, which automatically served a Notice of Electronic Filing on all known counsel of record pursuant to the Federal Rules of Civil Procedure.

/s/ Lamar Treadwell
Lamar Treadwell

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

ATHIGE DENZIL DESILVA,
Individually, as heir at law to the
ESTATE OF DR. MAURIS DESLIVA,
and on behalf of all wrongful death
Beneficiaries,

CIVIL ACTION NO. 1:21-cv-00129

Plaintiff,

JURY DEMAND

V.

CHRISTOPHER TAYLOR,
KARL KRYCIA, and the
CITY OF AUSTIN,

Defendants.

ORDER GRANTING PLAINTIFF'S MOTION TO STAY THE CASE

The Court, upon consideration of Plaintiff, Athige Denzil DeSilva's Unopposed Motion for Stay the Case Pending the Resolution of the Trial or Defendants, Taylor and Krycia, the Court FINDS the motion should be GRANTED and that the case should be stayed until further order of the court.

It is therefore ORDERED that Plaintiff's Motion for Stay is GRANTED and it is FURTHER ORDERED that this case be STAYED until further order of the Court.

SIGNED this _____ day of _____, 2022.

ROBERT PITTMAN
UNITED STATES DISTRICT JUDGE

Exhibit 6



[Uvalde School Shooting](#) [Funerals](#) [Gun Culture](#) [How to Help](#) [#TribFest22](#)

19 Austin police officers accused of excessive force during 2020 protests are indicted

Austin officials also agreed to a \$10 million settlement with two men who were injured by police with beanbag rounds during the protests.

BY [REESE OXNER](#) AND [JOSHUA FECHTER](#) FEB. 17, 2022 UPDATED: FEB. 18, 2022



An Austin police officer fires into a crowd of protesters from Interstate 35 near police headquarters on May 31, 2020. Eddie Gaspar/The Texas Tribune

Sign up for [The Brief](#), our daily newsletter that keeps readers up to speed on the most essential Texas news.

Nearly two years after demonstrators and police clashed in Austin during nationwide protests sparked by the murder of George Floyd, a Travis County grand jury on Thursday indicted 19 officers accused of excessive force, according to the police union, and Austin officials agreed to a \$10 million settlement with two men shot by police with beanbag rounds.

“We believe many protesters injured by law enforcement officers during the protest were innocent bystanders. We also believe that the overwhelming majority of victims in the incidents that were investigated suffered significant injuries,” Travis County District Attorney José Garza said during a Thursday press conference announcing the indictments. “Some will never fully recover.”

The names of the officers being indicted are not yet public record. Garza said that his office is prohibited by law to disclose details of an indictment until that person is arrested and booked into jail.

The Texas Tribune thanks its sponsors. [Become one.](#)

Austin Police Association president Kenneth Casaday confirmed to The Texas Tribune that 19 officers have been indicted. [The Austin American-Statesman first reported the news.](#)

[One of the officers indicted was Justin Berry](#), a candidate for the Hill Country's Texas House District 19, according to Casaday.

The number of indictments is among the highest tied to a single city's police force in connection with the 2020 protests so far, according to the [Associated Press](#).

In an interview last week, before the grand jury handed out any indictments, Sandra Guerra Thompson, a professor at the University of Houston Law Center, said it would be surprising if such a high number of officers were charged with crimes.

“Historically, we've seen a reluctance by grand jurors to charge police officers criminally for use of force on the job, just because of the sense that they're putting their lives at risk and protecting the public,” Thompson said. “Those kinds of views have usually worked in their favor.”

The cases could take months or years to resolve.

In a short press conference Thursday afternoon, Austin Police Chief Joseph Chacon defended his officers and chided Garza for remarking on "anticipated indictments." Flanked by APD command staff and city higher-ups, including City Manager Spencer Cronk, Chacon said officers were overwhelmed by crowds that were often "riotous and violent" — and that "less-lethal" weapons used for crowd control "did not perform in all instances in the manner anticipated."

"I am not aware of any conduct that, given the circumstances that the officers were working under, would rise to the level of a criminal violation by these officers," Chacon said. "We are at the beginning of the criminal justice process. As we move forward, these officers must be afforded all of the same protections of any defendant, including the presumption of innocence and the right to a speedy trial."

The department has since stopped the use of less-lethal weapons.

Cronk, the city's top executive, warned that "any indictments will heighten the anxiety of our officers" and exacerbate the police department's staffing shortages.

"We are disappointed to be in this position, and we do not believe that criminal indictments of the officers working under very difficult circumstances is the correct outcome," Cronk said in a statement.

Casaday said that the indicted officers were following orders and shouldn't be held responsible for any injuries during the protests.

The Texas Tribune thanks its sponsors. [Become one.](#)

"These officers were only doing what they were told to do with what the city of Austin provided them during the days of the riots," he said.

Casaday accused Garza of attempting to score political points. The police union is asking Garza's office to stop announcing indictments until after the Democratic primary and runoffs.

"It's an absolute disgrace, and it sickens me that DA Garza is using working officers as pawns in a political game of chess," Casaday said during a press

conference Thursday afternoon. "Garza ran on a platform to indict officers and has not missed the opportunity to try and ruin lives, careers and simply fulfill a campaign promise."

Garza was elected in 2020 following the protests and ran on a campaign promising to hold law enforcement accountable. His current term stretches through 2024.

The Texas Tribune thanks its sponsors. [Become one.](#)

The indictments also drew criticism from the nation's largest police officer association.

"Nothing more than a political attack on 19 officers who were already cleared by their department of any wrongdoing," tweeted Joe Gamaldi, national vice president of the Fraternal Order of Police.

Also on Thursday, under a settlement unanimously approved by the Austin City Council, demonstrator Justin Howell will receive \$8 million — the highest amount ever awarded in an excessive force case involving an Austin police officer, the Statesman reported. Anthony Evans, another protester, will get \$2 million.

Both men sued the city after suffering severe head injuries in May 2020, when Austin police officers fired on demonstrators protesting police brutality in the wake of the police killings of George Floyd in Minneapolis and Michael Ramos in Austin.

The Texas Tribune thanks its sponsors. [Become one.](#)

Howell, then a 20-year-old Texas State University student, had a fractured skull and brain damage, [his brother said at the time](#). The same weekend, Austin police fired on Evans as he walked away from a demonstration, fracturing his jaw, according to news reports.

"Today's settlement reminds us of a difficult & painful moment for our city," Austin Mayor Steve Adler said in a [tweet](#). "No one should be injured while exercising their constitutional right to protest."

Even the council's staunchest police allies approved of the settlement. Austin City Council Member Mackenzie Kelly said the Austin Police Department "instructed officers to use tools that were intended to help manage the crowd — for everyone's safety, including officers," but she still voted in favor of the settlement.

"I don't believe that the injuries sustained by Mr. Evans and Mr. Howell were the intended result," Kelly said [in a statement](#). "Regardless, these men were seriously injured, and I think it is right for the City to pay the damages."

The Texas Tribune thanks its sponsors. [Become one.](#)

Chacon — who took the job as Austin police chief more than a year after the protests — said in a statement he understands why City Council members opted to settle the case and expressed sympathy for Howell and Evans, though he didn't name them.

"In hindsight, we were not prepared for the heightened frustration felt by so many community members, nor the size and scope of the crowds," the chief said.

The violence that weekend spurred more than a dozen lawsuits against the city and police officers by people injured by police, the Statesman reported. So far, the city has settled three of those lawsuits.

Tens of thousands of people protested Floyd's death in Austin for over a week in May 2020. Floyd, a Black man, was killed by a white Minneapolis police officer, Derek Chauvin, after he kneeled on Floyd's neck for over nine minutes in May 2020. Chauvin was found guilty of murder last year.

Floyd's death spurred a nationwide outcry against police brutality against Black people, who are killed at disproportionately higher rates in police custody. Texans protested across the state, including in Austin, Houston, Dallas, San Antonio and Fort Worth.

Cities and communities in Texas continue to grapple with the aggressive tactics that police waged against protesters that year. Police officers all over Texas and the nation have faced charges for how they dealt with protesters.

Law enforcement officials have defended the use of force during the protests, saying it was warranted amid the chaos. They have pointed to reports of people throwing bottles and rocks at officers, sometimes injuring them, damaging police cars and breaking into stores.

But advocates and protesters expressed outrage over police officers turning to violent crowd-control measures, especially in light of what they were protesting.

The Texas Tribune thanks its sponsors. [Become one.](#)

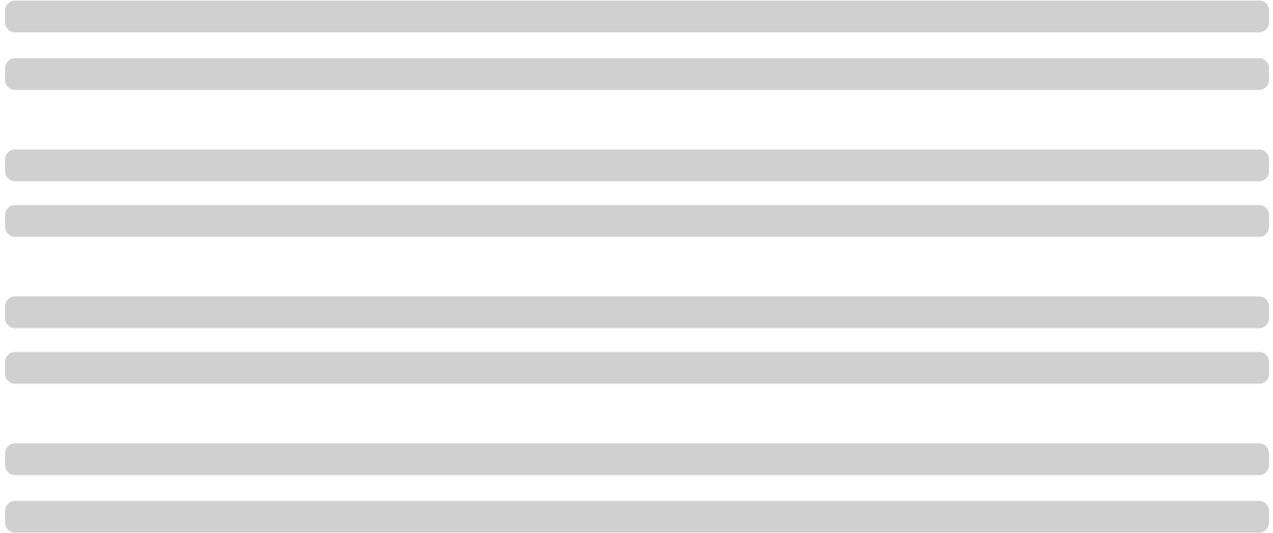
Last week, the Dallas county attorney's office issued warrants for two Dallas police officers' arrest for their alleged use of force during the 2020 racial justice protests in that city.

Andrew Zhang contributed to this report.

Disclosure: Steve Adler (who is also a former Texas Tribune board chair) and University of Houston have been financial supporters of the Tribune, a nonprofit,

nonpartisan news organization that is funded in part by donations from members, foundations and corporate sponsors. Financial supporters play no role in the Tribune's journalism. Find a complete list of them [here](#).

READ MORE



Quality journalism doesn't come free

Perhaps it goes without saying — but producing quality journalism isn't cheap. At a time when newsroom resources and revenue across the country are declining, The Texas Tribune remains committed to sustaining our [mission](#): creating a more engaged and informed Texas with every story we cover, every event we convene and every newsletter we send. As a nonprofit newsroom, we rely on members to help keep our stories free and our events open to the public. Do you value our journalism? Show us with your support.

YES, I'LL DONATE TODAY

The Texas Tribune thanks its sponsors.
Become one.



[Donate](#)

[Contact Us](#)

[Advertise](#)

© 2022 The Texas Tribune

SOCIAL MEDIA

[Facebook](#)

[Twitter](#)

[YouTube](#)

[Instagram](#)

[LinkedIn](#)

[Reddit](#)

[Join our Facebook Group, This Is Your Texas.](#)

INFO

[About Us](#)

[Our Staff](#)

[Jobs](#)

[Who Funds Us?](#)

[Strategic Plan](#)

[Republishing Guidelines](#)

[Code of Ethics](#)

[Terms of Service](#)

[Privacy Policy](#)

[Send us a confidential tip](#)

[Corrections](#)

[Feeds](#)

[Newsletters](#)

[Audio](#)

[Video](#)

Exhibit 7



AUSTIN MONITOR



Photo by Gabriel C. Pérez/KUT. Austin police officers clear demonstrators from I-35 on May 31, 2020. Hundreds took over the highway during a protest of the police killing of George Floyd.

Here's what we know about APD officers facing charges for using beanbag rounds in 2020 protests

TUESDAY, FEBRUARY 22, 2022 BY ANDREW WEBER, KUT

Nineteen Austin police officers face criminal charges for the use of so-called "less lethal" ammunition on demonstrators during racial justice protests in 2020.

Police use of the lead-pellet bags, which were fired from shotguns, severely injured protesters, at least 19 of whom were hospitalized.

The officers have been indicted on charges of aggravated assault by a public servant, a felony punishable by anywhere from five to 99 years in prison and a \$10,000 fine. The officers turned themselves in to the Travis County jail and were released on bond, according to the sheriff's office.

Travis County District Attorney José Garza released the indictments in 20 cases Tuesday.

Nineteen of the cases involve the use of beanbag rounds on protesters; one involves an officer who struck a demonstrator with a foam-tipped round fired from a 40 mm launcher.

Some of the indicted officers fired the beanbag rounds at protesters in an attempt to control the crowd and others were supervising officers, according to Ken Ervin, a lawyer representing eight of the officers.

At a news conference Monday, Ervin said the cases he's handling all stem from the clearing of Interstate 35 during protests over the police killings of George Floyd and Mike Ramos. He said the use of beanbag rounds to clear the highway was appropriate.

"It's consistent with not only training within the department, but within other law enforcement agencies across the country," he said. "If there is an issue with the use of beanbag rounds in this situation, that needs to be handled on a different level. It is unfair and entirely improper to use criminal indictments to try to effect some sort of change in a use-of-force policy." Garza said last week that his office considers the demonstrators involved in these cases to be "innocent bystanders" and that officers were using deadly weapons.

Austin Police Department Chief Joseph Chacon called news of the indictments extremely disappointing. Austin City Manager Spencer Cronk said in a statement that the city "did not believe that criminal indictments of the officers working under very difficult circumstances is the correct outcome."

Attorney Doug O'Connell, who is also representing officers, said Monday the officers were acting within APD's use-of-force guidelines. He said, however, that some of the protester injuries were "regrettable" and should be settled in civil court, not in criminal court.

"There very well may be righteous civil law, civil personal injury cases," he said. "That's not what's going on here. These are criminal indictments where these officers face up to 99 years, or life, in prison."

O'Connell said the officers are expected to be put on administrative duty while the cases move forward, and that he and Ervin plan to take their clients' cases to a jury trial.

Austin City Council last week approved \$10 million to settle the civil cases of two protesters who were injured.

“First, we believe many protesters injured by law enforcement officers during the protest were innocent bystanders. We also believe that the overwhelming majority of victims in the incidents that were investigated suffered significant and lasting injuries.

District Attorney José Garza

Austin Police Association President Ken Casaday has called the investigation politically motivated. One of the officers indicted, Justin Berry, is a Republican candidate for the Texas House.

“We think, again, the DA is just playing politics,” Casaday said Friday. His police union and other police advocacy groups made similar accusations about other police investigations by Garza's office. Six prior investigations have resulted in officers being indicted.

Garza, a Democrat, ran on a progressive platform to prosecute police misconduct. On Thursday, he described the facts discovered during this investigation as “disturbing.”

“First, we believe many protesters injured by law enforcement officers during the protest were innocent bystanders,” he said. “We also believe that the overwhelming majority of victims in the incidents that were investigated suffered significant and lasting injuries. Those injuries include significant and serious injuries to the head, face and body. Some will never fully recover.”

The district attorney's office has said the investigation into the use of force is ongoing.

Below is a list of the 19 indicted officers.

Nicholas Gebhart was charged with aggravated assault by a public servant, a first-degree felony. Gebhart is accused of shooting Brad Levi Ayala with a beanbag round during a protest on May 30, 2020. The Travis County Sheriff's Office told KUT he was booked on Feb. 18 and released the same day on bond.

Kyu An was charged with aggravated assault by a public servant, a first-degree felony. An is accused of shooting Bomani Barton with a beanbag round during a protest on May 30, 2020. The Travis County Sheriff's Office told KUT he was booked on Feb. 18 and released the same day on bond.

Derrick Lehman was charged with aggravated assault by a public servant, a first-degree felony. Lehman is accused of shooting Ge Micah Volter-Jones with a beanbag round during a protest on May 30, 2020. The Travis County Sheriff's Office told KUT he was booked on Feb. 21 and released the same day on bond.

Eric Heim was charged with aggravated assault by a public servant, a first-degree felony. Heim is accused of shooting Alyssa Sanders with a 40 mm foam-tipped round during a protest on May 30, 2020. The Travis County Sheriff's Office told KUT he was booked on Feb. 21 and released the same day on bond.

Edward Boudreau was charged with aggravated assault by a public servant, a first-degree felony. Boudreau is accused of shooting Ge Micah Volter-Jones with a beanbag round during a protest on May 30, 2020. The Travis County Sheriff's Office told KUT he was booked on Feb. 18 and released the same day on bond.

Joseph Cast was charged with aggravated assault by a public servant, a first-degree felony. Cast is accused of shooting Meredith Williams with a beanbag round during a protest on May 30, 2020. The Travis County Sheriff's Office told KUT he was booked on Feb. 21 and released on bond. Williams sued the City of Austin and the Austin Police Department over her injury.

John Siegel was charged with aggravated assault by a public servant, a first-degree felony. Siegel is accused of shooting Nicole Underwood with a beanbag round during a protest on May 30, 2020. The Travis County Sheriff's Office told KUT he was booked on Feb. 18 and released on bond. Underwood sued the City of Austin and the Austin Police Department over her injury.

Kyle Felton was charged with aggravated assault by a public servant, a first-degree felony, in two separate incidents. Felton is accused of shooting Anthony Evans with a beanbag round during a protest on May 31, 2020. He's also accused of shooting Justin Howell with a beanbag round during a protest on May 31, 2020. The Austin City Council [approved \\$10 million](#) in settlements for both Howell and Evans' civil cases against the city and APD last week.

The Travis County Sheriff's Office told KUT he was booked on Feb. 18 and released the same day on bond.

Jeffrey Teng was charged with aggravated assault by a public servant, a first-degree felony. Teng is accused of shooting Justin Howell with a beanbag round during a protest on May 31, 2020. The Travis County Sheriff's Office told KUT he was booked on Feb. 18 and released the same day on bond. The Austin City Council approved an \$8 million settlement in Howell's civil suit against the city [last week](#).

Rolan Rast was charged with aggravated assault by a public servant, a first-degree felony. Rast is accused of shooting Sam Kirsch with a beanbag round during a protest on May 31, 2020. The Travis County Sheriff's Office told KUT he was booked on Feb. 18 and released the same day on bond. [Kirsch sued](#) the City of Austin and the Austin Police Department over his injury.

Justin Berry was charged with aggravated assault by a public servant, a first-degree felony. Berry is accused of shooting Christen Warkoczewski with a beanbag round during a protest on May 31, 2020. The Travis County Sheriff's Office told KUT he was booked on Feb. 18 and released the same day on bond. Warkoczewski sued the City of Austin and the Austin Police Department over her injury.

Alexander Lomostev was charged with aggravated assault by a public servant, a first-degree felony. Lomovstev is accused of shooting Christen Warkoczewski with a beanbag round during a protest on May 31, 2020. The Travis County Sheriff's Office told KUT he was booked on Feb. 18 and released the same day on bond. Warkoczewski sued the City of Austin and the Austin Police Department over her injury.

Todd Gilbertson was charged with aggravated assault by a public servant, a first-degree felony. Gilbertson is accused of shooting Christen Warkoczewski with a beanbag round during a protest on May 31, 2020. The Travis County Sheriff's Office told KUT he was booked on Feb. 21 and released on bond. Warkoczewski sued the City of Austin and the Austin Police Department over her injury.

Stanley Vick was charged with aggravated assault by a public servant, a first-degree felony. Vick is accused of shooting Christen Warkoczewski with a beanbag round during a protest on May 31, 2020. The Travis County Sheriff's Office told KUT he was booked on Feb. 18 and released the same day on bond. Warkoczewski sued the City of Austin and the Austin Police Department over her injury.

Christian Irwin was charged with aggravated assault by a public servant, a first-degree felony. Irwin is accused of shooting Christen Warkoczewski with a beanbag round during a protest on May 31, 2020. Attorneys representing Irwin say he was booked and released the same day on bond. Warkoczewski sued the City of Austin and the Austin Police Department over her injury.

Jeremy Fisher was charged with aggravated assault by a public servant, a first-degree felony. Fisher is accused of shooting Christen Warkoczewski with a beanbag round during a protest on May 31, 2020. The Travis County Sheriff's Office told KUT he was booked on Feb. 21 and released on bond. Warkoczewski sued the City of Austin and the Austin Police Department over her injury.

Joshua Jackson was charged with aggravated assault by a public servant, a first-degree felony. Jackson is accused of shooting Christen Warkoczewski with a beanbag round during a protest on May 31, 2020. The Travis County Sheriff's Office told KUT he was booked on Feb. 18 and released the same day on bond. Warkoczewski sued the City of Austin and the Austin Police Department over her injury.

Josh Blake was charged with aggravated assault by a public servant, a first-degree felony. Blake is accused of shooting Christen Warkoczewski with a beanbag round during a protest on May 31, 2020. The Travis County Sheriff's Office told KUT he was booked on Feb. 21 and released on bond. Warkoczewski sued the City of Austin and the Austin Police Department over her injury.

Brett Tableriou was charged with aggravated assault by a public servant, a first-degree felony. Tableriou is accused of shooting Christen Warkoczewski with a beanbag round during a protest on May 31, 2020. The Travis County Sheriff's Office told KUT he was booked on Feb. 21 and released on bond. Warkoczewski sued the City of Austin and the Austin Police Department over her injury.

This story has been updated. It was produced as part of the Austin Monitor's reporting partnership with KUT.

The Austin Monitor's work is made possible by donations from the community. Though our reporting covers donors from time to time, we are careful to keep business and editorial efforts separate while maintaining transparency. A complete list of donors is available [here](#), and our code of ethics is explained [here](#).

JOIN YOUR FRIENDS AND NEIGHBORS

We're a nonprofit news organization, and we put our service to you above all else. That will never change. But public-service journalism requires community support from readers like you. Will you join your friends and neighbors to support our work and mission?

DONATE TODAY

RELATED STORIES

- [Austin OKs \\$850,000 settlement for volunteer medic shot with 'less-lethal' ammunition during protest](#)
- [City, police union negotiate new labor contract after eventful five years](#)

Exhibit 8



OFFICE OF THE DISTRICT ATTORNEY

P.O. Box 1748, Austin, TX 78767

Telephone 512/854-9400

Telefax 512/854-4206

JOSÉ P. GARZA
DISTRICT ATTORNEY

TRUDY STRASSBURGER
FIRST ASSISTANT

April 13, 2021

To the Travis County Community:

In our first one hundred days, we have made significant progress reshaping our criminal justice system in line with your aspirations. We have begun to make changes that prioritize violent crimes and that treat substance use disorder like the public health crisis that it is. Although we still have much work ahead of us, I am confident that together, we will continue to make changes that make our community more safe and restore faith in our criminal justice system.

As you know, on March 1st we implemented a bail policy that asked our prosecutors to ensure that no one is in our jail simply because they cannot afford to get out. Our policy prioritizes the safety of our community and our prosecutors have been working hard to re-evaluate open cases according to that community safety framework instead of a wealth-based system.

We have worked to ensure that survivors of sexual assault and victims of other crimes are heard and treated with dignity and respect. Our team is working to revamp many of our current victim-witness counselor policies along with our intake procedure to ensure that victims are part of the conversation about their case from the beginning.

We have also greatly expanded diversion eligibility, because making sure that all people have the resources they need, like treatment and counseling, makes us all more safe. As of our first 100 days, we have reviewed more than 1,200 cases and accepted over half of those cases into diversion.

No one should be in jail simply because they can't afford to get out. Anyone who has not yet been convicted of a crime should be in jail only if they pose a threat to the safety of our community. Ensuring our jail is reserved for people who threaten public safety is a shared goal of the District Attorney's Office and County Attorney Delia Garza. Before the pandemic, the jail population was around 2,200 people. On January 1st, when County Attorney Garza and I took office, the jail population was about 1,800 people and now the population is hovering below 1,500 people.

We have continued to prioritize our resources towards prosecuting violent crimes. Since January, we have secured over 300 indictments for crimes of violence including murder, kidnapping, sexual assault, aggravated assault, and violent crimes against children.

Police accountability is critical to the safety of our community because when members of our community trust the police and prosecutors, they are more likely to believe in the fairness of our justice system, seek help, report crimes, and participate in investigations. We will continue to fulfill our promise to you to take all officer involved excessive force cases to the grand jury so that the community can determine whether their actions

constitute criminal conduct. We do not expect every case that we present to result in an indictment, however we do believe it is important that it is the grand jury who decides. A Travis County grand jury has issued indictments against five current and former law enforcement officers for causing injury or death to another while on the job since we took office.

I am proud of our first 100 days, but our work has just begun. As part of our promise to you to reimagine the criminal justice system in Travis County, today we are announcing new initiatives:

Homicide and Major Crimes Unit: In order to prioritize the prosecution of violent crimes, we will be creating a homicide and major crimes unit. This division will be staffed by experienced prosecutors who are experts in the law, well-versed in forensics, have previously handled complicated cases, and can be in regular contact with homicide and major crime detectives. We expect the division to be up and running by July 1, 2021.

Sentencing. When a person commits a crime, our focus is ensuring that it does not happen again and that the victim is safe. To achieve this goal, it is important to address the underlying issue that made the person commit the crime, so it doesn't happen again.

We have distributed sentencing principles and recommendations for our prosecutors to use as a guide when they consider offers and plea bargains. We have asked our prosecutors to incorporate the following principles into their sentencing recommendations:

- **We will treat all victims with dignity and respect, and we will take their needs into account when considering the appropriate sentence.** We will take into consideration what is likely to cause the least amount of harm or trauma to the victim. We will also consider the trauma that victims have endured and we will consider and discuss with victims steps that can be taken to ensure they feel safe, or could be made whole again, in or out of the criminal justice system.
- **Addiction and mental illness, and the offenses that follow from them, should not serve as a justification for imprisonment unless a person poses a danger to our community.** This is true when a person first commits a crime, and while a person is on probation.
- **Diversion should be offered whenever possible.** To prevent crime, we must work to address the underlying causes of crime. If diversion is not appropriate, then community supervision will be offered for as long as is needed to address the underlying cause of the crime unless it is inadequate to protect against the threat of violence to our community.
- **Imprisonment is a last resort,** and it will be utilized if all other interventions and rehabilitative efforts have failed or prove inadequate to protect against the threat of violence to our community.

Collectively, these principles will prioritize the safety of our community and ensure that we center victims, address the root causes of crime, and focus on preventing future violence against our community.

In the coming months, we will continue to reform our criminal justice system so that it meets your aspirations and needs. The change our community has demanded will not happen overnight - but because you continue to make your voice heard, it will happen.



José Garza

Exhibit 9

LOCAL NEWS

CLEAT calls for Travis County DA Assistant Attorney to be removed after a job posting email

Travis County DA Jose Garza said unions don't want law enforcement officers to be prosecuted when they commit a crime.



Were You Hurt?
by davidgordonlaw.com



DavidGordonLaw.com THE LAW OFFICE OF PHILIP F. GORDON

00:00 / 01:06

Author: Daranesha Herron (KVUE)
Published: 6:47 PM CDT May 24, 2021
Updated: 6:47 PM CDT May 24, 2021



AUSTIN, Texas — The [Travis County District Attorney's office](#) is looking for a prosecutor to lead its civil rights unit, but a recruiting email sent by the assistant attorney has a state law enforcement association calling for her removal.

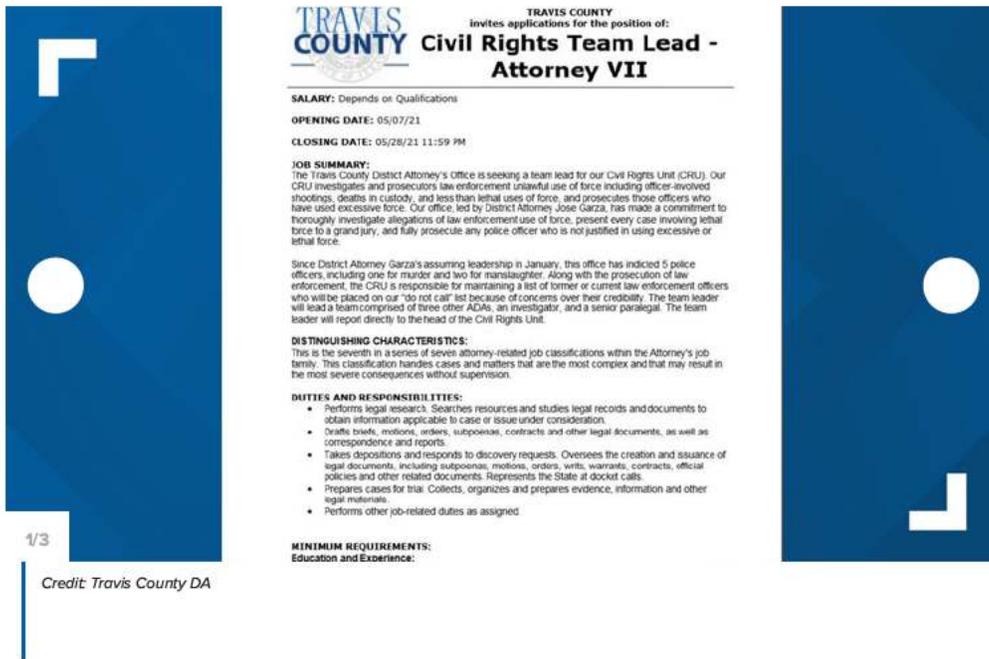
The [Combined Law Enforcement Associations of Texas](#), also known as [CLEAT](#), is calling for the removal of the assistant district attorney of Travis County, Trudy Strassburger.

Ad removed. [Details](#)

This is following an email about a [job posting](#), seeking a lead attorney for the Travis County Civil Rights Unit. The previous DA created the unit to investigate and prosecute unlawful use of force by officers.

The email in question reads in part, "Friends, I am reaching out in the hopes that you may be looking to prosecute police officers or that you know someone who is."

PHOTOS: Lead attorney job posting for the Travis County Civil Rights Unit



The image shows a job posting for the Travis County Civil Rights Team Lead - Attorney VII. The posting is framed by two vertical blue bars on either side, each containing a white geometric shape (an L-shape at the top and a circle in the middle). The text of the job posting is as follows:

TRAVIS COUNTY
invites applications for the position of:
Civil Rights Team Lead - Attorney VII

SALARY: Depends on Qualifications
OPENING DATE: 05/07/21
CLOSING DATE: 05/28/21 11:59 PM

JOB SUMMARY:
 The Travis County District Attorney's Office is seeking a team lead for our Civil Rights Unit (CRU). Our CRU investigates and prosecutes law enforcement unlawful use of force including officer-involved shootings, deaths in custody, and less than lethal uses of force, and prosecutes those officers who have used excessive force. Our office, led by District Attorney Jose Garza, has made a commitment to thoroughly investigate allegations of law enforcement use of force, present every case involving lethal force to a grand jury, and fully prosecute any police officer who is not justified in using excessive or lethal force.

Since District Attorney Garza's assuming leadership in January, this office has indicted 5 police officers, including one for murder and two for manslaughter. Along with the prosecution of law enforcement, the CRU is responsible for maintaining a list of former or current law enforcement officers who will be placed on our "do not call" list because of concerns over their credibility. The team leader will lead a team comprised of three other ADAs, an investigator, and a senior paralegal. The team leader will report directly to the head of the Civil Rights Unit.

DISTINGUISHING CHARACTERISTICS:
 This is the seventh in a series of seven attorney-related job classifications within the Attorney's job family. This classification handles cases and matters that are the most complex and that may result in the most severe consequences without supervision.

DUTIES AND RESPONSIBILITIES:

- Performs legal research. Searches resources and studies legal records and documents to obtain information applicable to case or issue under consideration.
- Drafts briefs, motions, orders, subpoenas, contracts and other legal documents, as well as correspondence and reports.
- Takes depositions and responds to discovery requests. Oversees the creation and issuance of legal documents, including subpoenas, motions, orders, writs, warrants, contracts, official policies and other related documents. Represents the State at docket calls.
- Prepares cases for trial. Collects, organizes and prepares evidence, information and other legal materials.
- Performs other job-related duties as assigned.

MINIMUM REQUIREMENTS:
Education and Experience:

1/3
 Credit Travis County DA

CLEAT's Executive Director Charley Wilkison said the email is an attack on Central Texas Law Enforcement.

"This kind of didactic language is for activists and not for the benign prosecutorial powers that reside inside of the wall of an elected district attorney," said Wilkison.

Travis County District Attorney Jose Garza said unions simply don't want law enforcement officials prosecuted for breaking the law.

"They don't care about the words we used," said Garza. "They just don't think that law enforcement officers should be prosecuted when they commit criminal acts and I strongly disagree."

Garza said the Civil Rights Unit has been overworked and cases have been backlogged. He said they need a lead attorney to fill this position because of increased reports of police misconduct in the community.

Garza said that, in 2021, the Travis County grand jury indicted [seven officers](#) and right now, [11 cases](#) are pending.

"We will absolutely recruit attorneys to fill those openings and we will accurately continue to accurately describe what the work is in our sexual assault unit," said Garza. "We look for attorneys who prosecute sexual assault in our child abuse unit. We look for attorneys who want to prosecute child abuse. In our civil rights unit, we look for attorneys who are willing to hold law enforcement accountable when they break the law."

Travis County DA's office faces backlash over email | KVUE



PEOPLE ARE ALSO READING:

[Austin FC's Q2 Stadium to host games at 100% capacity](#)

This Day in History

Recap of important historical events that took place on that day.

Ads By Connatix 

[Bill will allow families to designate essential caregiver to visit loved ones even during a pandemic](#)

Exhibit 10

Kyu An - 10/11/2022

Confidential

9	<p>1 THE VIDEOGRAPHER: Okay. Today's date is</p> <p>2 October 11, 2022. The time is 10:10 a.m.. We are on</p> <p>3 the record. This is the deposition of Kyu An. You may</p> <p>4 swear in the witness.</p> <p>5 THE STENOGRAPHER: Before I swear in the</p> <p>6 witness, if I could have all counsel please make their</p> <p>7 appearances for the record.</p> <p>8 MR. EDWARDS: Jeff Edwards and Paul Samuel</p> <p>9 for the plaintiffs.</p> <p>10 MR. LEAKE: Blair Leake on behalf of</p> <p>11 Officer Kyu An.</p> <p>12 MR. ERVIN: Ken Ervin on behalf of Kyu An.</p> <p>13 MR. EDWARDS: I'm sorry, who was that?</p> <p>14 MR. ERVIN: Ken Ervin on behalf of Kyu An.</p> <p>15 MR. BARTON: Monte Barton on behalf of the</p> <p>16 of the City of Austin in the Herrera case.</p> <p>17 MR. THOMPSON: Karson Thompson on behalf</p> <p>18 of the City of Austin in the consolidated matter Alyssa</p> <p>19 Sanders versus City of Austin.</p> <p>20 MR. SOLOMON: David Solomon for City of</p> <p>21 Austin in the Ellis and Fuentes cases.</p> <p>22 THE STENOGRAPHER: Okay. Great.</p> <p>23 (Witness sworn)</p> <p>24 THE STENOGRAPHER: Thank you.</p> <p>25 MR. EDWARDS: And so I don't know -- Ken,</p>	11	<p>1 Q. Even after you've been indicted you are still</p> <p>2 getting paid?</p> <p>3 A. Yes, I am, sir.</p> <p>4 Q. Okay. How much money do you make a year?</p> <p>5 A. I would say approximately 73,000 a year.</p> <p>6 Q. Okay. How many indictments do you currently</p> <p>7 face, sir?</p> <p>8 A. Just one, sir.</p> <p>9 Q. Okay. And what is that for?</p> <p>10 MR. LEAKE: Objection. Instruct my client</p> <p>11 not to the discuss that matter based on his Fifth</p> <p>12 Amendment privileges.</p> <p>13 Q. (By Mr. Edwards) What is that indictment for,</p> <p>14 sir?</p> <p>15 MR. LEAKE: I'm instructing you not to</p> <p>16 answer based on your amendment privileges. You can go</p> <p>17 ahead and invoke them.</p> <p>18 A. On the advice of counsel, I invoke my Fifth</p> <p>19 Amendment privilege and respectfully decline to answer</p> <p>20 your question, sir.</p> <p>21 Q. So even though it's a matter of public record</p> <p>22 and we all know what you've been indicted for, you're</p> <p>23 refusing to actually acknowledge under oath what you've</p> <p>24 been indicted for, sir. Correct?</p> <p>25 MR. LEAKE: Same instruction.</p>
10	<p>1 have you entered an appearance on behalf of Mr. An in</p> <p>2 this case?</p> <p>3 MR. ERVIN: I have not. I -- I am</p> <p>4 strictly here to observe and represent his criminal</p> <p>5 legal interests.</p> <p>6 MR. EDWARDS: Okay. All right. I have</p> <p>7 got to look into that, but -- all right. At least I</p> <p>8 know where you stand.</p> <p>9 KYU AN,</p> <p>10 having been first duly sworn, testified as follows:</p> <p>11 EXAMINATION</p> <p>12 BY MR. EDWARDS:</p> <p>13 Q. Would you kindly introduce yourself to the jury</p> <p>14 for the record, sir.</p> <p>15 A. Yes. Myself? Yes. I am Kyu An with the</p> <p>16 Austin Police Department.</p> <p>17 Q. Okay. And how long have you been a Austin</p> <p>18 Police Department police officer?</p> <p>19 A. For approximately six years, sir.</p> <p>20 Q. And are you currently an Austin Police</p> <p>21 Department officer?</p> <p>22 A. Yes, I am, sir.</p> <p>23 Q. Are you currently getting paid by the Austin</p> <p>24 Police Department?</p> <p>25 A. Yes, I am, sir.</p>	12	<p>1 A. Yes, sir. On the advice of counsel, I invoke</p> <p>2 my Fifth Amendment privilege and respectfully decline to</p> <p>3 answer your question, sir.</p> <p>4 Q. You've been indicted for aggravated assault by</p> <p>5 a public servant, right?</p> <p>6 MR. LEAKE: Same instruction.</p> <p>7 A. Sir, on the advice of counsel, I invoke my</p> <p>8 Fifth Amendment privilege and respectfully decline to</p> <p>9 answer your question, sir.</p> <p>10 Q. Other than Bomani Barton, who you currently</p> <p>11 face indictment for a form of assault, did you assault</p> <p>12 anyone else during the George Floyd protests?</p> <p>13 A. On the advice of counsel, sir, I invoke my</p> <p>14 Fifth Amendment privilege and respectfully decline to</p> <p>15 answer your question.</p> <p>16 Q. In fact, you did assault numerous other people</p> <p>17 during the George Floyd protests; isn't that correct?</p> <p>18 MR. LEAKE: Objection, form.</p> <p>19 Go ahead.</p> <p>20 A. Sir, on the advice of counsel, I invoke my</p> <p>21 Fifth Amendment privilege and respectfully decline to</p> <p>22 answer your question, sir.</p> <p>23 Q. For example, you shot Saraneka Martin, when she</p> <p>24 posed no danger to anyone, with a kinetic projectile;</p> <p>25 didn't you?</p>

WRIGHT WATSON & ASSOCIATES

Exhibit 11



**OFFICE OF THE
DISTRICT ATTORNEY**

P.O. Box 1748, Austin, TX 78767

Telephone 512/854-9400

Telefax 512/854-4206

JOSÉ P. GARZA
DISTRICT ATTORNEY

TRUDY STRASSBURGER
FIRST ASSISTANT

October 19, 2022

Dear Lieutenant Streepy:

I am responding to your inquiry of a week ago regarding our office's position on the request you have received regarding certain experts being able to access and test evidence – including 12-gauge shotguns, 40MM launchers, and “less lethal” ammunition rounds – currently being preserved as evidence in the pending criminal investigations and matters collectively referred to as “The Protest Cases.”

I understand that a request was specifically made as concerns *State v. Rast*, D-1-DC-20-900080, and the corresponding civil matter involving victim Sam Kirsch.

In order to protect the integrity of our ongoing criminal investigations in The Protest Cases, we regret that we must express our opposition to allowing these experts retained in the corresponding civil cases to access the firearms and ammunition evidence for inspection or testing. This evidence needs to be preserved for State and Defense inspection, testing, and use in the criminal investigations and indicted cases; and chain of custody concerns must also be considered. Allowing this access prior to the resolution of the criminal matters could compromise those cases/investigations.

This approach is consistent with our office's position in other pending criminal matters and is even more pressing in this situation given the limited amount of less lethal ammunition available for testing.

Please let me know if you have further questions or concerns and thank you for your patience.

Best,

/s/ Ramanjeet Gill

Ramanjeet Gill

Assistant District Attorney

Travis County District Attorney's Office

Exhibit 12



OFFICE OF THE DISTRICT ATTORNEY

P.O. Box 1748, Austin, TX 78767

Telephone 512/854-9400

Telefax 512/854-4206

JOSÉ P. GARZA
DISTRICT ATTORNEY

TRUDY STRASSBURGER
FIRST ASSISTANT

January 29, 2021

To the Travis County Community,

When I asked for your vote, I promised you that I would work with you to reimagine our criminal justice system. I believe that together we can build a system that treats all people equally, where our resources are spent fighting violent crimes, and that treats victims with dignity and respect.

We are facing unprecedented times in our criminal justice system. COVID-19 has created a backlog that means victims and people accused may be waiting months, if not years, for justice. Our jail currently houses over 1800 people, many of whom have not been convicted of a crime and are in jail because they are too poor to pay their bail to get out. Due to COVID-19, incarceration has become a potential death sentence. It has also put our public servants who work in jails and prisons, and their families, at risk.

We have much work to do, and change does not come quickly. However, now is the time to roll-up our sleeves and divert as many resources as we can into keeping our community safe. To that end, as of February 1 I am announcing that the following policies will be implemented:

Violent Crimes. Since March, there have been limited grand jury proceedings in Travis County. We are grateful for a group of grand jurors who committed to extending their service through the end of 2020. We will be triaging the backlog of cases to focus on violent offenses that pose a threat to public safety. In the last two weeks, the grand jury has returned over 55 indictments on violent offenses, including charges of murder, kidnapping, sexual assault, aggravated assault, and violent crimes against children.

Victim Services. It is imperative that our victim-witness counselors, who currently have a caseload of up to 800 people each, are able to do their jobs effectively. We have hired an experienced and nationally recognized victim-witness counselor, Neva Fernandez, who will be leading the team and moved the team under the supervision of Erin Martinson. Ms. Fernandez will work to train the counselors and prosecutors on trauma-informed interviewing, implement policies to reduce the counselor caseload, and ensure that all victims are treated with dignity and respect regardless of the facts of their case.

Diversion. In the past, many people who were accepted into pre-trial diversion programs through the District Attorney's Office were accepted because they had hired an attorney and could afford to pay the fees associated with diversion. Many were also excluded based solely on their criminal history. However, pre-trial diversion should recognize that all people are capable of change, and that helping a person through treatment or counseling makes our community more safe than jail or prison.

We have greatly expanded our pre-trial diversion program so that more people will be eligible, and have structured the program so that our prosecutors can seek to find eligible people instead of waiting on defense counsel to ask. We will also be asking stakeholders to work with us to expand services that we can offer. At this moment, a team of experienced prosecutors is reviewing cases to determine if the person is eligible for diversion. In order to fulfill our promise of transparency to you, we will update the community regularly on the number of people who have been accepted for diversion, and the number of people who have successfully completed it.

Bail. Those who have committed heinous crimes and are a danger to the community should remain in custody pending trial. But we must work to ensure that it is not just the wealthy who are given an opportunity to be released when they are not a danger to the community.

While we cannot set bail ourselves, we will be using this analysis to recommend bail to the Judges who make the final determination:

- We will not consider a person who is an attendance risk, meaning they have missed court in the past but have not attempted to evade the police, a flight risk.
- For anyone charged with a State Jail Felony, there will be a presumption of release with no conditions if it is determined that the person poses no threat to community safety or risk of flight.
- For anyone charged with a higher level felony, there will be a presumption of release with the least restrictive condition necessary to ensure that the person is not a risk to the community or risk of flight.
- Anyone who poses a future risk of harm to our community or a risk of a flight that cannot be addressed by conditions other than pre-trial incarceration should remain in custody.

Conviction Integrity. Over the last two decades, our community has learned hard lessons about the factors that can lead to wrongful convictions. We have a duty to ensure that no person who is innocent or is entitled to a new trial due to a wrongful conviction is forgotten in prison. We have created a conviction integrity team lead, and our team of lawyers will create processes and begin a thorough and careful review of past convictions. To this end, our office has been working since January 4th to ensure that a judge could hear evidence of Ms. Rosa Jimenez's innocence and ensure her release.

Soon our office will have a public form for our community to fill out if they have a loved one who needs their case reviewed.

Civil Rights. One of our most important jobs is to work with law enforcement to keep our community safe. That means we must work together to ensure that cases we bring to the point of prosecution have been thoroughly investigated, and we are confident that we are bringing the right person to trial with the right charges. It also means that in order to rebuild community trust and ensure the safety of our community, we must hold law enforcement accountable when they break the law.

If we have evidence that an officer's conduct calls into question the integrity of any case they have previously handled, we will be conducting a review of those cases and we will place them on a "do not call to testify" list. Before the list is made public, the officer will have a right to present evidence that they should be allowed to continue to testify in criminal cases.

Sentencing. I promised you that our practice would not be to seek excessive sentences. This office believes that all people are capable of change, and that we must use data to ensure that we are asking for sentences consistent with when we know that a person's criminogenic risk has been greatly reduced. For that reason, any prosecutor who believes that a sentence longer than twenty years is appropriate must seek permission from the director of the division and our first assistant or myself. Make no mistake, there will be times when a long sentence will be appropriate.

Powerful Actors. We have shifted the focus of the unit formally known as "special prosecutions" to Public Integrity and Complex Crimes. We will be focusing not only on elected officials who have committed crimes that fall under our jurisdiction, but we will be asking community members to come forward and inform us when they have been victims of wage theft, unsafe work conditions that rise to the level of criminal conduct, or landlords who have criminally taken advantage of tenants. We will soon be publishing a form that can be used to report complaints of this nature. We will be actively working with the community to identify these cases, and work to ensure that justice is done and that powerful actors are held accountable.

Drugs. I committed to you that my office would not spend our scant resources prosecuting people who suffer from substance abuse issues instead of using those resources to prosecute crimes like sexual assault and family violence. To that end, we will continue the practice started by the last administration of not prosecuting people who are in possession of a state jail amount of drugs and we will be ending the prosecution of the sale of small amounts of drugs unless there is a threat to public safety. Instead, when someone is arrested for a drug crime, we will prioritize prosecuting only sellers who pose a danger to the community because they engage in violent conduct.

Magistration. Right now, it is the police who decide what charges to file and the magistrates who set the initial bail. This is done without the input of the prosecutor or defense counsel. Our office, along with the county attorney, intends to begin an arrest review process in magistration as soon as we can. This will save time and money for the county, and potentially wasted days in jail, if we can review cases before a person sees a magistrate, and I look forward to working with criminal justice stakeholders to make this happen.

A handwritten signature in black ink, appearing to read "José Garza". The signature is fluid and cursive, with the first name "José" being larger and more prominent than the last name "Garza".

José Garza

Exhibit 13

CAUSE NO. D-1-DC- 20-900092

THE STATE OF TEXAS

§
§
§
§
§

IN THE DISTRICT COURT

VS.

299th JUDICIAL DISTRICT

GREGORY GENTRY

TRAVIS COUNTY, TEXAS

MOTION TO DISMISS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the State of Texas, by and through the District Attorney for Travis County, and respectfully requests the Court to dismiss the above entitled and numbered criminal action in which the defendant is charged with the offense of Aggravated Assault By Public Servant , for the reason:

- The evidence is insufficient;
- The defendant was convicted in another case;
- The complaining witness has requested dismissal;
- The case has been refiled;
- The defendant is unapprehended;
- The defendant is deceased;
- The defendant has been granted immunity in light of his testimony;
- The defendant has completed the drug court program
- Other: Best Interest of Justice

And for cause would show the Court the following: .

WHEREFORE, it is prayed that the above entitled and numbered cause be dismissed.

Respectfully submitted,

Filed in the District Court
Of Travis County, Texas
At 07/19/2021 2:23pm
Velva L. Price, District Clerk

DocuSigned by:
Coulter Goodman
0710258596BF488...
Assistant District Attorney

ORDER

The foregoing motion having been presented to me on this the 19th day of July, A.D. 2021, and the same having been considered, it is, therefore, ORDERED, ADJUDGED, and DECREED that the above entitled and numbered cause be and the same is hereby dismissed.

DocuSigned by:
Karen Sage
99ADDE0122AF43E...
Judge of the 299th Judicial District Court
Travis County, Texas



**OFFICE OF THE
DISTRICT ATTORNEY**

P.O. Box 1748, Austin, TX 78767

Telephone 512/854-9400

Telefax 512/854-4206

JOSÉ P. GARZA
DISTRICT ATTORNEY

TRUDY STRASSBURGER
FIRST ASSISTANT

July 19, 2021

Doug O'Connell
505 W 12th St, Ste 200
Austin, TX, 78701

Ken Ervin
1301 Rio Grande St
Austin, TX 78701

Filed in the District Court
Of Travis County, Texas

At 07/19/2021 2:23pm
Velva L. Price, District Clerk

Re: State v. Gregory Gentry D1DC20900092

Dear Mr. O'Connell and Mr. Ervin:

I am writing to inform you that our Office is dismissing the pending indictment against Austin Police Department Officer Gregory Gentry. In my review of this case, I became aware that our Office had previously consulted with an expert regarding Officer Gentry's use of force in this case. His opinion was that Officer Gentry's use of force was lawful. As you know, I have previously made that opinion available to you in accordance with our obligations under *Brady v. Maryland* and corresponding Texas law.

In light of this information, we have decided that a dismissal in the interests of justice is the appropriate action to take in this case. Attached to this letter is the dismissal of the pending case.

Regards,

Coulter Goodman
Assistant District Attorney
(512) 854-9400

Exhibit 14



<https://www.austinchronicle.com/news/2021-07-23/district-attorney-drops-assault-case-against-apd-officer/>

District Attorney Drops Assault Case Against APD Officer

D.A. Office's internal review of Gentry case uncovers previously undisclosed exculpatory evidence

BY AUSTIN SANDERS, JULY 23, 2021, NEWS

The **Travis County District Attorney's Office** has dropped its felony assault case against Austin Police Department Officer **Gregory Gentry**, after an internal review of the case file uncovered previously undisclosed exculpatory evidence. "Upon review, we have decided that a dismissal of the indictment is the appropriate action to take in this case and best serves the interest of justice," D.A. **José Garza** said in a statement. "I offer my sincere apologies to Officer Gentry who undoubtedly suffered as a result of this process."

A special grand jury indicted Gentry in January, along with fellow APD Officer **Chance Bretches**, on the first-degree felony charge of aggravated assault by a public servant, stemming from a March 2019 arrest. Charging documents allege that the two officers, and a third who was not indicted, struck a suspect with their hands, elbows, and knees. Body camera footage of the alleged beating has not been released, but sources who have seen it describe it as "disturbing."

The officers involved were cleared of wrongdoing after an APD Internal Affairs investigation, but a prosecutor under former D.A. **Margaret Moore** prepared a grand jury presentation to make the case for indictment, which never happened during her tenure. Earlier this year, Moore told the *Chronicle* that in the final weeks of her administration, the **Civil Rights Unit** – tasked with prosecuting officers accused of criminal conduct – was preoccupied by the **Javier Ambler** case, in which an unarmed Black man died in 2019 during an attempted arrest by Williamson County sheriff's deputies and APD officers.

When Garza took office earlier this year, his team moved forward with the case and secured an indictment of Bretches and Gentry. The case file compiled by the former prosecutor – whom Garza said is no longer employed by his office – included testimony from a retired APD detective who said that in his view Gentry's use of force in particular was justified and lawful. In his statement, Garza said the former assistant D.A. had not flagged this evidence and that no one else knew of its existence until a new prosecutor, preparing for trial, uncovered it in May.

At that point, Garza shared the testimony with the attorneys representing Gentry; under the law, this should have happened earlier, although the D.A. is not obligated to present exculpatory evidence to a grand jury. Those attorneys, **Doug O'Connell** and **Ken Ervin**, are also defending Bretches, whose case will still go to trial – and the two WilCo deputies indicted in Ambler's death, and **Christopher Taylor**, the APD officer charged with the murder of **Mike Ramos** in April 2020. They took the humbling moment for Garza as an opportunity to attack the progressive D.A., even though the error involving their client happened under his predecessor.

"We have said all along that the indictments against our law enforcement clients ... were the result of selecting and

presenting evidence to the grand jury in ways calculated to produce indictments," O'Connell and Ervin wrote in a statement. "Though we appreciate the dismissal of Officer Gentry's case and the acknowledgement of impropriety in obtaining his indictment, Mr. Garza still has several more illegitimate indictments to dismiss and apologies to give."

Garza also announced personnel changes to the Civil Rights Unit; **Jim Wheat**, previously chief of special crimes for the Bexar County D.A., will join the unit as a supervisor reporting to CRU Director **Dexter Gilford**, leading the team of three attorneys (JD Castro, Millie Thompson, and Coulter Goodman) working on cases involving law enforcement.

Copyright © 2023 Austin Chronicle Corporation. All rights reserved.

Exhibit 15

COURTS

Jury acquits former Austin police officer accused of misconduct in 2017 arrest



Katie Hall

Austin American-Statesman

Published 2:39 p.m. CT Oct. 18, 2022 | Updated 2:53 p.m. CT Oct. 18, 2022

After a weeklong trial that centered on accusations of police misconduct, a Travis County jury on Monday acquitted a former Austin police officer of two misdemeanor charges from his role in an arrest five years ago.

The case was the first in which prosecutors brought someone in law enforcement to trial since the election of Travis County District Attorney José Garza, who campaigned in part on a promise to hold officers accountable for any illegal conduct.

In an interview Tuesday, the attorney for former officer Nathaniel Stallings lambasted the prosecutors who pursued the case. Stallings, who resigned from the Police Department while he and his partner were being investigated, was indicted in 2018 under then-DA Margaret Moore.

Garza should have dropped the case after looking at the facts and the statute of limitations, said Terry Keel, Stallings' attorney.

"This case is symptomatic of a desperate DA's office that tried, at all costs, to prosecute an innocent police officer," said Keel, a former state representative, Travis County sheriff and assistant district attorney.

Indictments against officers have increased substantially under Garza. Most stem from May 2020 protests in which officers fired beanbag rounds at demonstrators, injuring several.

Prosecutors had accused Stallings of arresting a woman in 2017 without first giving her a chance to explain her conduct and using more force than was reasonable during the arrest. Then-Police Chief Brian Manley fired Stallings' partner after writing in a disciplinary memo that the officers' actions during the arrest "did not conform to the law and policy" because of the way they initiated it and the force they used.

"Although the woman was uncooperative and resisted the officers' efforts, after they went 'hands on,' the officers' failure to initially follow policy directly resulted in the unnecessary need to use the force that they administered," Manley wrote.

However, defense attorneys called the lead investigator in the case, detective Ricardo Pelayo, to the stand last week, and Pelayo testified that "in my training and experience, I would've done the same thing that Officer Stallings did."

During closing arguments, Keel was critical of the fact that it was the defense, and not the DA's office, that called Pelayo to testify.

"How many major criminal trials have you heard of where the prosecution doesn't call the main investigator?" Keel asked the jury.

The DA's office did call the backup investigator, Sgt. Derick Ingram. He did not offer an opinion on the case but walked the jury through the video of the interview the APD special investigations unit conducted with Stallings. The unit investigates allegations of officer misconduct.

Stallings was facing two misdemeanor charges: one count of abuse of official capacity and one count of official oppression. Each charge would have been punishable with a jail term of up to one year and a maximum fine of \$4,000.

"We are grateful for our community members who served in the grand jury and trial for this case," Garza said in a statement. "We respect the jurors' decision and thank them for their service."

Testimony details how arrest unfolded

In 2017, Stallings and his partner, Robert Mathis, often patrolled an area of North Austin along Rundberg Lane, U.S. 183, North Lamar Boulevard and Interstate 35. On Oct. 6, Stallings and Mathis noticed a woman they knew to be a sex worker on Georgian Drive, Mathis testified last week. The woman — Cursha Townsend, who also took the stand last week — acknowledged that she was a sex worker at the time.

Mathis saw her wave as a car was passing by, then saw Townsend speak to a man in a car before he drove away, Mathis testified.

Mathis and Stallings stopped the man first, speaking to him for about five minutes before they let him go with a warning. During the stop, Mathis ran the man's name and found out he

was driving on a suspended license and had been arrested for prostitution recently.

When the defense attorney asked why he didn't arrest the man, Mathis said, "I don't think I had the elements — the probable cause — to make that arrest. There was no way for me to tell if a deal was made for a sexual act for money."

The defense also asked if Mathis let the man go because he was a white man, and Mathis said no. Townsend is Black.

Video evidence shows that the officers drove up to Townsend, and Mathis pointed to her and said, "You. Come over here." The officers each held on to one of her arms and brought her to the front of the car. Townsend immediately asked why they were doing this and told them she hadn't done anything.

On the stand Tuesday, when Townsend was asked whether she was resisting, she responded, "Yes, but not to the point where they needed to use so much force."

Austin law says that "a peace officer may not arrest a person for a violation of (manifestation of prostitution) unless the officer has given the person an opportunity to explain the person's conduct," and prosecutors argued that Stallings broke the law when he didn't give Townsend that opportunity.

In 2017, Stallings told the special investigations unit that Townsend answered the question before they even asked it because she said she wasn't doing anything.

A Travis County grand jury declined to indict Mathis, but the grand jury that reviewed Stallings' case decided to indict him.

On the stand Friday, Mathis said he wanted to handcuff her because they didn't want her to run. The officers also searched her once she was handcuffed and found a box cutter.

The video shows Stallings and Mathis struggling to get handcuffs on her as she continues to say that she hasn't done anything wrong. As Stallings presses his arm against her back while they work to handcuff her, her head strikes the hood of the car.

Townsend yells out in pain and continues to ask why they are doing this, and Mathis knees her in the thigh multiple times.

As they put her in the police car, "Officer Stallings then forcefully pushed the woman into the patrol vehicle, where she hit her head on the back seat," Manley wrote in Mathis' disciplinary

memo. "As a result of hitting the hood or the back seat, the woman suffered a laceration to her lip."

In the memo, Manley was critical of the fact that the officers treated the man very differently from Townsend.

"Officer Mathis did not concede to (investigators) that he and Officer Stallings failed to comply with this ordinance, in spite of what is depicted on video and their obvious failure to give the female the same opportunity to explain her conduct that was afforded to the male subject," Manley wrote.

Townsend is in prison for aggravated assault with a deadly weapon. In a phone interview, she told the American-Statesman that it was wrong for the officers to treat her the way they did.

"We shouldn't have to fear the police," Townsend said. "We shouldn't be treated like that, no matter what walk of life you come from — whether you live in West Lake Hills or under a bridge."

'Basic human decency'

In his closing argument, prosecutor Josh Smalley said he and Dexter Gilford, who heads the DA's office's civil rights unit, have been working nonstop on this case with little sleep.

"I know how much this case means and how much it's worth," Smalley told the jury. "It's worth so much more than what happened to Cursha. ... I know for certain what the right outcome is, but I can't control it."

As he spoke to the jury, Smalley was critical of the way the defense talked about Townsend and critical of the defense for calling the case political.

"It's about basic human decency," Smalley said. Stallings "broke the law, and he thought it was OK because she's homeless and a sex worker."

In an interview, Keel said police officers also have rights and criticized the DA's office for dragging out a misdemeanor case that happened five years ago. The statute of limitations for the charges Stallings was facing is two years. The law allows prosecutors to reindict a defendant and extend that timeline. Keel claimed that the DA's office did not correctly do that in its paperwork, but he also argued that even if the paperwork had been correct, it still wouldn't have been right.

"Would the DA's office have ever charged a non-police officer defendant in this manner or continued with the prosecution if a non-police officer did this?" Keel said. "They never would."

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALYSSA SANDERS,

Plaintiff,

v.

CITY OF AUSTIN and ERIC HEIM,

Defendants.

§
§
§
§
§
§
§
§
§

CAUSE OF ACTION:
1:22-cv-314

**PLAINTIFF'S UNOPPOSED MOTION TO SEAL EXHIBITS IN SUPPORT OF
PLAINTIFF'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION FROM DEFENDANT CITY OF AUSTIN**

Plaintiff respectfully requests leave to file under seal seventeen exhibits in support of her Motion to Compel Responses to Interrogatories and Requests for Production from Defendant City of Austin.

I. FACTS AND PROCEDURAL BACKGROUND

On May 31, 2020, Plaintiff Alyssa Sanders was protesting peacefully in front of Austin City Hall when APD Officer Eric Heim shot Sanders in the head with a 40-millimeter launcher loaded with a foam baton round. Plaintiff Sanders sued the City of Austin for excessive force and first amendment retaliation, (Doc. 1) then added Eric Heim as a Defendant on June 16, 2022 (Doc. 12).

The City has produced responsive documents in the related *Evans* case under the protective order in that matter. *Evans v. City of Austin, et al.*, No. 1:20-cv-1134, Doc. 18.

The City has also produced responsive documents in this case subject to the agreed protective order in the related *Gallagher* case. *Gallagher v. City of Austin, et al.*, No. 1:20-cv-901, Doc. 63.

Meanwhile, as discovery in this case is set to close on May 1, 2023 and trial is set for October 23, 2023, Plaintiff needs documents that the City has not provided, as well as responses to interrogatories that the City has not fulsomely responded to, and has contemporaneously filed a motion to compel the same.

II. ARGUMENT

Plaintiff respectfully requests leave of Court to file under seal seventeen exhibits in support of her motion to compel.

The exhibits are:

Exhibit 11 – Casar Text Message String (COA-General Protest.0856001)

Exhibit 13 – Heim IA Statement (COA-General Protest.015514)

Exhibit 16 – Ofc. Rast Video Audit Log (COA-General Protest.0987333)

Exhibit 17 – Rast Body Worn Camera Video (COA-General Protest.0987313)

Exhibit 18 – Approval Form for Kinetic Energy Projectile Policy – February 25, 2021 (COA-General Protest.009844)

Exhibit 19 – APD Review Task Force Final Report (COA-General Protest.004880)

Exhibit 23 – Eric Heim R2R Smartsheet 1 (COA-General Protest.011058)

Exhibit 24 – Eric Heim R2R Smartsheet 2 (COA-General Protest.011062)

Exhibit 26 – IA Investigative Summary of Eric Heim (COA-General Protest.014731)

Exhibit 27 – Excerpt from Dell Seton Medical Records (Redacted) (COA-Sanders.0057)

Exhibit 28 – Ralston Body Worn Camera Footage of Sanders Shooting (COA-General Protest.015741)

Exhibit 30 – Eric Heim Supplemental Report (COA-General Protest.014744)

Exhibit 31 – IA Investigative Summary of John Siegel (COA-General Protest.015747)

Exhibit 32 – IA Investigative Summary of Todd Gilbertson and Michael Crossen (COA-General Protest.025792)

Exhibit 33 – Felton Interview Transcript (COA-Evans.000963)

Exhibit 34 – SRT Event Action Plan (May 30, 2020) (COA-General Protest.010660)

The City of Austin marked Exhibits 11, 13, 16-19, 23-24, and 26-34 as “Confidential” or “Attorneys’ Eyes Only,” when it produced them, invoking the agreed protective order in the related case, *Evans v. City of Austin, et al.*, No. 1:20-cv-1134, Doc. 18 as to Exhibits 11, 13, 16-19, 23-24, 26, 28, and 30-34, and the agreed protective order in the related case, *Gallagher v. City of Austin, et al.*, No. 1:20-cv-901, Doc. 63. Exhibit 27 was marked confidential in the City’s production in this case, presumably under the protective order in the lead consolidated case, *Gallagher*.

Plaintiff is not aware of the basis for the City’s decision to designate the documents as classified under any version of the protective order, other than the Plaintiff’s medical records. Plaintiff disagrees with the classification of the documents other than her medical records, as Plaintiff believes none of the documents contains bona fide confidential information. When Plaintiff conferred with the City about whether it was willing to withdraw these designations, counsel for the City did not agree to do so. Because Plaintiff is not at liberty to file the documents publicly, and Plaintiff needs to file the documents for part of her argument in the Motion to Compel Responses to Interrogatories and Requests for Production from Defendant City of Austin, there is good cause to permit Plaintiff to submit the exhibits under seal.

III. CONCLUSION

For the foregoing reasons, the Court should grant Plaintiff leave to file Exhibits 11, 13, 16-19, 23-24, and 26-34 under seal.

Dated: March 6, 2023.

Respectfully submitted,

EDWARDS LAW
603 W. 17th St.
Austin, Texas 78701
Tel. 512-623-7727
Fax. 512-623-7729

By /s/ Jeff Edwards
JEFF EDWARDS
State Bar No. 24014406
jeff@edwards-law.com
DAVID JAMES
State Bar No. 24092572
david@edwards-law.com
PAUL SAMUEL
State Bar NO. 24124463
paul@edwards-law.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of the foregoing and the exhibits thereto has been served on all counsel of record by electronic mail.

By /s/ Jeff Edwards
JEFF EDWARDS

CERTIFICATE OF CONFERENCE

By my signature below, I certify that I conferred via email with counsel for Defendants about the relief requested herein and Defendants are not opposed to the relief requested in this motion.

By /s/ David James
DAVID JAMES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALYSSA SANDERS,

Plaintiff,

v.

CITY OF AUSTIN and ERIC HEIM,

Defendants.

§
§
§
§
§
§
§
§
§

CAUSE OF ACTION:
1:22-cv-314

**ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION TO SEAL EXHIBITS IN
SUPPORT OF PLAINTIFF'S MOTION TO COMPEL RESPONSES TO
INTERROGATORIES AND REQUESTS FOR PRODUCTION FROM DEFENDANT
CITY OF AUSTIN**

The Court, having considered Plaintiff's Unopposed Motion to Seal Exhibits in Support of Plaintiff's Motion to Compel Responses to Interrogatories and Requests for Production from Defendant City of Austin, Defendants' lack of opposition, any response, all argument and evidence presented, and all applicable law, the Court GRANTS the motion in its entirety.

Plaintiff may file exhibits 11, 13, 16-19, 23-24, 26-28, and 30-34 under seal.

The Clerk is directed to keep exhibits 11, 13, 16-19, 23-24, 26-28, and 30-34 under seal.

IT IS SO ORDERED.

SIGNED this _____ day of _____, 2023.

ROBERT PITMAN
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALYSSA SANDERS,

Plaintiff,

v.

CITY OF AUSTIN and ERIC HEIM,

Defendants.

§
§
§
§
§
§
§
§
§
§

CAUSE OF ACTION:
1:22-cv-314

**PLAINTIFF'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION FROM DEFENDANT CITY OF AUSTIN**

Exhibit 11

Casar Text Message String (COA-General Protest.0856001)

FILED UNDER SEAL

PARTICIPANTS: Greg Casar - 15129628708; Greg Casar - 18326547908; Unknown - 15122281645

Sent 2020-05-30 09:54:04 PM CDT FROM: Greg Casar - 18326547908;

Ann. I sent the following to chief and manager. We need to keep people safe and we need to hope for APD de-escalation as much as possible. Any emphasis you can add could be helpful.

Sent 2020-05-30 09:54:47 PM CDT FROM: Greg Casar - 18326547908;

The blue text is what I sent to chief and manager. Gray text was sent to me by someone at the protest

Sent 2020-05-30 09:56:42 PM CDT FROM: Unknown - 15122281645;

Ok. Will do. Btw I spoke to City Mgr this morning and suggested its would be good for him over next few days for him to make string statement

Sent 2020-05-30 09:59:42 PM CDT FROM: Unknown - 15122281645;

that reiterates the commitment to making our city better - more accountable - and state /restate accountability for changing training curriculum before opening class etc There is an opportunity here - and I think people need to hear strong public statements committing to tangible actions

Sent 2020-05-30 10:00:57 PM CDT FROM: Greg Casar - 18326547908;

Agreed. I am very worried that tonight goes bad. There is nothing we can do to control actions of every protester, but I hope City does not needlessly escalate. We have so little control.

Sent 2020-05-30 10:01:21 PM CDT FROM: Unknown - 15122281645;

Agreed

Sent 2020-05-30 10:06:09 PM CDT FROM: Unknown - 15122281645;

These accounts are disturbing. Thx for sharing. Id say share with Mayor too

Sent 2020-05-30 10:06:15 PM CDT FROM: Greg Casar - 18326547908;

Done

Sent 2020-05-30 10:06:50 PM CDT FROM: Unknown - 15122281645;

K

Sent 2020-05-30 11:01:51 PM CDT FROM: Unknown - 15122281645;

Done. Communicated with Spencer

Sent 2020-05-30 11:51:43 PM CDT FROM: Unknown - 15122281645;

Did you see this?

Sent 2020-05-31 11:53:49 AM CDT FROM: Unknown - 15122281645;

<https://twitter.com/valliedoll/status/1266861608464154627>

Sent 2020-05-31 11:54:18 AM CDT FROM: Unknown - 15122281645;

Greg - I have asked Spencer to check on how this kid is

Sent 2020-05-31 12:09:45 PM CDT FROM: Unknown - 15122281645;

I understand from EMS that he was transported

Sent 2020-05-31 05:32:21 PM CDT FROM: Greg Casar - 18326547908;

Will call you here shortly

Sent 2020-05-31 05:32:45 PM CDT FROM: Unknown - 15122281645;

It was a misdial. No need. Hope you are ok

Sent 2020-05-31 05:32:59 PM CDT FROM: Greg Casar - 18326547908;

Let me call you anyway

Sent 2020-05-31 05:33:12 PM CDT FROM: Unknown - 15122281645;

Ok.

Sent 2020-05-31 05:40:00 PM CDT FROM: Greg Casar - 18326547908;

Sent this to chief and manager and mayor

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALYSSA SANDERS,

Plaintiff,

v.

CITY OF AUSTIN and ERIC HEIM,

Defendants.

§
§
§
§
§
§
§
§

CAUSE OF ACTION:
1:22-cv-314

**PLAINTIFF'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION FROM DEFENDANT CITY OF AUSTIN**

Exhibit 13

Heim IA Statement (COA-General Protest.015514)

FILED UNDER SEAL

.....
State of Texas

AFFIDAVIT

County of Travis
.....

IAD CONTROL #2020-1094

On October 5, 2020 in the offices of the Internal Affairs Division, I was ordered to submit this memo by Sergeant David Nordstrom 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.

1 **NORDSTROM:** Today is October 5, 2020, and the time is 2:40 pm. We are located at 1520
2 Rutherford Lane in Austin, Texas. This interview is with Officer Eric Heim,
3 Number 7995. This interview is regarding Internal Affairs Case Number
4 2020-1094. Will everyone please state and spell your full name for the record
5 starting with Officer Heim.
6
7 **HEIM:** E-R-I-C, H-E-I-M as in Mary, 7995.
8
9 **PERKINS:** Chris Perkins, C-H-R-I-S, P-E-R-K-I-N-S, Austin Police Association.
10
11 **REYES:** Kathy Reyes, K-A-T-H-Y, R-E-Y-E-S, CLEAT Staff Attorney.
12
13 **DEMERS:** Mia Demers, M-I-A, D-E-M-E-R-S, Office of Police Oversight.
14
15 **WINES:** Mai Wines, M-A-I, W-I-N-E-S, Sergeant Internal Affairs.
16
17 **NORDSTROM:** David Nordstrom, D-A-V-I-D, N-O-R-D-S-T-R-O-M, Sergeant Internal
18 Affairs. Officer Heim, were you informed and are you aware this interview is
19 being recorded and the room is subject to monitoring?
20
21 **HEIM:** Yes, I am.

22
23 NORDSTROM: The process for this interview is established by the Meet & Confer Contract.
24 The Office of Police Oversight or OPO is allowed to have a representative
25 present for this interview. Obviously today due to COVID-19 protocol,
26 they're monitoring remotely. The Meet & Confer Contract also allows for the
27 representative of the OPO to ask questions of the Officer who is the subject of
28 the investigation at the end of the interview before it is concluded. However,
29 because you are the subject Officer of this investigation, you must first agree
30 to allow the representative of the OPO to ask questions directly of you. This is
31 your choice and it is voluntary. Neither the course of the investigation nor this
32 interview will change based on your decision. If you do not agree, then the
33 representative of the OPO may not ask questions directly of you. If the
34 representative of the OPO has any questions, we will pause the recording and
35 take a break to confer with the OPO. I will determine if the questions are
36 pertinent to the investigation. If so, we will come back and continue with the
37 questions on record. Before we continue, I am asking you if you are willing to
38 allow the representative of the Office of Police Oversight to directly ask you
39 questions at the end of this interview.
40
41 HEIM: No, thank you.
42
43 NORDSTROM: I understand that you are voluntarily not agreeing to allow the representative
44 of the OPO to ask questions directly of you. Is that correct?
45
46 HEIM: That is correct.
47
48 NORDSTROM: As a reminder, as outlined in The Collective Bargaining Agreement, all
49 representative are - all representatives are observers only and are not
50 permitted to speak during the interview. Anyone who violates this pri-
51 provision of The Collective Bargaining Agreement may be asked to leave the
52 room to monitor the remainder of the interview remotely. Officer, were you
53 informed this interview would cover the incident discussed in your Notice of
54 Allegations?
55
56 HEIM: Yes, sir.
57
58 NORDSTROM: Have you had sufficient time to reflect on the incident in question and prepare
59 for this interview?
60
61 HEIM: I have.
62
63 NORDSTROM: Do you recall receiving your administrative warnings, notice of allegation and
64 a copy of the complaint on September 21, 2020?
65
66 HEIM: I do.
67

68 NORDSTROM: Prior to the beginning of this interview were you given a reasonable
69 opportunity to review the items listed on page 4 of the notice of allegations
70 that you'll receive today related to the incident under investigation?
71
72 HEIM: Yes, I was.
73
74 NORDSTROM: If you've reviewed those items, check one of the appropriate boxes, just one,
75 and then sign and date. Do you have any questions about any of the
76 paperwork you've received - received up until this point?
77
78 HEIM: I do not.
79
80 NORDSTROM: Are you under the influence of any kind of medication or other substance that
81 will inhibit your ability to understand and answer my questions?
82
83 HEIM: I am not.
84
85 NORDSTROM: If you hear a question today you don't understand or is confusing, just say so
86 and I'll repeat or rephrase it. We are here today to discuss an incident that you
87 were involved in that occurred on May 31, 2020. Do you recall the incident
88 I'm speaking of?
89
90 HEIM: Yes, I do.
91
92 NORDSTROM: And can you tell me how long you've been employed with the Austin Police
93 Department?
94
95 HEIM: Going on five years this month.
96
97 NORDSTROM: What is your current duty assignment?
98
99 HEIM: I'm a Patrol Officer on the Charlie Sector 600 night - or evening shift.
100
101 NORDSTROM: Is that the same duty assignment you had on May 31, 2020?
102
103 HEIM: It is not.
104
105 NORDSTROM: Where were you assigned?
106
107 HEIM: I was assigned with the Special Response Team Downtown.
108
109 NORDSTROM: Were you assigned to that patrol shift at that time?
110
111 HEIM: Yes, I was assigned to that patrol shift at that time.
112
113 NORDSTROM: But on May 31st you were working as part of SRT?

114
115 HEIM: Yes.
116
117 NORDSTROM: Okay, and we'll get into more of that later but what did you do prior to joining
118 the Austin Police Department?
119
120 HEIM: I was a Soldier in the U.S. Army.
121
122 NORDSTROM: And how long were you in the Army?
123
124 HEIM: Four years.
125
126 NORDSTROM: What kind of work did you do while in the Army?
127
128 HEIM: I was an infantry man trained in weapons and part of the Honor Guard.
129
130 NORDSTROM: Was that your - your, um, as part of the infantry, I guess did you have a
131 special assignment in the infantry that dealt with weapons?
132
133 HEIM: Yes.
134
135 NORDSTROM: What's that called?
136
137 HEIM: Just a team made of weapons squad.
138
139 NORDSTROM: Okay. At this point if you can speak to your SRT deployment on May 31st. If
140 you'd take some time and kind of walk us through that day, why you were
141 there, any kind of - as much - with as much detail as you can possibly
142 remember, um, everything that led up to the incident that we're here to talk
143 about and then maybe even aftermath if anything happened afterwards.
144
145 HEIM: Okay. On that day I was working with SRT under Sergeant Molleur's squad.
146 So it was a squad that with Officers that we haven't worked together before. It
147 was kind of we need this group of guys to go here, this group of guys to go
148 here. On that day we had gotten word that we needed to head over to City Hall
149 on Cesar Chavez, that there was large, large crowds gathering. We were
150 instructed at that time to go assist BPOD, which is our Bike Patrol Officers
151 with SRT to go intercept that intersection to block the protestors off to keep
152 them safe because they didn't - it was an open road. So it was very dangerous
153 for traffic coming through and stuff like that. On that day we got on the bus.
154 We drove and parked a couple blocks away, and at that time we walked down
155 to that intersection to assess what was happening and what we needed to do.
156 Once we got there, we ended up lining up behind our Bike Officers, and that's
157 when chanting started and a lot of protesting going on at that time. And, um,
158 from what I remember is there was a fight that broke out or something
159 happened to the left of me where there was an altercation, and that's when it

160 became a riot. We started taking rocks, we starting taking frozen water bottles,
161 water bottles. We had Officers getting hit. We had civilians getting hit from
162 behind that people were falling too short. And after that altercation took up
163 and it turned into a riot, I observed a white male wearing a black bandana step
164 out from the crowd. Had a - had a water bottle, what appeared to be a water
165 bottle in his hand, and at that time he started to throw it. I was issued a 40
166 millimeter less than lethal at that time that I had been trained in. As the - as
167 the male was throwing the water bottle, I took aim. I fired one shot. I don't
168 believe I hit him, but I wasn't sure because it happened so quick that the round
169 could've hit him because he disappeared into the crowd really quick, and that
170 was the last thing I saw. After that - after a few minutes of it being riotous
171 behavior, things started calming down and, you know, after that it became a
172 little more aggressive, more aggressive. Um, we kept taking rocks. We kept
173 taking bottles periodically here and there. I remember there were lots less
174 lethal rounds going off at that time. After that I know that somebody - one of
175 our supervisors had met with one of the organizers out there, a lady who was
176 trying to work with Police and the - and the protestors, and that's when we
177 had agreed to give them the street. And that's when we moved out. So and
178 then we were followed because we were surrounded at this time. We had
179 protestors behind us throwing things and protestors in front of us throwing
180 things and protestors on the side of us throwing things. So we were taking it
181 from all sides. Once they decided that we were going to give the protestors a
182 street, that's when our squad and the bike squad moved to go up Guadalupe, I
183 believe it was Guadalupe, that we ended up walking forward and then we
184 were chased with the group for almost two blocks before one of the organizers
185 were able to get them to go south towards 35.

186
187 NORDSTROM: Okay. Thank you for that.

188
189 HEIM: And then we were moved to 35 where it was still a riot going on, and that's
190 when we were taking - I mean, we were taking everything. Again, protestors
191 taking over 35, stopped all traffic and we - that's when my team was called
192 over onto 35. Once we got onto 35, we were told that we'd possibly be
193 deploying CS gas. We'd all been issued gas masks, and so we gave ample
194 time to our Officers, to multiple of the civilians out there from Air 1 that gas
195 was going to be utilized if they do not vacate the highway, because it was an
196 open highway, very dangerous.

197
198 NORDSTROM: I understand that.

199
200 HEIM: Right.

201
202 NORDSTROM: And I guess, when you - and I'm going to stop you there for a second. I guess,
203 did you return to City Hall at - at any point after I guess after you agreed to -
204 to give or after the decision was made to give the protestors the street outside
205 City Hall? Is that what you were talking about?

206
207 HEIM: Yes.
208
209 NORDSTROM: Okay, and then you left it, you left that area?
210
211 HEIM: Yes.
212
213 NORDSTROM: Did you ever return to the area around City Hall that day?
214
215 HEIM: I don't remember.
216
217 NORDSTROM: Okay.
218
219 HEIM: I can read my report where I ended up at, I don't think so.
220
221 NORDSTROM: Okay. What were your duty hours on May 31st, do you recall?
222
223 HEIM: I don't. I know that it started early, 8:00 or 9:00 am until later that night. I
224 don't have an exact time.
225
226 NORDSTROM: And do you - do you recall where you showed up?
227
228 HEIM: Yes.
229
230 NORDSTROM: Where was that?
231
232 HEIM: APD Main on 8th and 35.
233
234 NORDSTROM: And you mentioned Sergeant Molleur earlier, who's your normal SRT
235 Sergeant?
236
237 HEIM: It's Detective ^{Chiappardi} ~~Chief Hardy~~. We had Sergeant Billy Parks as our Sergeant at
238 that time but he had never deployed with us. He wasn't there during that time,
239 and he's never worked on my SRT team. It's always been Detective ~~Chief~~ ^{Chiappardi}
240 Hardy as the Supervisor for my team.
241
242 NORDSTROM: Okay. So, I guess, did you just have a new Supervisor for that day or?
243
244 HEIM: Yes.
245
246 NORDSTROM: Or a fill-in Supervisor?
247
248 HEIM: Yes, it was a matched-up squad. It was, he had his squad, but he didn't have
249 enough people to fill his squad, so they pulled from other squads to fill his
250 squad.
251

252 NORDSTROM: And you were one of those Officers?
253
254 HEIM: I was one of those Officers.
255
256 NORDSTROM: Okay. That makes sense. And did you - when you - what happened after you
257 arrived at the Main?
258
259 HEIM: We got a briefing on kind of what to expect, where we're seeing lots of people
260 at. There were protestors this time at the Main, I believe, and we got word -
261 we weren't sure. It was chaos at this time. We had hundreds and hundreds, if
262 not thousands of people down there.
263
264 NORDSTROM: Do you recall who gave that briefing?
265
266 HEIM: I know that Chief Manly was down there some of the day, but it was long, a
267 few days. I don't remember exactly, but I'm pretty sure he showed up every
268 day to give the briefings. Or if not, it was an assistant chief.
269
270 NORDSTROM: And do you recall, this is speaking of May 31st.
271
272 HEIM: Mm-hm.
273
274 NORDSTROM: Do you recall being given a specific direction for your SRT assignment that
275 day?
276
277 HEIM: Not on that day. On the days prior, we had gotten the briefings on less lethal
278 use and anything with that. I don't recall on that specific day, but I know
279 between the 29th and the 30th we had gotten briefings on how to use. That
280 day I don't - I don't recall exactly what was said.
281
282 NORDSTROM: And what was that direction on less lethal deployment?
283
284 HEIM: That we are going to not let them take over because they were trying to take
285 over the - eventually take over the Main. We had intel that they were going to
286 try to take over the main building. There was intel that they were going to take
287 over 35. We were directed not to give up any of the Main, and if they took 35,
288 we would get them off, um. If at any time we started taking rocks and
289 bottles like we had the days before, that we were instructed to use our less
290 lethal ammunition on them.
291
292 NORDSTROM: And do you recall who - who gave you that information or that direction?
293
294 HEIM: Multiple Supervisors.
295
296 NORDSTROM: Were they SRT Supervisors?
297

298 HEIM: Y- yes and no. There were - there was a Supervisor out there that had not been
299 on SRT and there were Supervisor out there with SRT. I know that my
300 Supervisors on SRT gave that. I know that there were Lieutenants out there
301 behind me telling me. I heard them behind me pointing, saying, you know,
302 "Less lethal him, less lethal him." So we'd gotten multiple directives to use
303 our less lethal weapons.
304
305 NORDSTROM: And did that - did that change at all on May 31st?
306
307 HEIM: No, except for the beanbag rounds. I believe at that point they realized the
308 beanbag rounds were no good, but I wasn't issued a beanbag shotgun.
309
310 NORDSTROM: And so you mentioned - can you described the - the less lethal weapon you
311 were carrying that day?
312
313 HEIM: Yeah. It's a 40 millimeter foam baton round, um, from what I've been
314 described it feels - it's supposed to be pain compliance. It's supposed to feel
315 like a punch hitting you. It's safer than the beanbag rounds. It's a little bigger,
316 40 millimeters. It's a one-shot. It's a one-shot weapon. So every time it's
317 fired, you have to manually reload it, and I was trained to with SRT, um, years
318 prior that I just had training on it, I believe within that year at some point.
319
320 NORDSTROM: Okay. And where did you obtain that 40 millimeter less lethal that day?
321
322 HEIM: That would've been from the - the APD Main or the SRT Arms Room.
323
324 NORDSTROM: Is that a weapon that's assigned to you?
325
326 HEIM: No. They're - so usually, from what I believe, there's usually two people per
327 squad that are trained on it and whoever's there during a protest or during that
328 day, they usually assign somebody to have a less lethal shotgun and a - and
329 the 40 millimeter. It just happened for that day that I was trained on that
330 weapon and I was issued and told that I was taking that weapon.
331
332 NORDSTROM: And did you receive ammunition for the 40 millimeter less lethal at the same
333 time?
334
335 HEIM: Yes.
336
337 NORDSTROM: And how many rounds - do you recall how many rounds you were - you were
338 issued?
339
340 HEIM: I believe it was like 12 to 15 rounds. I don't have an exact number on that.
341
342 NORDSTROM: And basically you said you were initially trained on that weapon system years
343 ago?

344
345 HEIM: Yeah, my - within my first year, year-and-a-half on SRT, I got trained on that
346 - on that weapon system. And then annually we would qualify.
347
348 NORDSTROM: And based on that training, can you describe some - some circumstances when
349 a 40 millimeter less lethal deployment would be appropriate?
350
351 HEIM: Yes, any act of violence towards Officers or civilians, any riotous crowd
352 control, um.
353
354 NORDSTROM: And can you tell me wh- what types of injuries can occur from a 40 - 40
355 millimeter less lethal foam baton round?
356
357 HEIM: From what I have observed, it's only been bruising. I've never seen any skin
358 break. Granted, this is the first time that we have used the 40 millimeter
359 during the time that I've been on SRT in the many protests that we've done.
360 It's the first time they've ever been brought out to be used, and I haven't seen
361 too many injuries, but we were trained that it's much safer than a less lethal
362 beanbag gun.
363
364 NORDSTROM: Can you - can you tell me what - what the targeting system in on that weapon?
365
366 HEIM: Yeah, that one's more safer, it's going to be either your - your arms, upper
367 body, legs.
368
369 NORDSTROM: I'm sorry. Like what - what site system or optics, if any.
370
371 HEIM: Oh, I'm sorry.
372
373 NORDSTROM: Are on the actual weapon?
374
375 HEIM: It's iron sights, I'm sorry.
376
377 NORDSTROM: And were you given any direction, um, on the perimeters for deploying - was
378 there any difference between the instructions of using less lethal ammunitions
379 versus from the what's called the beanbag shotgun versus a 40 millimeter less
380 lethal?
381
382 HEIM: No.
383
384 NORDSTROM: Do you recall any conversation or instructions about, you know, I guess
385 beanbag shotguns are okay for this but only use less, you know, 40
386 millimeters for this or vice versa?
387
388 HEIM: No.
389

390 NORDSTROM: And can you - can you describe what the encounters were like between
391 Officers and those partic- participating in the protest around City Hall on May
392 31st?
393
394 HEIM: It was - it was very hostile. There was active aggression, you know, the
395 constantly Officers were taking water bottles and rocks, like I said. The
396 previous day we had taken frozen water bottles. I had heard the frozen water
397 bottles hitting the ground. This day, um, to set the scene, it was very hostile.
398
399 NORDSTROM: Have you - so how long have you been a part of the Special Response Team?
400
401 HEIM: Like around three-and-a-half, four years. I'd say three-and-a-half years.
402
403 NORDSTROM: And, I guess, in your career in APD have you worked any protests in the past?
404
405 HEIM: Yes, dozens of protests I've worked.
406
407 NORDSTROM: Do you recall any of those protests specifically? And when I say protest, I
408 mean demonstrations, Marches, anything like that?
409
410 HEIM: Yes, the - the ones - one that we worked are planned. They are given permits
411 to protest. They're legally protesting as far as they have the permits. They
412 went through the city and everything. That way we can shut down the roads,
413 support that person and their rights so they can march down Congress. So
414 everything like that, and we've had our couple of incidents were fights have
415 broken out between clashing groups. We've handled that, but I've never been
416 on a protest in the past that had required us using less lethal ammunitions
417 besides OC spray or tasers, but not that had kinetic energies.
418
419 NORDSTROM: And I'm going - I'm going to ask two questions here about your training. Do
420 you recall what kind of training you received from the Police Department that
421 was not part of SRT as far as how to handle protests or large demonstrations?
422
423 HEIM: Yes. We received training on how to deal with large crowds as far as learning
424 formations, learning what to do and not to do as far as if we have an
425 aggressive person. How we handle that as Patrol Officers, and that was in the
426 Academy.
427
428 NORDSTROM: And other than SRT, have you received any other training like that in your
429 career?
430
431 HEIM: No.
432
433 NORDSTROM: Since the Academy?
434
435 HEIM: No, not that I recall.

436
437 NORDSTROM: And then can you tell me about your SRT training?
438
439 HEIM: Yes.
440
441 NORDSTROM: You were - how long were you an Officer before you joined SRT?
442
443 HEIM: About a year-and-a-half.
444
445 NORDSTROM: And can you - can you describe the training you've received since joining
446 SRT on - on, um, how SRT approaches large demonstrations or crowds or - or
447 riots?
448
449 HEIM: Yes. We learn how to - we usually meet in a huge, open field somewhere,
450 usually it's on base, at the Air Force Base, and we'd go through scenarios. I
451 know SRT, we had talked, we had never seen anything like what we
452 experienced this weekend in May. So it's all scenario-based on if we were to
453 have a couple hundred protestors or 100 protestors, how we would handle it if
454 - if they had refused to move or if we - just different scenarios of fights
455 breaking out, how to handle separating two clashing groups, and things like
456 that. What would happen if we had to use CS gas, how would it be used. It
457 was never deployed with us during training but we've all been - we've lit it so
458 we could all get a taste of it, but nothing.
459
460 NORDSTROM: Did you - did you receive any kind of in - in the scenarios that you described,
461 did you receive any kind of training where the crowd was hostile? I think you
462 mentioned, you know, different sides of a protest or - or a situation right or a
463 demonstration. In those scenarios, had you trained as part - as part of SRT had
464 you trained where the crowd is hostile towards the Officers?
465
466 HEIM: Yes, to an extent. As far as verbally hostile, refusing to listen to the
467 commands of clearing a roadway, on how we would handle that. Not that I
468 recall of when we start taking fireworks and rocks and bottles and objects like
469 that.
470
471 NORDSTROM: And you mentioned this weekend, um, May 31st was a Sunday.
472
473 HEIM: Yes.
474
475 NORDSTROM: How many - do you recall it was - you mentioned a couple days earlier.
476
477 HEIM: Yes.
478
479 NORDSTROM: Do you know how many days you had to work this?
480
481 HEIM: Yes. I started the 29th at night. I was working Patrol when the FaceTime Live

482 came out to start the - the riots. Basically they were calling for riots on his
483 FaceTime Live or video following that night. And that's when we ended up,
484 Patrol Officers, ended up following the motorcade that they had down to
485 block down, and that's the night they took over the Main as far as beginning
486 the protest and take over the highways and service streets.
487
488 NORDSTROM: So you Friday was on Patrol?
489
490 HEIM: Friday I was on Patrol.
491
492 NORDSTROM: Saturday?
493
494 HEIM: SRT.
495
496 NORDSTROM: Sunday?
497
498 HEIM: SRT.
499
500 NORDSTROM: So speaking of the 31st, the situation on City Hall, the situation that, um,
501 occurred near City Hall, can you kind of describe that as far as what you'd
502 seen on Friday and Saturday? Was it similar, worse, more chaotic, more
503 violent. I mean, you - you seem to this is your third day in a row dealing with
504 these protests, so I'm trying to get an idea of what you were thinking at the
505 time at City Hall on Sunday?
506
507 HEIM: Correct, um, from what I can recall, from what I remember, is - is when we
508 got there on Sunday, there were hundreds, if not thousands of people. When
509 the Officers arrived on scene, I believe that it was out there pretty peaceful at
510 first when Officers arrived on scene. And then over time, I don't know what
511 had happened in other parts with Officers, but it became very hostile very
512 quick, and they were blocking traffic. And from what I heard, was that there
513 was a bus, like a Capitol Metro bus, stuck on the road trying to get through,
514 and that people began attacking that bus. But from what I remember, that's
515 why we had to open up that road and get people moving, which is then why it
516 became even more hostile and it was - it started to turn just like it was
517 Saturday and Friday night, people really throwing objects. We smelled bleach
518 that day. People were filling bottles up with bleach and acid, I don't know
519 what else. So I would say it was a riot just like on Saturday and Sunday where
520 there were businesses down there, civilians, open roads, traffic.
521
522 NORDSTROM: And can you, um, you mentioned, um, water bottles, frozen water bottles, you
523 could smell bleach. Can you describe any other ob- objects that were you
524 believe were being thrown at Officers?
525
526 HEIM: There were glass bottles being thrown. There was - there was this - I don't
527 know if it was this day or the other days, but there were fireworks being shot

528 at us. Some Officers had Molotov cocktails thrown at them, large rocks,
529 bricks, um, cones. We had cones thrown at us. Various objects that could...
530
531 NORDSTROM: Go ahead, I'm sorry.
532
533 HEIM: That was it. That's all I can think of right now.
534
535 NORDSTROM: And, um, during the - the incident that occurred outside of City Hall, do you
536 recall an Officer was struck by any of those objects you just described?
537
538 HEIM: Yes. I believe there were a few Officers struck by rocks and bottles, um,
539 during that. I don't know who. I don't know their names.
540
541 NORDSTROM: Do you know if they received any medical treatment?
542
543 HEIM: I do not know.
544
545 NORDSTROM: And were any of the members of the, um, any of the members of the crowd or
546 the protestors struck by any of those objects being thrown?
547
548 HEIM: I - I don't know. I know that they were hitting really close to them, that people
549 were throwing from the back and they were falling short, but I don't know if
550 any of them were hit or struck.
551
552 NORDSTROM: And do you know if any of the protestors - did you see any - do you have any
553 knowledge that any of the protestors outside City Hall received any medical
554 attention?
555
556 HEIM: I did not then, no.
557
558 NORDSTROM: And can you walk me through again, with as much detail and describe the
559 circumstances that led you to deploy your 40 millimeter less lethal outside
560 City Hall on Cesar Chavez Street?
561
562 HEIM: Yes. So, um, at this point we were already - we were already lined up in the
563 intersection at this time. We were surrounded by hundreds of protestors to the
564 front, to the rear, to the side of us. We had Officers staggered. So one was
565 facing east, one was facing west. We had Officers facing north and south.
566 There were bikes lined up and SRT Officers facing multiple directions with
567 less lethals facing multiple directions. At this time, you know, we're getting
568 hurled obscenities, f-you, f-12, no justice, no peace. At this time it's all
569 chanting. At this time we had to move while we're hearing there were people
570 to my left, Officers to my left, that had to move the protestors back and off the
571 road because we had that bus that from what I heard was being attacked. And
572 we were trying to get that bus out. At this point an altercation happened. I
573 don't know exactly what it was, an altercation between BPO Officers, the

574 Bike Officers and protestors started fighting. I don't know exactly what
575 happened. At this point I just hear and see multiple Officers yelling, "Get
576 back. Get back." We start moving forward. OC spray was sprayed. As people
577 started running, I remember there was a large gap in the where people had ran
578 from. I see a white male in a black bandana step out from the crowd. He has a
579 water bottle, which I believe it could've been frozen because we had taken
580 those earlier too, throws it at Officers. And as he's throwing it, I see him, I
581 take aim with my 40 millimeter. I fire one round. At this time I believe it was
582 center mass and to his right side of his body, um. I don't know if it struck him.
583 I didn't think it did but I'm not sure if it did or not. But he immediately, which
584 makes me think - he immediately turned and ran into the crowd. I saw that. At
585 that point I unloaded my 40 millimeter, loaded it with a new round, held my
586 weapon down. And it was not too long after that we were still taking water
587 bottles. We were still taking rocks, still taking large objects. Heard the other
588 Officer had met with, um, the organizer and tried to get us out of there and to
589 come up with a plan so that everybody could safely get out.

590
591 NORDSTROM: Other than a white male in a black bandana, can you describe his height,
592 weight, clothing, any other clothing?
593

594 HEIM: I do remember that he was tall, um, but I don't remember exactly. I - I know it
595 was dark-colored clothing, but I don't remember too much after. That had
596 happened very fast, and I remember seeing the water bottle and him throwing
597 it.
598

599 NORDSTROM: And when you say - when you said black bandana.
600

601 HEIM: Mm-hm.
602

603 NORDSTROM: How is it - where was the bandana?
604

605 HEIM: I think about like an old robber, how they would wear the bandanas over their
606 face in a triangle. He had it wrapped around his head so that he could cover
607 his nose and mouth.
608

609 NORDSTROM: And again, you were targeting his center mass, is that correct?
610

611 HEIM: Yes. Yes.
612

613 NORDSTROM: And I have - I don't have any experience with the 40 millimeter less lethal
614 round. Are you able to, when that round exits the barrel of that weapon, are
615 you able to see it? I mean, it - I mean, it's obviously it's not traveling as fast
616 as a bullet.
617

618 HEIM: Right.
619

620 NORDSTROM: Is it slow enough where you can actually see the round?
621
622 HEIM: Yes.
623
624 NORDSTROM: And wh- to the best of your knowledge, where do you think that round went?
625
626 HEIM: To the right of him. To my left, to the right of him. I remember seeing it
627 because it - it logs out, the front logs out, but I knew that it was to - between
628 his like elbow and his side. I don't know if it hit him or not, but it was to this
629 area because after he had thrown it, he had moved and it could've struck him.
630
631 NORDSTROM: And was - let me stop you there. At the time you fired, what was his position?
632 What part of it - was he facing you, was he turned away from you, that's kind
633 of...
634
635 HEIM: Okay. So he is facing me. He used his right hand to throw it. So as he's
636 throwing it, he comes out and he starts to turn and run at the same time as I'm
637 firing.
638
639 NORDSTROM: So and there's no video in here so I'm trying to describe your motion you just
640 said.
641
642 HEIM: Right. So he's throwing it like a baseball almost with a step forward throwing
643 it, and as he releases the bottle, he's turning his body.
644
645 NORDSTROM: Which part of his body is now closest to you?
646
647 HEIM: His left part of his body - no, right part of his body. So his right side of his
648 body would be closest to me.
649
650 NORDSTROM: And so...
651
652 HEIM: I'm sorry. I said left. I - I meant his right because he's facing me. So his right
653 side of the body when I fired it, was to his right elbow, right there. He used his
654 right arm to throw it, and as he comes down, he turns his right body towards
655 me and that's when I was shooting here. He turned and I did not see the
656 impact.
657
658 NORDSTROM: Okay.
659
660 HEIM: Which is why I did not say I really saw him get impact because I did not see
661 the impact. There were multiple people around at that time, but I had a clear
662 shot and I took that single target.
663
664 NORDSTROM: And I know you touched on this earlier, but based on your training with the 40
665 millimeter less lethal weapon system, what is - what is the best most optimal

24

666 shot placement for that munition?
667
668 HEIM: All right. You can go under - beneath the muscle areas, the chest, the thighs,
669 the arms, anywhere, um, below the neck, not in the private parts. We try to
670 stay away from there.
671
672 NORDSTROM: So no neck, no groin, any other areas?
673
674 HEIM: No neck, no head, no groin.
675
676 NORDSTROM: Okay. I'd like to show you Officer Ralston's body-worn camera video. This is
677 starting at - this is Officer Ralston's body-worn camera video starting at the
678 8:26 mark. I just want you to - here's the sound.
679
680 ((RECORDING))
681
682 NORDSTROM: Get back. Get back. Get back. Get back.
683
684 ((END RECORDING))
685
686 NORDSTROM: Okay. So this is at I paused it at the 8:48 mark. Do you recall what was
687 happening at - at this point?
688
689 HEIM: Yes. I remember seeing - I am to the right of this. I remember to my left I
690 remember seeing an altercation happen over here, and I remember the Capitol
691 Metro bus coming down the street on this left side of the street.
692
693 ((RECORDING))
694
695 NORDSTROM: Get back. Get back.
696
697 ((END RECORDING))
698
699 HEIM: But I'm not clear on what happened and what started this.
700
701 NORDSTROM: I understand. So I've got it paused here at the 8:50 mark and there's - there's
702 obviously now like almost like a big gap between the BPOD Officers. The
703 crowd seems to be moving back. There's one Officer deploying a Mark 9 OC
704 cannister. Is - is this what you were describing earlier as the event?
705
706 HEIM: Yes.
707
708 NORDSTROM: That you didn't know what caused it but, um, and then I'm just going to play
709 it real slow and you believe you're to the right?
710
711 HEIM: I am to the right a little bit of this.

712
713 ((RECORDING))
714
715 ((END RECORDING))
716
717 NORDSTROM: And this is what you were facing east, is that correct?
718
719 HEIM: Yes. I believe I was facing west. This is west, right?
720
721 NORDSTROM: This is City Hall. That's City Hall so and this is the road that...
722
723 HEIM: I'm not familiar with it.
724
725 NORDSTROM: Okay.
726
727 HEIM: I don't work down there, so that's why I was trying to figure it out.
728
729 ((RECORDING))
730
731 ((END RECORDING))
732
733 NORDSTROM: Um, and this might be a more - in your review of - did you watch Officer -
734 this, do you recall watching Officer Ralston's body-worn camera video?
735
736 HEIM: Not before I wrote my supplement.
737
738 NORDSTROM: I meant - I meant before this interview?
739
740 HEIM: Yes. Today's the first day I've seen this video.
741
742 NORDSTROM: Sure. Were you able to identify the person throwing the water bottle that you
743 targeted?
744
745 HEIM: I believe that was.
746
747 NORDSTROM: Okay. I'm going to keep playing it and you tell me when you see that person
748 or who you believe that person may be.
749
750 ((RECORDING))
751
752 ((END RECORDING))
753
754 HEIM: Slow down a little bit.
755
756 ((RECORDING))
757

758 ((END RECORDING))
759
760 NORDSTROM: I can play it again too, if you need to, but.
761
762 ((RECORDING))
763
764 ((END RECORDING))
765
766 HEIM: Can you go back?
767
768 NORDSTROM: Sure.
769
770 HEIM: Like five clips, right there. Keep going.
771
772 ((RECORDING))
773
774 ((END RECORDING))
775
776 NORDSTROM: Go ahead and get the light, do you mind, if might help. There's TVs. Is that
777 better?
778
779 HEIM: Yeah.
780
781 NORDSTROM: Okay.
782
783 ((RECORDING))
784
785 ((END RECORDING))
786
787 HEIM: This male right here.
788
789 NORDSTROM: Okay. So we're going to pause that at the 8:54 mark, and there's a man in all
790 black right really in the center of the screen.
791
792 HEIM: Yes. There's a white - there's a white bag to the left.
793
794 NORDSTROM: Let me back up and go through it again. I'm sorry. Back it up and play it
795 again. Is this the white bag?
796
797 HEIM: After the white bag, he is next to it.
798
799 NORDSTROM: Okay.
800
801 ((RECORDING))
802
803 ((END RECORDING))



804
805 HEIM: But I don't know where he came from.
806
807 NORDSTROM: Right.
808
809 HEIM: He just - right there.
810
811 ((RECORDING))
812
813 ((END RECORDING))
814
815 NORDSTROM: Okay. Again, 8:54 mark. Do you agree he's dressed in all dark clothing, if not
816 all black clothing?
817
818 HEIM: Yes.
819
820 NORDSTROM: Okay, thanks. So that person you just identified, is that the person you're
821 describing and referring to in your supplement?
822
823 HEIM: I believe it is, that's what I remember.
824
825 NORDSTROM: And I mean, that person, it - it's clear in Officer Ralston's video that that
826 person is throwing something. I guess, how confident are you that's the person
827 you targeted?
828
829 HEIM: You can't tell on my body-worn camera, I'm not 100% confident. I recognize
830 what happened. I don't know where I am at compared to this except for to his
831 right a little bit. I know that that male matches the description of what I
832 remember he was doing. I remember seeing him step out from the crowd, like
833 you see, throw a water bottle. I remember I shot my firearm or my, um, my 40
834 millimeter, and it matches with what I did with his actions.
835
836 NORDSTROM: Okay, thank you. Do you have any questions, Sergeant Wines, at this point?
837 And did you provide a verbal warning prior to your deployment of less lethal
838 munitions?
839
840 HEIM: I did not.
841
842 NORDSTROM: Why not?
843
844 HEIM: Um, there were far too many - there was la- too many crowds of people. It
845 was far too many. There were a lot of people and if I were to give a command,
846 nobody would know who I was talking to. The mere Officer presence and the
847 directive that we have received over the last few days, were that if you see
848 somebody actively throwing things or attacking something or somebody, you
849 fire a less lethal round, and if they were blocking an active roadway.

WJ

850
851 NORDSTROM: And do you recall after you notified dispatch that you had deployed a less
852 lethal munition?
853
854 HEIM: I did not. We were told to hold the radio channel for emergencies. At that time
855 I felt like that was not an emergency, and it was so loud there. There was more
856 pertinent information going over the radio.
857
858 NORDSTROM: And I'd like to get a sense of where - where this, not this person, the person
859 you targeted, um, can you describe as far as I don't know if you want to use a
860 clock reference or an angle reference from where your position, you know,
861 distance, angle, um, try to describe where they were specifically in relation to
862 your position?
863
864 HEIM: From my position, so if the man was the 12 o'clock. And Officer Ralston is
865 the 6 o'clock., we'll say I'm at the 5 o'clock..
866
867 NORDSTROM: Okay. And how...
868
869 HEIM: Does that make?
870
871 NORDSTROM: Yeah. And how wh- what was the estimated distance between you and the
872 person you targeted?
873
874 HEIM: Estimated, 20 to 30 feet, estimated. I...
875
876 NORDSTROM: And based on your training, what's the - what's the optimal - do you recall
877 minimum and maximum range?
878
879 HEIM: I do not, but I know at that distance and what was happening, it was within
880 policy.
881
882 NORDSTROM: Do you recall if there was a maximum effective range for that weapon
883 system?
884
885 HEIM: I do not recall.
886
887 NORDSTROM: And what other kind of equipment were you wearing that day?
888
889 HEIM: I had my taser, my OC spray, my PR-24 and my 40 millimeter less than lethal
890 launcher.
891
892 NORDSTROM: Is there any other special equipment, um, that you carry when you're on - on
893 an SRT deployment?
894
895 HEIM: We have the big cannister of OC spray, Mark 9, and a large, um, a large

896 wooden baton that's not the PR-24. Other than that, no.
897
898 NORDSTROM: Were you wearing a helmet?
899
900 HEIM: Yes, I was.
901
902 NORDSTROM: Did that helmet have a face shield?
903
904 HEIM: It did.
905
906 NORDSTROM: Do you recall if it was up or down?
907
908 HEIM: From when it started, it was down.
909
910 NORDSTROM: And I was on SRT like ten years ago.
911
912 HEIM: Mm-hm.
913
914 NORDSTROM: So do you guys still wearing the load-bearing vests with additional
915 equipment?
916
917 HEIM: Yes.
918
919 NORDSTROM: Did you have one of those on?
920
921 HEIM: I - no, I did not because I was transitioned for the - for the vest, that is a load-
922 bearing vest, and that - and that prohibits with my camera and stuff like that,
923 but I - I do not recall. I know I had it on some of this time but I don't recall
924 this specific time if I had it on or not. I don't know why I wouldn't have.
925
926 NORDSTROM: Do you recall encountering any - any issues with the 40 millimeter less lethal
927 during this deployment?
928
929 HEIM: No.
930
931 NORDSTROM: It seemed to function normally?
932
933 HEIM: It seemed to function normally and I function-checked it and everything
934 seemed to be working in order.
935
936 NORDSTROM: And as part of your training with the 40 millimeter less lethal, do you recall
937 ever training or firing that weapon with a helmet and face shield down?
938
939 HEIM: I do not.
940
941 NORDSTROM: Did you encounter any issues with that on this during this deployment?

942
943 HEIM: I did not.
944
945 NORDSTROM: And did you report your less lethal deployment at this - at this time outside
946 City Hall to a Supervisor?
947
948 HEIM: I do not recall. I believe I did to Sergeant Molleur later on in that day. I think
949 it was towards the end when I had told him about the other times on the
950 highway and stuff like that, that we had been involved in any r2rs as far as
951 pushing or.
952
953 NORDSTROM: And do you recall, how did you document your less lethal deployment outside
954 City Hall?
955
956 HEIM: It was days later, um, that I went back to our substation when we finally had a
957 little bit of time to document all of our subs when we were told - we were
958 given one case number and told to document everything under that case
959 number.
960
961 NORDSTROM: And did you read - did you - did you receive any additional instruction or I
962 guess, did you receive any instruction to - to document your response or
963 resistance encounters during that first weekend?
964
965 HEIM: I remember that it was very confusing and I remember hearing different things
966 that we were not documenting - that we were documenting, that we were only
967 documenting r2rs. And that they were all going to be - all the r2r's would be
968 lumped into one case number for that day. Um, and it had changed multiple,
969 multiple times.
970
971 NORDSTROM: Do you recall how you were getting that information?
972
973 HEIM: It was just being passed down through our - whatever Supervisor we were
974 working under that day.
975
976 NORDSTROM: And how is the Department or, you know, outside City Hall on May 31st, do
977 you recall how the Austin Police Department was attempting to gain voluntary
978 compliance from the protestors?
979
980 HEIM: Um, so once we arrived, we began a - began giving multiple, multiple verbal
981 commands on they need to vacate the street, that they need to leave the
982 roadway.
983
984 NORDSTROM: And who were - who was giving those commands?
985
986 HEIM: Multiple Officers on the scene.
987

988 NORDSTROM: Was that just use of voice? Was there any other systems in place to...
989
990 HEIM: At this specific time, I believe it was only voice. It wasn't until we got 35 that
991 Air 1 began giving multiple commands and that the Main the LRAD, the long
992 range and distance speaker to give multiple commands.
993
994 NORDSTROM: And did you - how were you attempting to gain voluntary compliance from
995 the protestors outside City Hall?
996
997 HEIM: So I was standing back behind the BPOD as BPOD was giving the verbal
998 commands. I let them give the verbal commands, and I stood back just for
999 support of them.
1000
1001 NORDSTROM: And did you review APD Policy 200.2 De-escalation of Potential Force
1002 Encounters prior to this interview?
1003
1004 HEIM: Yes, I did.
1005
1006 NORDSTROM: So while assessing risk and benefits during de-escalation, can you tell me
1007 what resources were available to the Officers working this protest outside City
1008 Hall were?
1009
1010 HEIM: As far as using less lethals, is that what you mean?
1011
1012 NORDSTROM: Well, as far as maybe before - before the incident that you've described
1013 several times, were there any - did the Officers on the scene have any
1014 resources to de-escalate that situation before it turned violent?
1015
1016 HEIM: Just using voice commands, that was it.
1017
1018 NORDSTROM: Would tactive - would tactical repositioning been an effective de-escalation
1019 technique?
1020
1021 HEIM: No, it would not have. We - we weren't able to move from there. I was fa- far
1022 too many people and for myself, if I were to leave the other Officers, I
1023 could've easily just been dragged out of there and been separated from the
1024 Officers if I were to try to move into a tactfully sound position. There were
1025 just far too many people.
1026
1027 NORDSTROM: Could you even - did you, at the time, do you recall being told how large the
1028 crowd was? Do you remember being given that information?
1029
1030 HEIM: I don't remember. It was only as far as we could see, which looked - which
1031 appeared to be we were totally outnumbered. There were so far few of us
1032 Officers compared to the hundreds - hundreds of protestors.
1033

1034 NORDSTROM: Do you know how many Police Officers were - were out there with you on
1035 that day?
1036
1037 HEIM: I don't have an exact number, but I know that it was not many.
1038
1039 NORDSTROM: And do you believe verbal persuasion would've been an effective de-
1040 escalation technique for this..
1041
1042 HEIM: I...
1043
1044 NORDSTROM: For this encounter outside City Hall?
1045
1046 HEIM: I do not.
1047
1048 NORDSTROM: Why not?
1049
1050 HEIM: Officers tried verbal persuasion by telling them they just needed to leave the
1051 highway, to just leave the road, to move back and that they're interrupting,
1052 you know, regular civilians who are going to work, whatever they need to do
1053 to get through the streets. And I remember hearing at one point that we were
1054 interrupting - that Police were interrupting their lives, um, as a reply. And as
1055 soon as we - we tried or as soon as Officers tried verbal persuasion, it just - it
1056 just wasn't working.
1057
1058 NORDSTROM: And without getting - without getting into the details, you were in the Army
1059 for four years, correct?
1060
1061 HEIM: Yes, sir.
1062
1063 NORDSTROM: Did you ever deploy overseas?
1064
1065 HEIM: I did not, sir.
1066
1067 NORDSTROM: Did you - did you ever encounter anything in your military career as violent as
1068 or anything like what you experienced that weekend of May 31st?
1069
1070 HEIM: No, sir, never in my life.
1071
1072 NORDSTROM: And can you - can you kind of tell me what emotions you were feeling,
1073 specifically outside City Hall on the 31st?
1074
1075 HEIM: It was very scary. Um, when we arrived, we didn't know what to expect. We
1076 hadn't really had too much intel on what we were walking into. We know that
1077 we only had, you know, maybe 30 Officers there. And as we walked in, and
1078 we were instructed to position ourselves here on the road, we were quickly
1079 surrounded. We didn't have anywhere to go. We were completely

1080 outnumbered. It was very scary, very, um, very nerve-wrecking on what could
1081 happen. If something bad goes wrong, it's going to go very wrong.
1082
1083 NORDSTROM: Um, in regards to Policy 200.3.1, Determining the Objective Reasonableness
1084 of Force. Were you able to reasonably perceive the conduct of the individual
1085 you targeted?
1086
1087 HEIM: I'm sorry, repeat that question.
1088
1089 NORDSTROM: Were you able to reasonably perceive the conduct of the individual you
1090 targeted and fired a less lethal munition at?
1091
1092 HEIM: I was not. Due to his distance and the - the way too many people and it was
1093 very, very loud, even if I started screaming at him, he wouldn't know.
1094
1095 NORDSTROM: Okay. I'm - I'm going to - were you able to see the person you targeted and
1096 fired your impact munitions at?
1097
1098 HEIM: Yes, sir.
1099
1100 NORDSTROM: Were you able to see what he was doing prior to your deployment?
1101
1102 HEIM: Yes.
1103
1104 NORDSTROM: Was there - was there anybody obstructing your view of that person's
1105 conduct?
1106
1107 HEIM: No, there was not.
1108
1109 NORDSTROM: Was there any doubt in your mind of what he was doing?
1110
1111 HEIM: No, there was not.
1112
1113 NORDSTROM: And during this incident outside City Hall, what was the potential for injury to
1114 everyone including Officers and protestors?
1115
1116 HEIM: Serious bodily injury. I remember seeing the rocks hit the grounds in front of
1117 us, behind us, hearing it. If a rock hits you in the head or a civilian in the head
1118 who wasn't wearing a helmet, they're going to have a broken skull to - to
1119 death. I mean, I'm very surprised that luckily nothing happened like that to
1120 any Officers that I know. I know we had a few incidents with civilians but it
1121 could've been very dangerous.
1122
1123 NORDSTROM: And what is your definition of riotous behavior?
1124
1125 HEIM: My definition of riotous behavior is large groups conducting violence,

1126 throwing water bottles, throwing rocks, taking over businesses, taking over
1127 buses, trying to destroy property.
1128
1129 NORDSTROM: And at the time of your less lethal deployment outside City Hall with the 40
1130 millimeter less lethal weapon system, do you believe that crowd was engaged
1131 in riotous behavior?
1132
1133 HEIM: Yes, that was a riot.
1134
1135 NORDSTROM: And can - can you describe or did the person that you targeted and fired at
1136 pose an immediate threat to the safety of Officers or others?
1137
1138 HEIM: Yes, he did. I had seen multiple frozen water bottles being used, which are
1139 just as hard as rocks. If that water bottle was frozen, which I saw that it
1140 appeared that he was throwing a water bottle, I do not know if it was frozen or
1141 not, but that appeared to be serious enough where I needed to - to stop that
1142 action.
1143
1144 NORDSTROM: Would that water bottle, if it wasn't frozen, could it still cause injury?
1145
1146 HEIM: Yes. Due to the weight, even hitting somebody on the head is the way and -
1147 and how fast it could've been traveling and the sawed - not sawed, but the
1148 compression of it. If it hits somebody, it could jam your neck, it could jam - it
1149 could do anything.
1150
1151 NORDSTROM: And what other force options, um, could have been utilized against the
1152 protestors outside City Hall?
1153
1154 HEIM: What other options? I don't believe tasers would've been effective, OC spray
1155 didn't appear to be very effective, less than lethal beanbag rounds, CS gas.
1156
1157 NORDSTROM: Let me rephrase that question. What - what other - what other force options
1158 could've been utilized against the person you were targeting?
1159
1160 HEIM: Deadly force. If it was - there's not many other force options, being able to
1161 use the taser would've been too far, OC spray wouldn't have reached. Another
1162 beanbag round would've - that would've been another force option.
1163
1164 NORDSTROM: And other than the - other than another beanbag deployment, you mentioned
1165 taser, um, pepper spray, would those other - would those other options create a
1166 safety to Officers?
1167
1168 HEIM: Yes.
1169
1170 NORDSTROM: How so?
1171

1172 HEIM: There's - he was just a li- he was too far out of range for OC spray, the OC
1173 spray you're just spraying into a crowd at that point. If the wind's going to
1174 take it, you're not going to be able to reach him. Taser is not going to reach,
1175 um, at that time the 40 millimeter was the only option I had that was
1176 reasonable that I could use for the safety of Officers and the safety of the
1177 civilians.
1178
1179 NORDSTROM: And do you have a copy of APD Policy 200.2 De-Escalation of Potential
1180 Force Encounters in front of you?
1181
1182 HEIM: Yes. It's right here.
1183
1184 NORDSTROM: After having reviewed that policy and reflected on this incident, do you
1185 believe you violated that policy?
1186
1187 HEIM: I do not.
1188
1189 NORDSTROM: Why not?
1190
1191 HEIM: You said 200.2.1?
1192
1193 NORDSTROM: 200.2. De-Escalation of Potential Force Encounters.
1194
1195 HEIM: Well, just based on the sheer fact of the verbal persuasion was not working,
1196 we were not able to tact- tactical reposition. It was far too loud, way too many
1197 people, completely outnumbered that we weren't able to de-escalate the
1198 situation.
1199
1200 NORDSTROM: And again, you have 200.3.1 Policy Determining the Objectionable
1201 Reasonableness of Force?
1202
1203 HEIM: Yes, I do.
1204
1205 NORDSTROM: And after reviewing that policy, do you believe you violated that?
1206
1207 HEIM: I do not.
1208
1209 NORDSTROM: And why not?
1210
1211 HEIM: Based on the Officers' presence and the orders that were given to the
1212 protestors to leave the roadway, it being an active roadway, very dangerous to
1213 them. They were given multiple warnings to leave the roadway. And when
1214 they started throwing, when we started receiving objects, I believe that all
1215 reasonable force was used.
1216
1217 NORDSTROM: And did you review APD Policy 206.5 Kinetic Energy Projectiles?

1218
1219 HEIM: Yes, sir, I did.
1220
1221 NORDSTROM: After reviewing that policy, do you - and reflecting on this incident, do you
1222 believe you violated that policy?
1223
1224 HEIM: I do not.
1225
1226 NORDSTROM: And can you tell me why not?
1227
1228 HEIM: Due to not being able to give the verbal warnings, due to the noise and crowd
1229 at a distance of the people that were giving, I am authorized under policy to
1230 have verbal threats, obviously he was actively throwing an object at Officers,
1231 during persons engaged in riotous behavior, and for the subject that I
1232 impacted, you know, capability to pose imminent threat to multiple other
1233 Officers, whoever that - that object would've hit so.
1234
1235 NORDSTROM: Sergeant Wines?
1236
1237 HEIM: I don't have anything.
1238
1239 NORDSTROM: We're going to take a break. The time is 3:46 pm. We're back on the record.
1240 The time is 3:48 pm. I'm sorry, can you confirm that the people in the room
1241 are the same as before we took a break and no one else has joined us?
1242
1243 HEIM: Yes.
1244
1245 NORDSTROM: OPO, you're still monitoring remotely?
1246
1247 DEMERS: OPO is still on the line.
1248
1249 NORDSTROM: Officer Heim, is there anything I haven't asked about that you would like to
1250 comment on?
1251
1252 HEIM: No.
1253
1254 NORDSTROM: Is there anything that I've asked you about that you would like to further
1255 explain or clarify?
1256
1257 HEIM: No.
1258
1259 NORDSTROM: Is there any other information you have related to this investigation that may
1260 or may not be important?
1261
1262 HEIM: No, sir.
1263

1264 NORDSTROM: This recording will be transcribed and you will be asked to review the
1265 transcription. When you do - when you do so, you will be expected to read it
1266 thoroughly. After you sign it, the document will become your formal
1267 statement in this investigation and you will be held accountable for its
1268 truthfulness and accuracy. If you have additional information to add to your
1269 statement at that time, we will record the additions or clarifications. We are
1270 now ending the interview. The time is 3:49 pm.
1271
1272

E. Heim #7995
Officer Eric Heim

SUBSCRIBED AND SWORN TO BEFORE ME THE UNDERSIGNED AUTHORITY ON
THIS THE 14th DAY OF October, 2020.

[Signature] 4058
PEACE OFFICER IN AND FOR THE STATE OF TEXAS

ATTORNEYS EYES ONLY

ATTORNEYS EYES ONLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALYSSA SANDERS,

Plaintiff,

v.

CITY OF AUSTIN and ERIC HEIM,

Defendants.

§
§
§
§
§
§
§
§
§
§

CAUSE OF ACTION:
1:22-cv-314

**PLAINTIFF'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION FROM DEFENDANT CITY OF AUSTIN**

Exhibit 16

Ofc. Rast Video Audit Log (COA-General Protest.0987333)

FILED UNDER SEAL



Austin TX PD

Austin, TX, US

Document generated: 14 Jan 2022 - 23:35:16 -06:00 by Austin TX PD(N/A)



EVIDENCE AUDIT TRAIL

Evidence		Source	
Evidence ID	201520382	Device Type	Axon Body 2
Categories	Five Year SIU - Internal Investigation Indefinite Response to Resistance	Device Name	X81355301
Title	Reviewed by AP5896/AP3936	Serial Number	X81355301
		Other	Axon Body 2
Checksum	Sha2- 5e3e0a7c4a94cef6d489b4dfbd9619f88a96330fc860533a619f45 56b3601655		
Record Start	31 May 2020 13:51:33		
Uploaded	02 Jun 2020 01:16:08	Usage	
Uploader	Rast, Rolan (Badge ID: AP8221)		
Unique ID	32BA6D07C080424EBD1D92460A058631	Page views	19
		File downloads	
		Video playbacks	20
		Last Viewed Or Downloaded On	14 Jan 2022 23:35:15

#	Date	Time	User	Activity
1	31 May 2020	13:51:33 (-05:00)	System	Recording started due to camera event button press
2	31 May 2020	13:51:34 (-05:00)	System	GPS added to video metadata using Axon application
3	31 May 2020	14:30:04 (-05:00)	System	Recording stopped due to event button hold
4	02 Jun 2020	00:53:45 (-05:00)	System	Evidence successfully uploaded using Axon Dock
5	02 Jun 2020	01:16:07 (-05:00)	System	Evidence automatically deleted from camera after successful upload using Axon Dock
6	02 Jun 2020	01:16:08 (-05:00)	System	Evidence Record Created
7	02 Jun 2020	22:22:11 (-05:00)	Maynes, Christian (Badge ID: AP5355) Username: AP5355 User ID: cd0bbc017077493083ec9e5ce167b191	Evidence Record Accessed. Client IP Address: 162.89.0.59
8	02 Jun 2020	22:22:12 (-05:00)	Maynes, Christian (Badge ID: AP5355) Username: AP5355 User ID: cd0bbc017077493083ec9e5ce167b191	Media File Buffered by System at Page Load. Client IP 162.89.0.59
9	02 Jun 2020	22:22:22 (-05:00)	Maynes, Christian (Badge ID: AP5355) Username: AP5355 User ID: cd0bbc017077493083ec9e5ce167b191	Evidence Record Streamed. Client IP Address: 162.89.0.59
10	02 Jun 2020	22:23:00 (-05:00)	Maynes, Christian (Badge ID: AP5355) Username: AP5355 User ID: cd0bbc017077493083ec9e5ce167b191	Marker Added
11	02 Jun 2020	22:23:38 (-05:00)	Maynes, Christian (Badge ID: AP5355) Username: AP5355 User ID: cd0bbc017077493083ec9e5ce167b191	Evidence access class changed to Restricted.
12	02 Jun 2020	22:23:38 (-05:00)	Maynes, Christian (Badge ID: AP5355) Username: AP5355 User ID: cd0bbc017077493083ec9e5ce167b191	Maynes, Christian (Badge ID: AP5355) was granted Role-based access. Access expires: no expiration

#	Date	Time	User	Activity
13	02 Jun 2020	22:23:38 (-05:00)	Maynes, Christian (Badge ID: AP5355) Username: AP5355 User ID: cd0bbc017077493083ec9e5ce167b191	Category 'SIU - Internal Investigation' Added Deletion is now scheduled for 31 May 2022 13:51:33 (-05:00)
14	02 Jun 2020	22:23:38 (-05:00)	Maynes, Christian (Badge ID: AP5355) Username: AP5355 User ID: cd0bbc017077493083ec9e5ce167b191	Retention Level Updated Deletion is now scheduled for 31 May 2022 13:51:33 (-05:00)
15	02 Jun 2020	22:23:41 (-05:00)	Maynes, Christian (Badge ID: AP5355) Username: AP5355 User ID: cd0bbc017077493083ec9e5ce167b191	External ID '205021502' added
16	05 Jun 2020	15:35:49 (-05:00)	Aranda, Roberto (Badge ID: AP8618) Username: AP8618 User ID: 724dd2aeec62474c982b319c0fd44a88	Evidence Record Added to Case '205021502' Deletion is now unscheduled
17	05 Jun 2020	15:39:00 (-05:00)	Aranda, Roberto (Badge ID: AP8618) Username: AP8618 User ID: 724dd2aeec62474c982b319c0fd44a88	Evidence copy created at agency Travis County Prosecutor's Office
18	18 Jun 2020	14:45:48 (-05:00)	Briegel, Becky (Badge ID: AP5143) Username: AP5143 User ID: 75c1a18cf8a14eee8734c67cb7f40a53	Evidence Record Accessed. Client IP Address: 162.89.0.57
19	18 Jun 2020	14:45:50 (-05:00)	Briegel, Becky (Badge ID: AP5143) Username: AP5143 User ID: 75c1a18cf8a14eee8734c67cb7f40a53	Media File Buffered by System at Page Load. Client IP 162.89.0.57
20	18 Jun 2020	14:46:03 (-05:00)	Briegel, Becky (Badge ID: AP5143) Username: AP5143 User ID: 75c1a18cf8a14eee8734c67cb7f40a53	Evidence Record Streamed. Client IP Address: 162.89.0.57
21	18 Jun 2020	15:05:34 (-05:00)	McCormick, Steven (Badge ID: AP5169) Username: AP5169 User ID: f82cb966bdc7494fb1d4aba70801c2e6	Evidence Record Accessed. Client IP Address: 162.89.0.59
22	18 Jun 2020	15:05:37 (-05:00)	McCormick, Steven (Badge ID: AP5169) Username: AP5169 User ID: f82cb966bdc7494fb1d4aba70801c2e6	Media File Buffered by System at Page Load. Client IP 162.89.0.59
23	18 Jun 2020	15:06:33 (-05:00)	McCormick, Steven (Badge ID: AP5169) Username: AP5169 User ID: f82cb966bdc7494fb1d4aba70801c2e6	Evidence Record Streamed. Client IP Address: 162.89.0.59
24	18 Jun 2020	15:21:33 (-05:00)	McCormick, Steven (Badge ID: AP5169) Username: AP5169 User ID: f82cb966bdc7494fb1d4aba70801c2e6	Evidence Record Streamed. Client IP Address: 162.89.0.59
25	20 Jul 2020	14:28:01 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Evidence Record Accessed. Client IP Address: 162.89.0.57
26	20 Jul 2020	14:28:02 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Media File Buffered by System at Page Load. Client IP 162.89.0.57
27	20 Jul 2020	14:28:30 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Evidence Record Streamed. Client IP Address: 162.89.0.57
28	20 Jul 2020	14:35:10 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Added
29	20 Jul 2020	14:36:23 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Edited
30	20 Jul 2020	14:49:28 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Evidence Record Streamed. Client IP Address: 162.89.0.57
31	20 Jul 2020	14:51:22 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Edited
32	20 Jul 2020	14:51:44 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Added
33	20 Jul 2020	14:52:11 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Edited
34	20 Jul 2020	14:52:41 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Added

#	Date	Time	User	Activity
35	20 Jul 2020	14:53:08 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Edited
36	20 Jul 2020	14:54:23 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Added
37	20 Jul 2020	14:54:50 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Edited
38	20 Jul 2020	14:55:48 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Added
39	20 Jul 2020	14:56:30 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Edited
40	20 Jul 2020	14:58:45 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Added
41	20 Jul 2020	14:59:00 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Edited
42	20 Jul 2020	14:59:10 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Edited
43	20 Jul 2020	15:00:38 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Added
44	20 Jul 2020	15:00:57 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Edited
45	20 Jul 2020	15:02:41 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Added
46	20 Jul 2020	15:03:10 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Edited
47	20 Jul 2020	15:03:51 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Added
48	20 Jul 2020	15:04:15 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Edited
49	20 Jul 2020	15:04:29 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Evidence Record Streamed. Client IP Address: 162.89.0.57
50	20 Jul 2020	15:04:48 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Added
51	20 Jul 2020	15:05:03 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Edited
52	20 Jul 2020	15:08:29 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Added
53	20 Jul 2020	15:08:45 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Edited
54	20 Jul 2020	15:19:29 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Evidence Record Streamed. Client IP Address: 162.89.0.57
55	20 Jul 2020	15:21:27 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Added
56	20 Jul 2020	15:21:44 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Edited

#	Date	Time	User	Activity
57	20 Jul 2020	15:36:03 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Evidence Record Streamed. Client IP Address: 162.89.0.57
58	20 Jul 2020	15:37:41 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Added
59	20 Jul 2020	15:38:18 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Edited
60	20 Jul 2020	15:39:43 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Added
61	20 Jul 2020	15:40:00 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Edited
62	20 Jul 2020	15:43:03 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Added
63	20 Jul 2020	15:43:26 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Edited
64	20 Jul 2020	15:51:03 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Evidence Record Streamed. Client IP Address: 162.89.0.57
65	20 Jul 2020	15:55:49 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Added
66	20 Jul 2020	15:56:09 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Edited
67	20 Jul 2020	15:57:38 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Added
68	20 Jul 2020	15:58:20 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Edited
69	20 Jul 2020	15:58:29 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Edited
70	20 Jul 2020	15:59:03 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Marker Edited
71	20 Jul 2020	16:08:01 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Evidence Record Streamed. Client IP Address: 162.89.0.57
72	20 Jul 2020	16:10:26 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Evidence title updated to 'Reviewed by AP5896.'
73	20 Jul 2020	16:10:26 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Evidence Record Accessed. Client IP Address: 162.89.0.57
74	20 Jul 2020	16:10:54 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Category 'Response to Resistance' Added
75	20 Jul 2020	16:10:55 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Category 'Five Year' Added
76	20 Jul 2020	16:41:51 (-05:00)	Claunch, John (Badge ID: AP5896) Username: AP5896 User ID: 7e310e914dc24275aef423c5905dd20c	Evidence Record Accessed. Client IP Address: 162.89.0.57
77	22 Jul 2020	21:48:24 (-05:00)	Egal, Richard (Badge ID: AP3936) Username: AP3936 User ID: f2b85603c9e042d483dc2a6b5bc627e8	Evidence Record Accessed. Client IP Address: 162.89.0.59
78	22 Jul 2020	21:48:25 (-05:00)	Egal, Richard (Badge ID: AP3936) Username: AP3936 User ID: f2b85603c9e042d483dc2a6b5bc627e8	Media File Buffered by System at Page Load. Client IP 162.89.0.59

#	Date	Time	User	Activity
79	22 Jul 2020	21:48:40 (-05:00)	Egal, Richard (Badge ID: AP3936) Username: AP3936 User ID: f2b85603c9e042d483dc2a6b5bc627e8	Evidence Record Streamed. Client IP Address: 162.89.0.59
80	28 Jul 2020	08:41:53 (-05:00)	Maynes, Christian (Badge ID: AP5355) Username: AP5355 User ID: cd0bbc017077493083ec9e5ce167b191	Evidence Record Accessed. Client IP Address: 162.89.0.58
81	28 Jul 2020	08:41:54 (-05:00)	Maynes, Christian (Badge ID: AP5355) Username: AP5355 User ID: cd0bbc017077493083ec9e5ce167b191	Media File Buffered by System at Page Load. Client IP 162.89.0.58
82	28 Jul 2020	08:41:57 (-05:00)	Maynes, Christian (Badge ID: AP5355) Username: AP5355 User ID: cd0bbc017077493083ec9e5ce167b191	Evidence access class changed to Unrestricted.
83	28 Jul 2020	20:04:59 (-05:00)	Egal, Richard (Badge ID: AP3936) Username: AP3936 User ID: f2b85603c9e042d483dc2a6b5bc627e8	Evidence Record Accessed. Client IP Address: 162.89.0.59
84	28 Jul 2020	20:05:00 (-05:00)	Egal, Richard (Badge ID: AP3936) Username: AP3936 User ID: f2b85603c9e042d483dc2a6b5bc627e8	Media File Buffered by System at Page Load. Client IP 162.89.0.59
85	28 Jul 2020	20:06:18 (-05:00)	Egal, Richard (Badge ID: AP3936) Username: AP3936 User ID: f2b85603c9e042d483dc2a6b5bc627e8	Evidence Record Streamed. Client IP Address: 162.89.0.59
86	28 Jul 2020	20:07:07 (-05:00)	Egal, Richard (Badge ID: AP3936) Username: AP3936 User ID: f2b85603c9e042d483dc2a6b5bc627e8	Marker Edited
87	28 Jul 2020	20:14:12 (-05:00)	Egal, Richard (Badge ID: AP3936) Username: AP3936 User ID: f2b85603c9e042d483dc2a6b5bc627e8	Marker Edited
88	29 Jul 2020	11:51:19 (-05:00)	Egal, Richard (Badge ID: AP3936) Username: AP3936 User ID: f2b85603c9e042d483dc2a6b5bc627e8	External ID Updated from '205021502' to '201520382'
89	29 Jul 2020	11:51:47 (-05:00)	Egal, Richard (Badge ID: AP3936) Username: AP3936 User ID: f2b85603c9e042d483dc2a6b5bc627e8	Evidence Record Accessed. Client IP Address: 162.89.0.59
90	29 Jul 2020	11:51:50 (-05:00)	Egal, Richard (Badge ID: AP3936) Username: AP3936 User ID: f2b85603c9e042d483dc2a6b5bc627e8	Media File Buffered by System at Page Load. Client IP 162.89.0.59
91	29 Jul 2020	11:52:02 (-05:00)	Egal, Richard (Badge ID: AP3936) Username: AP3936 User ID: f2b85603c9e042d483dc2a6b5bc627e8	Evidence title updated to 'Reviewed by AP5896AP3936'
92	29 Jul 2020	11:52:07 (-05:00)	Egal, Richard (Badge ID: AP3936) Username: AP3936 User ID: f2b85603c9e042d483dc2a6b5bc627e8	Evidence title updated to 'Reviewed by AP5896/AP3936'
93	29 Jul 2020	11:56:49 (-05:00)	Egal, Richard (Badge ID: AP3936) Username: AP3936 User ID: f2b85603c9e042d483dc2a6b5bc627e8	Evidence Record Accessed. Client IP Address: 162.89.0.59
94	29 Jul 2020	11:56:50 (-05:00)	Egal, Richard (Badge ID: AP3936) Username: AP3936 User ID: f2b85603c9e042d483dc2a6b5bc627e8	Media File Buffered by System at Page Load. Client IP 162.89.0.59
95	07 Aug 2020	12:32:37 (-05:00)	Fleming, Edria (Badge ID: CA9156) Username: CA9156 User ID: 67e577998d094e07b1acf0ead3597d7a	Category 'Five Year' Added
96	16 Aug 2020	15:58:45 (-05:00)	Rodriguez, Fausto (Badge ID: AP6487) Username: AP6487 User ID: c020c7c2a23e449eb898abf825e299ec	Evidence Record Accessed. Client IP Address: 23.168.160.66
97	16 Aug 2020	15:58:46 (-05:00)	Rodriguez, Fausto (Badge ID: AP6487) Username: AP6487 User ID: c020c7c2a23e449eb898abf825e299ec	Media File Buffered by System at Page Load. Client IP 23.168.160.66
98	16 Aug 2020	15:59:46 (-05:00)	Rodriguez, Fausto (Badge ID: AP6487) Username: AP6487 User ID: c020c7c2a23e449eb898abf825e299ec	Evidence Record Streamed. Client IP Address: 23.168.160.66
99	16 Aug 2020	16:10:50 (-05:00)	Rodriguez, Fausto (Badge ID: AP6487) Username: AP6487 User ID: c020c7c2a23e449eb898abf825e299ec	Evidence Record Accessed. Client IP Address: 23.168.160.66
100	16 Aug 2020	16:16:50 (-05:00)	Rodriguez, Fausto (Badge ID: AP6487) Username: AP6487 User ID: c020c7c2a23e449eb898abf825e299ec	Evidence Record Streamed. Client IP Address: 23.168.160.66

#	Date	Time	User	Activity
101	22 Aug 2020	20:43:26 (-05:00)	Silva, Dave (Badge ID: AP4580) Username: AP4580 User ID: 6daac36835074c8ea5d3059d84667242	Evidence Record Accessed. Client IP Address: 162.89.0.59
102	22 Aug 2020	20:43:28 (-05:00)	Silva, Dave (Badge ID: AP4580) Username: AP4580 User ID: 6daac36835074c8ea5d3059d84667242	Media File Buffered by System at Page Load. Client IP 162.89.0.59
103	22 Aug 2020	20:43:38 (-05:00)	Silva, Dave (Badge ID: AP4580) Username: AP4580 User ID: 6daac36835074c8ea5d3059d84667242	Evidence Record Streamed. Client IP Address: 162.89.0.59
104	28 Aug 2020	17:04:24 (-05:00)	Rast, Rolan (Badge ID: AP8221) Username: AP8221 User ID: d4cb0dd22a8e4854a46f7a8f5aca94ae	Evidence Record Accessed. Client IP Address: 162.89.0.57
105	28 Aug 2020	17:04:25 (-05:00)	Rast, Rolan (Badge ID: AP8221) Username: AP8221 User ID: d4cb0dd22a8e4854a46f7a8f5aca94ae	Media File Buffered by System at Page Load. Client IP 162.89.0.57
106	29 Aug 2020	18:36:58 (-05:00)	Adam, Ryan (Badge ID: AP4624) Username: AP4624 User ID: dd68cc36747549f18641d4f3a7a3a5de	Evidence Record Accessed. Client IP Address: 162.89.0.59
107	29 Aug 2020	18:37:00 (-05:00)	Adam, Ryan (Badge ID: AP4624) Username: AP4624 User ID: dd68cc36747549f18641d4f3a7a3a5de	Media File Buffered by System at Page Load. Client IP 162.89.0.59
108	29 Aug 2020	19:08:37 (-05:00)	Adam, Ryan (Badge ID: AP4624) Username: AP4624 User ID: dd68cc36747549f18641d4f3a7a3a5de	Evidence Record Streamed. Client IP Address: 162.89.0.59
109	02 Sep 2020	18:27:54 (-05:00)	Bryant, Jason (Badge ID: AP3432) Username: AP3432 User ID: 53946d708cbf45c29f8fd7808928c7bc	Evidence Record Accessed. Client IP Address: 162.89.0.59
110	02 Sep 2020	18:27:57 (-05:00)	Bryant, Jason (Badge ID: AP3432) Username: AP3432 User ID: 53946d708cbf45c29f8fd7808928c7bc	Media File Buffered by System at Page Load. Client IP 162.89.0.59
111	02 Sep 2020	18:30:14 (-05:00)	Bryant, Jason (Badge ID: AP3432) Username: AP3432 User ID: 53946d708cbf45c29f8fd7808928c7bc	Evidence Record Streamed. Client IP Address: 162.89.0.59
112	23 Oct 2020	13:59:37 (-05:00)	Chancellor, Michael (Badge ID: AP5329) Username: AP5329 User ID: bd8cc9ffe4194cf2b78ce198cfdcf5a2	Evidence Record Accessed. Client IP Address: 162.89.0.58
113	23 Oct 2020	13:59:39 (-05:00)	Chancellor, Michael (Badge ID: AP5329) Username: AP5329 User ID: bd8cc9ffe4194cf2b78ce198cfdcf5a2	Media File Buffered by System at Page Load. Client IP 162.89.0.58
114	23 Oct 2020	13:59:47 (-05:00)	Chancellor, Michael (Badge ID: AP5329) Username: AP5329 User ID: bd8cc9ffe4194cf2b78ce198cfdcf5a2	Evidence Record Streamed. Client IP Address: 162.89.0.58
115	11 Dec 2020	10:46:00 (-06:00)	Witherington, Joseph (Badge ID: AP8706) Username: AP8706 User ID: 6c866c2aa68a49828d293b552ef25b93	Category 'SIU - Internal Investigation' Added
116	15 Dec 2020	13:52:51 (-06:00)	Gilbert, Robert (Badge ID: AP5346) Username: AP5346 User ID: 26f10fdb8dd64264840034eae5c4740c	Category 'Indefinite' Added
117	15 Mar 2021	21:56:26 (-05:00)	Hemberger, Gretchen (Badge ID: AP8308) Username: AP8308 User ID: 0d624948cd924cbb921346326baddbce	Evidence Record Added to Case '201520382'
118	16 Mar 2021	13:55:54 (-05:00)	Parker, Reginald (Badge ID: AP3105) Username: AP3105 User ID: c675d9f2a6ab4534b40315e8ed0f4543	Parker, Reginald (Badge ID: AP3105) was granted Role-based access. Access expires: no expiration
119	16 Mar 2021	13:55:54 (-05:00)	Parker, Reginald (Badge ID: AP3105) Username: AP3105 User ID: c675d9f2a6ab4534b40315e8ed0f4543	Hemberger, Gretchen (Badge ID: AP8308) was granted Role-based access. Access expires: no expiration
120	16 Mar 2021	14:09:28 (-05:00)	Hemberger, Gretchen (Badge ID: AP8308) Username: AP8308 User ID: 0d624948cd924cbb921346326baddbce	Evidence Record Removed from Case '201520382'
121	16 Mar 2021	14:16:48 (-05:00)	Hemberger, Gretchen (Badge ID: AP8308) Username: AP8308 User ID: 0d624948cd924cbb921346326baddbce	Evidence Record Added to Case '201520382'
122	08 Jun 2021	16:08:11 (-05:00)	Hemberger, Gretchen (Badge ID: AP8308) Username: AP8308 User ID: 0d624948cd924cbb921346326baddbce	Evidence Record Removed from Case '201520382'

#	Date	Time	User	Activity
123	17 Aug 2021	14:49:40 (-05:00)	Hemberger, Gretchen (Badge ID: AP8308) Username: AP8308 User ID: 0d624948cd924cbb921346326baddbce	Evidence Record Added to Case '5-30-2020and5-31-2020'
124	17 Aug 2021	15:06:35 (-05:00)	Hemberger, Gretchen (Badge ID: AP8308) Username: AP8308 User ID: 0d624948cd924cbb921346326baddbce	Evidence copy created at agency Travis County Prosecutor's Office
125	18 Aug 2021	09:15:47 (-05:00)	Benoit, Jeremy (Badge ID: AP4836) Username: AP4836 User ID: f9aeb8f81f4d4f4aa006f75f975769d0	Evidence Record Accessed. Client IP Address: 162.89.0.59
126	18 Aug 2021	09:15:48 (-05:00)	Benoit, Jeremy (Badge ID: AP4836) Username: AP4836 User ID: f9aeb8f81f4d4f4aa006f75f975769d0	Media File Buffered by System at Page Load. Client IP 162.89.0.59
127	18 Aug 2021	09:15:56 (-05:00)	Benoit, Jeremy (Badge ID: AP4836) Username: AP4836 User ID: f9aeb8f81f4d4f4aa006f75f975769d0	Evidence Record Streamed. Client IP Address: 162.89.0.59
128	14 Jan 2022	23:31:11 (-06:00)	Hemberger, Gretchen (Badge ID: AP8308) Username: AP8308 User ID: 0d624948cd924cbb921346326baddbce	Evidence Record Added to Case '201520382'

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALYSSA SANDERS,

Plaintiff,

v.

CITY OF AUSTIN and ERIC HEIM,

Defendants.

§
§
§
§
§
§
§
§

CAUSE OF ACTION:
1:22-cv-314

**PLAINTIFF'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION FROM DEFENDANT CITY OF AUSTIN**

Exhibit 17

Rast Body Worn Camera Video (COA General-Protest.0987313)

FILED TRADITIONALLY

FILED UNDER SEAL

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALYSSA SANDERS,

Plaintiff,

v.

CITY OF AUSTIN and ERIC HEIM,

Defendants.

§
§
§
§
§
§
§
§

CAUSE OF ACTION:
1:22-cv-314

**PLAINTIFF'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION FROM DEFENDANT CITY OF AUSTIN**

Exhibit 18

**Approval Form for Kinetic Energy Projectile Policy – February
25, 2021 (COA-General Protest.009844)**

FILED UNDER SEAL



Request for Policy Revision

Requestor Name Commander Lee Rogers Emp # 4697

This revision applies to Existing Policy

If new, recommended section _____

This revision is necessary to comply with Does not apply

Who does this revision affect? Department

This revision Choose One have an unbudgeted financial impact of N/A

Brief reason for the revision:

Update policy on deployment of Kinetic Energy Projectiles to provide greater details in the example section, specifically to address the instances where LL munitions were fired at subjects that were engaging in criminal mischief but did not pose a "threat to the safety of officers or others.

Document the changes or additions to Policy below. Please include the specific policy number. Red-strikethroughs will be used for deletions and blue underlined for text insertions. Please email completed forms to APDPolicy@austintexas.gov.

206 Control Devices and Techniques

206.1 PURPOSE AND SCOPE

In an effort to reduce and minimize altercation related injuries to officers, the public and subjects, the Department authorizes the use of selected control devices. These control devices are approved in order to control violent or potentially violent subjects. It is anticipated that the use of these devices will generally result in fewer altercation related injuries to officers and subjects. The order below is for the use and maintenance of control devices.

206.1.1 PHILOSOPHY

The use of control devices upon a subject by an officer shall only occur when the officer, while in the performance of his lawful duties, reasonably believes it necessary to gain control of the subject.

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 protect the public welfare requires a careful balancing of all human interests.

206.2 CONTROL DEVICES AND TECHNIQUES OVERVIEW

206.2.1 WHEN DEVICES MAY BE USED

When a decision has been made to control, restrain or arrest a violent, threatening or escaping subject, an approved control device may only be used when its use appears objectively reasonable under the circumstances.

206.2.2 REPORTING USE OF CONTROL DEVICES AND TECHNIQUES

Any application of a control device and/or technique shall be documented as prescribed by General Order 211 (Response to Resistance Inquiry, Reporting and Review).

206.2.3 APPROVED CONTROL DEVICES

Only Department issued or approved control devices and munitions shall be carried. Only Department approved modifications may be made to any control device.

- (a) The control devices approved by the Department are:
 1. Baton and/or Impact Weapons (long, short, side-handle or expandable).
 2. Chemical Agents (Oleoresin Capsicum (OC) spray).
 3. Kinetic Energy Projectiles and their delivery systems.
 4. TASER Device - See General Order 208 (TASER® Guidelines).
- (b) Every control device shall be periodically inspected by the employee's supervisor or the designated instructor for a particular control device. All daily inspections, routine maintenance, charging and cleaning shall remain the responsibility of the employee assigned the device.
- (c) All damaged, inoperative, or expended control devices shall be returned to the Property Control Office for disposal, repair and/or replacement.

206.2.4 TRAINING FOR CONTROL DEVICES

- (a) Only employees trained and certified in the use of a specified control device are authorized to carry and/or use that device. Proficiency training must be monitored and documented by a certified device, weapons, or tactics instructor.
- (b) Civilian employees may use issued chemical agents for self-defense only. Recertification for chemical agents issued to civilian employees shall occur annually.
- (c) Officers shall re-certify annually for all control devices they have been previously approved to carry with the exception of the TASER®. Recertification for the TASER® shall follow the guidelines set forth in General Order 208 (TASER® Guidelines).
- (d) All formal training and proficiency for control devices shall be documented in the employees' training file.
- (e) Employees failing to demonstrate proficiency with a device shall be provided remedial training. Employees failing to pass remedial training shall not be permitted to carry the device and may be subject to other provisions prescribed by the Training Division.

206.3 BATON AND IMPACT WEAPON GUIDELINES

The baton and/or an impact weapon is authorized for use when, based upon the circumstances perceived by the officer, such force reasonably appears justified and necessary to result in the safe control of a subject.

The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury. The head, neck, spine and groin should not be intentionally targeted except when the officer has an objectively reasonable belief the subject may cause serious bodily injury or death to the officer or others.

206.4 CHEMICAL AGENT GUIDELINES

Chemical agents are devices used to minimize the potential for injury to employees, offenders, or other subjects. They should be used only in situations where such force reasonably appears necessary.

- (a) Authorized employees may use chemical agents when the application of the chemical agent is objectively reasonable to:
1. Subdue or control a violent or physically resisting subject.
 2. Subdue or control a subject who by words or action has demonstrated an intention to be violent or to physically resist and who reasonably appears to present the potential to harm employees, himself, or others.
 - (a) Employees should give a verbal warning followed by a reasonable opportunity to voluntarily comply when practicable.
 - (b) Employees must be able to articulate their use of the chemical agent.
 3. Apprehend a subject fleeing lawful arrest or detention.
 4. Address situations where there is a reasonable expectation that it will be unsafe for employees to approach within contact range of the subject.
 5. Repel physical attacks from humans or animals.
 6. Compel subjects to leave an enclosure.
 7. Disperse violent crowds or riots.

206.4.1 PROHIBITED USES

The following are prohibited uses of chemical agents:

- (a) To torture, psychologically torment, elicit statements or inflict undue pain on any individual.
- (b) Horseplay or practical jokes.
- (c) Demonstrations without the permission of a supervisor.
- (d) When a subject exhibits only verbal and/or passive resistance to arrest or authority.
- (e) When a subject is under physical restraint unless the subject is still aggressively resisting and lesser means of controlling the subject have failed.

206.4.2 CARRYING OF OLEORESIN CAPSICUM SPRAY

Uniformed employees carrying the OC spray shall carry the device in its holster on the equipment belt. Plainclothes and non-field employees may carry the OC spray as authorized, consistent with the needs of their assignment or at the direction of their supervisor.

206.4.3 TREATMENT FOR CHEMICAL AGENT EXPOSURE

Subjects who have been affected by the use of chemical agents should be afforded means of cleansing the affected areas as soon as practicable. Those subjects who complain of further severe effects shall be afforded a medical examination by competent medical personnel.

206.4.4 TRANSPORTING OF PRISONERS SUBJECTED TO CHEMICAL AGENT EXPOSURE

When transporting prisoners who have been subjected to chemical agents, officers shall ensure that the prisoner stays upright with a clear airway and is not placed in a prone position to avoid possible positional asphyxia. Officers must be especially careful when tightly restraining combative subjects following the use of chemical agents.

Before booking, officers shall advise jail personnel when a prisoner has been subjected to chemical agents.

206.5 KINETIC ENERGY PROJECTILES

This department is committed to reducing the potential for violent confrontations when such subjects are encountered. Kinetic energy projectiles are less likely to result in death or serious physical injury.

Kinetic energy projectiles are approved by the Department and are fired from 12 gauge shotguns that are clearly identified as less lethal shotguns. Certain munitions can be used in an attempt to de-escalate a potentially deadly situation, with a reduced potential for death or serious physical injury.

206.5.1 DEPLOYMENT

Approved munitions are justified and may be used in an effort to compel individuals to cease their actions when such munitions present a reasonable option for resolving the situation at hand.

- (a) Officers are not required or compelled to use approved munitions in lieu of other reasonable tactics if the involved officers determine that deployment of these munitions cannot be deployed safely.
- (b) The safety of hostages, innocent subjects and officers takes priority over the safety of subjects engaged in perceived criminal or suicidal behavior.

206.5.2 VERBAL WARNINGS

A verbal announcement of the intended use of the kinetic energy projectile should precede its application unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances.

- (a) The purpose of the warning is for the following:
 1. Provide the individual with a reasonable opportunity to voluntarily comply.
 2. Provide other officers and individuals with warning that a kinetic energy weapon may be deployed.
- (b) The fact that a verbal and/or other warning was given, or the reasons it was not given, shall be documented in any related reports, as well as any responses by the subject.
- (c) When the less lethal kinetic energy projectile is deployed on scene, the officer carrying the weapon shall announce over the air as soon as practicable that the less lethal shotgun/40mm weapon was deployed and be acknowledged by the dispatcher.
- (d) When given, the verbal warning should be "IMPACTING" to prevent any confusion as to which weapon system is being deployed.

206.5.4 206.5.3 EXAMPLES OF CIRCUMSTANCES APPROPRIATE FOR DEPLOYMENT

Examples include, but are not limited to, the following types of situations where the subject:

- (a) Is armed with a weapon and the tactical circumstances allow for the safe application of approved munitions.
- (b) Has made credible threats or is actively attempting to harm himself or others.
- (c) Is engaged in riotous behavior ~~or is~~ related to or consisting of throwing rocks, bottles, or other dangerous projectiles at people and/or officers, buildings, and vehicles, creating a high risk for substantial injury or property damage.
- (d) There is reasonable suspicion to believe that the subject has already committed a crime of violence and is refusing to comply with lawful orders.

206.5.4 ADDITIONAL DEPLOYMENT CONSIDERATIONS

- (a) Before discharging projectiles, the officer should consider the following factors:

1. The subject's capability to pose an imminent threat to the safety of officers or others.
 2. Whether the subject is actively resisting arrest or attempting to evade arrest by flight.
 3. The credibility of the subject's threat as evaluated by the officers present, and the subject's physical capacity/capability to carry out the threat.
 4. The availability of other force options and their possible effectiveness.
 5. Distance and angle to target.
 6. Type of munitions employed.
 7. Type and thickness of subject's clothing.
 8. The subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.
- (b) The use of Kinetic Energy Projectiles should generally be avoided in the following situations unless the totality of the circumstances indicate that other available options reasonably appear ineffective, impractical, and the officer reasonably believes that the need to control the individual outweighs the risk of using the Kinetic Energy Projectile.
1. As a breaching tool for windows in vehicles, especially when the vehicle is occupied.
 2. As a breaching tool for windows of a structure, especially if it places occupants at risk of injury.
 - 2-3. On obviously pregnant females, elderly individuals, obvious juveniles, individuals who are handcuffed or otherwise restrained, or individuals whose position or activity may result in serious collateral injury (e.g., falls from height, operating vehicles).
- (c) An officer who is currently assigned to Special Operations Command and who has been trained in the use of Kinetic Energy Projectiles as a breaching tool may use that technique in a way that is consistent with their training.
- (d) Kinetic Energy Projectiles shall not be used for crowd control (e.g., demonstrations).

(e) " " " " " Fired into a Crowd

206.5.5 SHOT PLACEMENT AND DEPLOYMENT DISTANCES

Officers should generally follow their training instructions regarding minimum deployment distances and target areas. The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death.

The head and neck should not be intentionally targeted, however any target area or distance may be considered when it reasonably appears necessary to accomplish immediate incapacitation in order to prevent serious injury or death to officers or others.

206.5.6 REPORT OF USE

All kinetic energy projectile use shall be documented in the related incident report/supplements and notification made to a supervisor in compliance with General Order 211 (Response to Resistance Inquiry, Reporting and Review).

- (a) Specific information on the use of a kinetic energy projectiles should include, but is not limited to, the following:
1. Articulate reasons for the use of the kinetic energy projectile weapon.
 2. Information on the type of individual who was subject to the kinetic energy projectile(s) (e.g., age, sex, health conditions).
 3. Any special circumstances surrounding the use of the kinetic energy projectile(s).
 4. Whether the kinetic energy projectile(s) application was successful.
 5. Where the projectile(s) impacted the subjects body.
 6. Number of kinetic energy projectiles deployed.
 7. Number of times subject was impacted by kinetic energy projectile(s).
 8. Approximate distance the kinetic energy projectile(s) was deployed from the subject.

- (b) Photographs of impact sites should be taken. Expended projectiles should be collected and the expended projectile(s) shall be submitted into evidence for future reference. The evidence packaging should be marked "Biohazard" if the projectile(s) penetrated the subject's skin.

206.6 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a passive or actively resisting individual. Officers may only apply those pain compliance techniques for which the officer has an objectively reasonable belief that the use of such a technique appears necessary to further a legitimate law enforcement purpose.

- (a) Officers should consider the following when using pain compliance techniques:
 1. The potential for injury to the officers or others if the technique is not used.
 2. The potential for serious injury to the individual being controlled.
 3. Whether the pain compliance technique is effective in achieving an appropriate level of control.
 4. The nature of the offense involved.
 5. The level of resistance of the individual(s) involved.
 6. The need for prompt resolution of the situation.
 7. If time permits (e.g., passive demonstrators), other reasonable alternatives.
- (b) The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved or other more appropriate alternatives can reasonably be utilized.

206.6.1 USE OF FORCE TO SEIZE EVIDENCE

- (a) Pressure point techniques are the maximum amount of force authorized to seize evidence (e.g., narcotics) when there is probable cause to believe it is being held or hidden in the mouth of a subject.
- (b) Soft/empty hand control is the maximum amount of force authorized to seize blood from a subject pursuant to a mandatory blood draw.

Reviewed by Policy Vetting Committee

on N/A

Reviewed by City Legal 2/23/21

Reviewed by Policy Review Committee

on N/A REVIEWED BY FRU

Reviewed by Executive Staff

on 2/23/2021

Pillar Policy – Additional Training Assigned to Sworn Civilian Both

Approved Not Approved Approved with Notations/Revisions

pg 5

Comments: _____

Chief's Signature

Date

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALYSSA SANDERS,

Plaintiff,

v.

CITY OF AUSTIN and ERIC HEIM,

Defendants.

§
§
§
§
§
§
§
§

CAUSE OF ACTION:
1:22-cv-314

**PLAINTIFF'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION FROM DEFENDANT CITY OF AUSTIN**

Exhibit 19

**APD Review Task Force Final Report (COA General
Protest.0048800)**

FILED UNDER SEAL

From: Bryant, Jason [APD]
Sent: Monday, October 26, 2020 2:19 PM
To: APD Commanders
Subject: R2R Review Task Force Final Report - Commanders
Attachments: Review Task Force Final Report.pdf

Fellow Commanders, please find the final report from the R2R project attached. There are some interesting stats and lessons learned in there. It's worth the read.

Thanks,
Jay



Jay Bryant

Commander, Organized Crime

Austin Police Department

512.974.9208 | jason.bryant@austintexas.gov

One Austin, Safer Together

Keeping you, your family & our community safe through innovative strategies & community engagement.

CONFIDENTIAL

CONFIDENTIAL

Austin Police Department Review Task Force Report¹

¹ This report is a guide and not intended to replace a thorough review of all of the documentation included in the Review Task Force Folder located in the G Drive and the SmartSheet reports. The report was prepared by Austin Police Department (APD) Lieutenant Michael Chancellor #5329.

Table of Contents

Background and Formation.....	3
Scope and Process.....	4
BWC and Case Numbers.....	6
Statistics.....	7
RTF Insights and Feedback.....	8
Charts and Graphs.....	15
Smartsheet.....	18
Body Worn Camera (BWC) Case Numbers Reviewed.....	20
Review Task Force Roster.....	21

CONFIDENTIAL

Background and Formation:

Since May 29, 2020, the City of Austin (COA) has and continues to face protests and riots following the deaths of George Floyd, Mike Ramos, and other individuals. During these protests and riots, the Austin Police Department (APD) became the focal point of the civil unrest. In response to the civil unrest, APD created the Review Task Force (RTF) to evaluate the Body Worn Camera recordings related to the protests and riots for the period of May 29, 2020 to June 11, 2020.

The necessity of the RTF was due to the sheer number of Response to Resistance (R2R) incidents during the protests and a change in the reporting of R2Rs brought on by the following page sent on May 30, 2020:

Sat, May 30, 10:47 PM

If you use force during the response to the protest, you must write a supplement to the best of your knowledge detailing the type of force used, number of times different force was used, and reasons why but you do not need to complete a details page. This is in effect for all uses of force related to the protest except for level 1 force incidents. Authority APD DOC.

On June 11, 2020, the normal R2R reporting requirements described in policy were reinstated, which is why the reviews completed by the RTF only go through that date.

On June 18, 2020, APD Commander Jason Bryant #3432 was tasked with constructing the team and enacting the processes and database that would be used to conduct and document this monumental task. APD Lieutenant's Christopher Davis #5335, Richard Egal #3836, and Michael Chancellor #5329 were assigned to oversee the day to day operations of the RTF and to select the reviewers from the ranks of sergeant, corporal, and detective. The following personnel

were selected to be reviewers²:

- Sergeant John P Claunch #5896
- Sergeant Scott Donovan #6131
- Sergeant Charlie Rohre ##3959
- Sergeant Patrick O'Farrell #5948
- Sergeant John Bryant #4287
- Sergeant Gary Shaw #3540
- Sergeant Reggie Parker #3105
- Sergeant George Silvio #5370
- Sergeant Melanie Rodriguez #3452

In addition, Detective Luke Serrato was selected to help with the database creation and maintenance. Sissy Jones was selected to be the RTF Administrative Specialist based on her extensive knowledge of SmartSheet.

During the months of reviewing, several of the reviewers were selected for other department positions and were removed from the RTF to start those new positions. More reviewers were added and are listed below:

- Sergeant Jennifer Smith #4956
- Corporal Christopher Rivenbark #5365
- Corporal John O'Donnell #5947
- Detective Benjamin Hornbuckle #5136
- Corporal Ashley Edwards #6327
- Sergeant Albert Rodriguez #4265

A temporary work location for the RTF was arranged and located at APD Headquarters, 715 East 8th Street, in the Patrol Building on the fourth floor. The group was later moved and worked out of various locations but had a main office at 1520 Rutherford Lane (2-217).

Scope and Process:

On June 22, 2020, the RTF Lieutenants met with Commander Bryant and put together a plan to begin the reviews. This plan included the following:

- Determining the scope of the reviews.
- Printing out a list of BWC recordings that needed to be reviewed from the AXON website Evidence.com
- Putting together a Microsoft Excel spreadsheet to temporarily document the reviews.
- Obtaining a SmartSheet license for Detective Serrato and putting together a permanent database for the reviews.

² A full RTF roster can be found on page 22 of this report.

- Preparing the reviewers for the process.

The primary scope of the reviews was determined to be identifying all R2Rs and potential policy and/or criminal violations.

On that same date, June 22, 2020, the RTF Lieutenants and Commander Bryant met with the reviewers and outlined the task before them. The instructions given the reviewers were as follows:

- Watch and document each and every BWC recording that could be identified as part of the recent protests between May 29, 2020 and June 11, 2020.
- Label the BWC recording as *R2R – Reviewed by APXXXX* or *Reviewed by APXXX* to ensure no recordings were missed.
- Check Versadex to ensure that a report or supplement was written and detail pages were completed by the subject officer of the BWC recording.
- Identify and bookmark the following:
 - any R2R, both by the officer wearing the camera and by other officers whose actions were captured on the BWC recording being viewed
 - the number of R2Rs captured in the video, including what type of weapon systems were used and the number of burst or rounds used
 - any potential policy violation
 - any potential criminal violation
 - if the officer was assaulted or injured
 - crowd hostility

The RTF began reviews that same day, June 22, 2020.

The documented fields for the reviewer(s) in the Excel spreadsheet and later the SmartSheet included the following:

- *R2R Taskforce Reviewer / Date Submitted*
- *R2R Taskforce Approving Lieutenant*
- *Referred To* (with options of None, COC, IAD, SIU) / *Date Referred*
- *Subject Officer* (officer wearing the BWC)
- *Sector / Unit*
- *Level* (indicated the level of force by policy standards: 1,2,3,or 4)
- *BWC Captures Other R2R*
- *Other R2R Officer*
- *Incident #*
- *Date*
- *Time (24hr)*
- *Location*

- *Type of Force*
- *# Used*
- *# of R2R's*
- *Summary of R2R* (free text field)
- *Lt.'s Review Summary* (free text field)
- *Officer Assaulted* (yes, no, or attempted dropdown box)
- *Officer Injured* (yes or no dropdown box)
- *Crowd Hostility Bookmarked*
- *BWC* (recording hyperlinked here)
- *Duration of BWC* (in minutes)
- *Report / Supplement* (yes, no, or incomplete dropdown box)
- *Details Page* (yes, no, or incomplete dropdown box)

Any time an R2R, potential policy violation, or potential criminal violation was observed, one of the RTF lieutenants would review the BWC recording and send the review to the appropriate Chain of Command (COC) for their review. Detective Serrato built in notifications for the SmartSheet database that would automatically send an email link to the officers' Commander notifying them that a review was needed. The Commander would then forward that email to the appropriate supervisor. As the reviews were completed, the supervisor would enter the next level in the COC, and SmartSheet would automatically send another link to that person. The COCs could then enter their reviews in the SmartSheet fields, which include but were not limited to:

- *Officer Supervisor*
- *Supervisor Review* (free text field)
- *Tac/Train Issues* (check box)
- *Tactical / Training Notes* (free text field)
- *Policy Violations* (check box)
- *Policy Notes* (free text field)
- *Corrective Actions* (free text field)
- *Lieutenant Review* (free text field)
- *Commander Review* (free text field)

The reviews started going out to the individual COCs on July 9, 2020.

BWC and Case Numbers³:

The BWC recordings that were reviewed were determined by the daily case numbers for the protest, which were paged out each day or documented in the Department Operations Center (DOC) Teams application. In addition, the following sources were evaluated to determine case numbers that needed to be reviewed:

³ A master list of case numbers can be found on page RTF of this report.

- Master Arrest list provided by the APD Planning and Crime Analysis Division Manager, Ron Mackay
- Versadex - a general search for incident titled “Protests” or “Riot”
- AXON - by searching key words such as “Protests” or “Riot” in the title box

Every BWC recording that was unclassified between May 29, 2020 and June 11, 2020 was also classified. This was a monumental task with over 4,500 BWC recordings showing to be unclassified in that date range. APD Records Manager, Brandon Gilstrap assisted with running weekly audits and sending out printouts of the data. Commander Bryant continually sent updates to the Department to ensure the recordings were classified. By August 24, 2020 all recordings had been classified.

**A full list of the reviewed case numbers is included at the end of this report.*

As the reviews progressed, Versadex reports and supplements were cross-referenced to ensure no R2Rs were missed. Any report or supplement that indicated an R2R took place that was not captured on BWC had a SmartSheet entry created and sent to the officer’s COC for review.

Statistics⁴:

The RTF concluded their portion of the reviews on September 13, 2020. Here are some of the statistics collected from those reviews:

- The RTF reviewed and documented 5,648 BWC recordings in SmartSheet entries.
- 459 (or eight percent) of those reviews were sent to the subject officer’s COC for review of an R2R.
- Only 16 of the 5,648 reviews were directed to Internal Affairs (IA) or the Special Investigations Unit (SIU) after being forwarded to the COC. Most of these were level 1 reviews or external complaints. That is less than a third of one percent (.3%) of the total recordings.
- The total approximated number of R2Rs during this 14 day period was 1,011⁵.
 - Approximate less than lethal munitions R2Rs: 719
 - Approximate oleoresin capsicum spray R2Rs: 154
 - Approximate baton R2Rs (push or strike): 111
 - Approximate weaponless R2Rs (hands, etc.):102
- 48 of the 5,648 recordings reviewed were sent to the subject officer’s COC for review of

⁴ Charts and graphs containing additional statistics can be found at the end of this report.

⁵ The total number of R2Rs is nearly impossible to calculate based on the delayed reporting requirements, chaos of the situation, the numerous times when multiple R2Rs took place. Plus, it was difficult to determine when one stopped and the other began, and other factors.

comments or language that may have been a violation of APD policy. The COCs handled in the following manner:

- Conduct Counseling Memorandum (CCM) – 2, Supervisor Referral (SR) – 5, Field Notes (FN) – 24, Counseling – 9, No issue – 6, Training – 1, Internal Affairs (IA) – 1
- 26 of the 5,648 recordings reviewed were sent to the subject officer's COC for review of a BWC issue. The COCs handled in the following manner: FN – 17, Counseling – 1, Training – 5, SR - 2
- The recordings showed officers were assaulted at least 247 estimated times and were the subjects of attempted assaults at least 327 other times.
 - The BWC recordings showed baseballs, golf balls, water bottles, frozen water bottles, balloons filled with paint, balloons filled with asphyxiates, eggs, rocks (from small to softball sized), wooden boards, fireworks, smoke grenades, and other objects were thrown at officers by rioters.
 - The BWC recordings also showed rioters repeatedly spitting on officers, striking them with belts, and verbally assaulting and threatening them.
- Those same recordings, coupled with reports and supplements, showed that officers suffered 106 injuries.⁶

RTF Insights and Feedback:

At the end of the reviews, each RTF member was asked to submit insight they gathered from the review process. All of the insights were gathered with the benefit of 20/20 hindsight and from numerous perspectives of which not all were available to the personnel working the protests at the time. For those reasons, it would be a disservice to solely judge individuals based on these insights. At the same time, it would be a disservice not to document them and learn from them.

Below is a summary⁷ of what was gathered. The insights can be broken down into the following categories: RTF, Training and Equipment, Communication, Tactics, and General Observations and Recommendations.

RTF:

The task force was put together on the fly and accomplished the task, not without great effort and diligence from each member. What the RRRT did well was create a new process and get it up and running in no time at all. That being said, there are lesson to be learned and improvements to be made to any future reviewing group or task force.

- Instructions: The RTF lieutenants should have put together more information for the

⁶ Injuries estimated using a combination of reports, supplements, photos, recorded statements of injury, and recorded utterances of pain indicating injury.

⁷ The complete RTF member submissions can be found here: <G:\2020 Protest\Insights>

COCs to completely understand the purpose of the RTF and how the reviews needed to be completed. This information needed to be filtered down to the shift level supervisors (sergeants and corporals).

- Guidelines: The RTF lieutenants should have provided written (rather than only verbal) guidelines for each RRRT member. This would have led to more consistency in the recording summaries and overall reviews.
- Organization: The RTF should have been more organized in how they collected data in order to make that data more easily collected and processed into useful learning information. The RTF team potentially collected too much data in the beginning, making it complicated and difficult to breakdown.

Training and Equipment:

- Mobile Field Force (MFF): It was very apparent that a significant number of officers and supervisors had little to no knowledge of current MFF procedures and tactics. It is imperative that the Department have regular and ongoing training for MFF to provide officers with not only the ability, but also the confidence to carry out their MFF assignments.
 - It should be noted that on 6/24/2020, APD Lieutenant Scott Perry addressed this issue by sending the MFF PowerPoint out to the *APD All*⁸ email address. Along with the PowerPoint was a message attached that the Department's Special Response Team (SRT) was going to start refresher training that night for all officers working the Bravo schedule.
- Shields: The Department found that it had several defective shields and not enough to protect the officers on the frontlines of the riots from the various projectiles thrown their way. While protestors used umbrellas and signs to block officers from responding to criminal activity and violence with oleoresin capsicum spray and less than lethal munitions, officers were left with only their helmets, uniforms, and hands to fend off projectiles before having to resort to oleoresin capsicum spray and less than lethal munitions to protect themselves.
- Less than lethal shotgun munitions: The use of less than lethal munitions ended up being the focal point for news outlets, protestors and rioters alike, officers, and even a group of local doctors⁹. Rioters and protestors received injuries from less than lethal munitions that required hospitalization. All rounds proved to be less than lethal, as no one died from the use of them; however, the injuries were severe in some cases. Given the results and reactions to the use of those munitions by all the groups above, it is imperative that the Department devise better training and equipment practices for those rounds. It is commonplace for newer officers to carry the less than lethal shotguns and to be the officers that qualify with them from year to year. The annual qualification only requires two rounds to be fired in perfect conditions, and it is not mandatory for

⁸ This email address includes all APD personnel.

⁹ 12 Doctors from Austin published an article about the LL munitions in the New England Journal of Medicine. Media articles on the publication can be found here: G:\2020 Protest\Media

those that wish to not carry the weapon. The RRRT makes the following recommendations pertaining to less than lethal munitions:

- The Department needs to provide more robust training in the use of the less than lethal shotguns, and that training needs to specifically address riot and protest situations. The training also needs to address shooting from an elevated platform.
- All officers should be required to qualify on the weapon, given the possibility of needing to use the device in situations such as riots.
- The less than lethal shotguns need tactical light systems so that they can illuminate targets and work effectively in dark areas.
- Rounds need to be accounted for, clearly marked, and checked for expiration dates. APD worked alongside multiple other departments that also deployed less than lethal munitions. Marking APD rounds allows us to be more accountable.
- The rules of engagement were also unclear to many officers and will be addressed in the communications section. However, it should be noted that Department General Order 206.5.3, which deals with less than lethal deployments, reads:

EXAMPLES OF CIRCUMSTANCES APPROPRIATE FOR DEPLOYMENT

Examples include, but are not limited to, the following types of situations where the subject:

(c) Is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers, creating a risk for injury.

- Helmets and face shields: The first insight and recommendation also deals with the deployment of less than lethal munitions. Several officers had trouble operating the less than lethal shotguns with their face shields down. Many opted to flip the shield up or remove the shield altogether and wear goggles. Part of the less than lethal training should be firing the device with a helmet and face shield on and in place. The next issue with helmets was the apparent fact that several officers had not tried them on or attached the face shield. Many officers also did not know how to flip the face shield up and down. While a small equipment issue overall, this can show a lack of preparation and lower the esteem of all involved officers.
 - It is also recommended that the Department have identifiers placed on the back of the helmets. This would have greatly helped with identifying employees during the review process, but could also help officers and supervisors identify each other while on scene. The identifier could be as simple as an employee number or include rank as well.
- Gas mask: It was apparent that several officers had never donned their gas mask and were unclear as to how. Show up or Informa training can solve this equipment issue.
- BWC: The location of the BWC led to many issues with the lens of the camera being obscured by weapon systems (less than lethal shotguns) or being turned off by a bump from a weapon (less than lethal shotgun or baton). The Department should look into ways to mount the cameras to avoid this. The RTF recommends that officers acting as verbal scribes be assigned to each officer with a less than lethal shotgun or similar weapons systems to help call out each action being taken by the officer and to use their BWC to record the intended targets and impacts of the officer deploying the less than

lethal system. This would also align with current policies and sound tactics for the designation of lethal cover officers for each officer assigned to a less lethal platform.

- It should be noted that some supervisors did start assigning scribes to officers carrying less than lethal shotguns and the end result was much better reporting and documentation.

The Department should look into having handheld BWC trigger devices. Similar to the patrol unit doors triggering all BWCs in a certain area, this would allow for an overlooking officer to activate all cameras when violence breaks out. Many BWCs were turned on just after an R2R during the protests. This would eliminate that issue.

It should also be noted that officers should be aware of their recordings when accessing phones with passwords and other private information and the potential for the recording to be public record.

- Other weapon systems should be considered. Pepper gel, optical overload systems, and PepperBall are all recommendations for the Department to look into. Pepper gel and pepper balls can be more effective against goggles and umbrellas. PepperBall can also contain a dye that can be used to mark violent suspects for later arrest. It can also address specific threats from a distance, while minimizing potential injuries and unintended exposure to others. Optical overload systems can be used to disorient violent subjects and rioters. All of these options would lead to fewer usages of less than lethal shotguns.
 - It should be noted that the above listed alternative uses of force still revolve around targeting singular subjects and require a projectile or substance to be directly applied to an individual. This tactic becomes increasingly ineffective as the complicit if not coordinated efforts of the crowd attempt to conceal the most violent or criminal acts by individuals. These elements coupled with the unavoidable fatigue and human error associated with the deployment of said munitions, leads inevitably to the accidental application of force to unintended members of the crowd. This has a cascading effect that incites the crowd further as they feed off of the perceived inappropriate use of force or implementation of the use of force.
- Bullhorns should be readily available for officers and supervisors to provide loud and audible instructions to the protestors and rioters, affording them the opportunity to cease criminal activity or provide an opportunity for those who wish to avoid a response to resistance by the Department.

Communication:

- Communication in general appeared to be one of the most valuable tools and hindrances during the protest. A lack of overall communication in the first few days of the protests led to many officers questioning why and what they were doing.
- Communication came from multiple sources, such as APD email, the Spok messaging application, radio traffic, and the Department Operations Center (DOC) Microsoft Teams application. In an evolving and chaotic event such as the protests and riots, all communication needs to be on the same platform (or every platform). It is also

imperative that there be one location where all the information can be found, such as SharePoint (an excellent example would be the way the Department set up the Covid-19 SharePoint page).

- Communication for sergeants needs to be sent to corporals as well. Often corporals are acting sergeants or check their emails more than their respective sergeants and are in a position to better communicate or prepare officers with information.
- A primary radio channel was identified for the protest; however, it was not easy to locate and had multiple units at different locations working off it. It is recommended that future events have separate radio channels dedicated to the different areas of a protest. All channels can be monitored at the Command Post (CP) and DOC for continuity and flow of operations.
 - Non-priority radio traffic or that which does not concern the majority of the organization should be relegated to an administrative or unit specific channels. An example would be units providing escorts for MFF buses.
- Rules of Engagement: Officers were unclear on the general rules of engagement during the protest. The Department has a policy¹⁰ of just under 800 pages that has been updated four times since the protest began. In fact, Department policy updated on June 2, 2020, the fifth day of the riots and protest. The policy is a clear indication of the Department's desire to provide guidance to employees, maintain order, and provide the best service to the City of Austin, but it can be challenging for officers and supervisors alike to decipher it in the middle of protests and riots. The department should provide clear and concise direction for officers in these situations. Given the number of times an officer asked what the rules of engagement were during the protests and riots, it is clear that the Department did not provide this guidance in the first days of the protest. Clear and concise guidance would also help avoid potential uses of force that lead to investigations or provide clear direction for those investigations.
 - It should be noted that some direction came on the third day of the protests and riots (May 31st, 2020), but those directions still left several officers confused and unclear on when the Department approved the use of less than lethal munitions.
- The next communication issue dealt with BWCs and when to turn them off and when to have them running. Different direction was overheard during reviews and documented in reports. While it was apparent that the current BWC systems could not operate, record, and download the whole time officers worked for various reasons¹¹, clear

¹⁰ The two policy versions for May 29, 2020 to June 11, 2020 can be found here: G:\2020 Protest\Lt Folder\Policy

¹¹ It should be noted that the use of Body Worn Camera (BWC) while on the alpha / bravo scheduling during the protests was an issue of both technological constraints and human involvement. The battery life on the current Axon issued BWCs is 10-12 hours on standby and 8 hours on record when fully charged. That number can be less depending on battery degradation. Each BWC can store approximately 22 hours of video, before it runs out of storage and has to be uploaded. Only 2 of the 6 BWCs in a mounted download strip can download at one time. Those videos download at 1/3-1/2 (20-30 seconds per minute of video) the rate of the recordings on the device during normal internet speeds. That means if there are two BWCs in a dock with 10 hours of video on them a piece, it will be at least 5 hours before the next two BWCs start downloading. Based on the amount of hours each employee was working and the download rates, it would have been common for batteries or storage on the BWCs to reach their max capacity during the protests. To that point, many supervisors gave direction to their employees to conserve their battery life by turning off the BWCs during times where there were no active R2Rs. In addition, many

direction should have been given. Clear direction would have eased officers' minds and provided direction for supervisors conducting reviews and trying to determine if there was a policy violation or not.

- The change to alpha / bravo scheduling also created some confusion for many officers and supervisors. If the Department finds a better system or schedule for handling similar situations, it should add the schedule to policy. To avoid confusion, the Department needs to follow the alpha / bravo scheduling or make it abundantly clear on what the new scheduling is.

•
Tactics:

- The use of CS gas was extremely effective in its limited use during the periods of riotous behavior demonstrated by the crowd.
 - Not only did it cease the rioter's ability to engage in criminal activities such as vandalism and arson, but it also interrupted violent activities like assaulting officers by obscuring vision and causing subjects who remain in the affected area to suffer respiratory distress. This severely limited their ability to actively target officers.
 - CS gas also served as an area denial tool. The ability to attain these types of results with short lived effects that are relieved within moments of removing oneself from the affected area, appeared ideal for gaining compliance from the riotous crowd.

General Observations and Recommendations:

- Some officers appeared to exhibit signs of extreme stress during and after the protests and riots. Supervisors should be trained to identify these signs and closely monitor officers for them.
 - It should be noted that as of September 22, 2020, 48 officers have resigned or retired since the first day of the protest.
- While the overall helpfulness or harm of critical incident debriefs is up for debate, some type of debrief would be welcomed by most officers to help them understand and cope with their roles and responses in the riots and protests.
- Dialogue between the Department and protestors seemed to be a turning point for when the violence stopped.
- The media portrayed the protests / riots as mainly peaceful. However, after reviewing over 5,000 recordings from the incidents, the RTF can clearly state that the first three days (May 29th through May 31st, 2020) were filled with riotous activity. The Department should consult with City Legal and investigate or consider ways to release recordings from the riots and protests (unrelated to SIU and / or IA investigations) to

of the BWC mounting locations (required by policy) caused them to be deactivated unintentionally by gear (less than lethal shotguns and batons specifically).

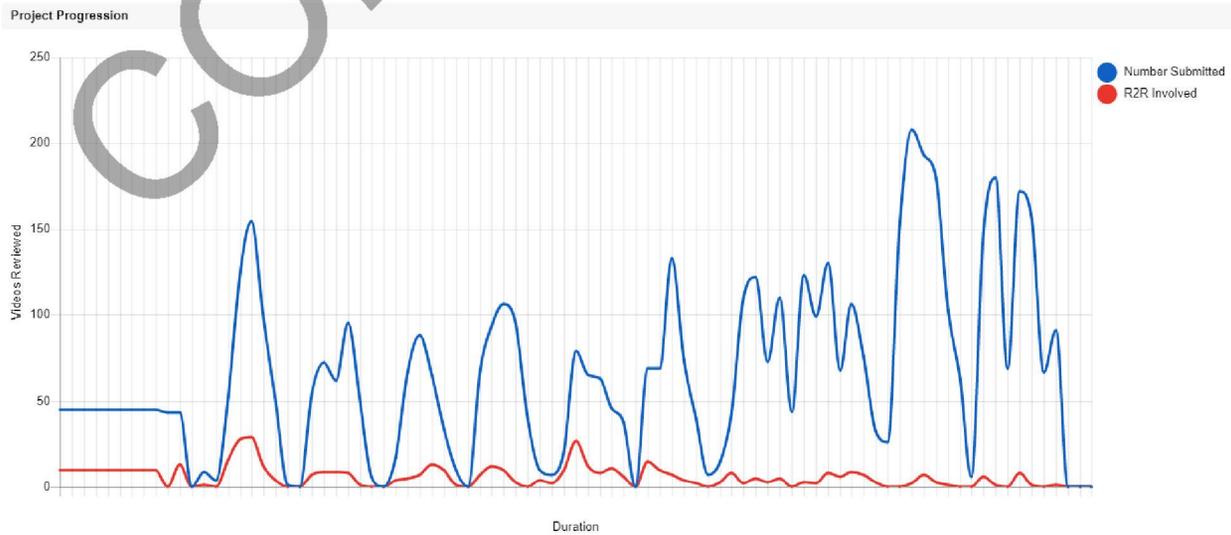
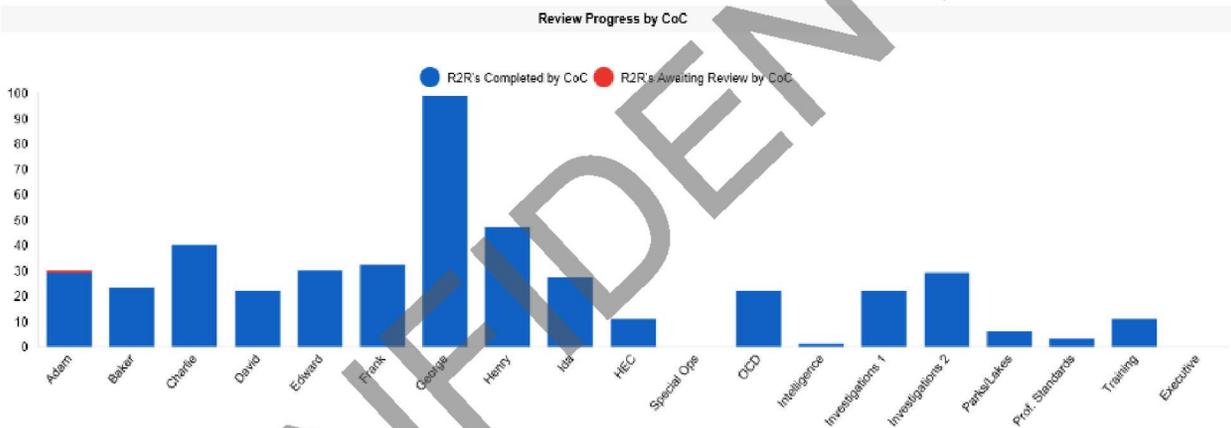
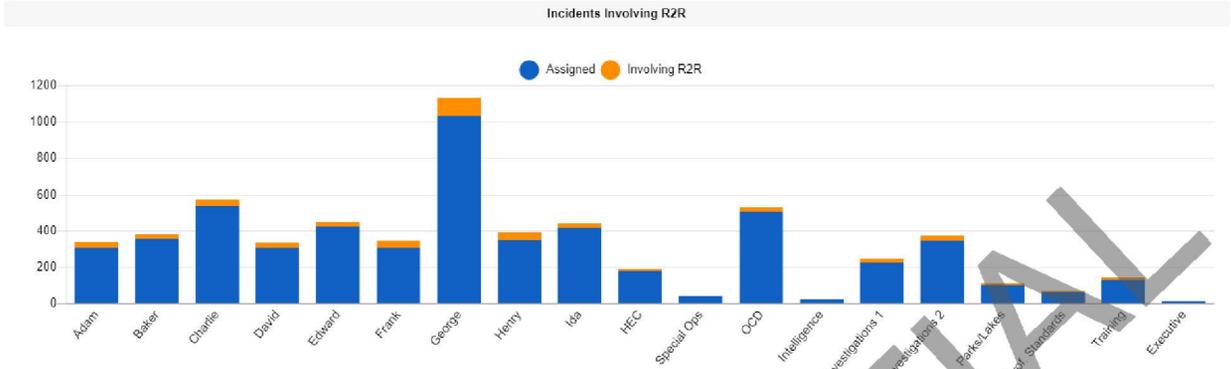
give a clear and factual overview of the incidents. Another option may be to livestream the area around the Main.

- A plan for addressing rioters and protestors taking over highways (mainly Interstate Highway 35) needs to be implemented immediately. Days into the protests, participants attempted to take the highway, and the Department was still unprepared for dealing with them.
- Protestors were organized. Multiple BWC recordings show that many of the protestors and rioters were working within a structure. Protestors on the front line could be seen getting slips of paper from another participant and then immediately moving away, while another protestor from the back of the crowd came up and filled their spot. The first row of protestors would get as close as possible to the line of officers. They would stand with their hands up between their waists and shoulders while stating they were peaceful protestors or that they weren't doing anything. They would refuse to move back, and sometimes also held objects like signs and umbrellas up in front of the officers. Other rioters and protestors would stand behind the first couple of rows and then begin to throw projectiles such as rocks, bottles (glass & plastic), smoke grenades, paint bombs, fireworks, and anything else that became available to them. Rioters and protestors came organized and prepared for police tactics. They wore backpacks on their chests, wore goggles and face coverings, and brought reagents they believed would counter the effects of OC spray. They attempted to block officers deploying oleoresin capsicum spray and less than lethal shotguns with posters, umbrellas, wooden shields, other objects, and themselves. Protestors used their bikes in attempts to build fences and create barriers. Protestors would link arms and push against officers who were trying to move them off the roadway. During these physical confrontations, some protestors attempted to take weapons from the officers, while some protestors continued to throw objects at officers while still others continued to state they were peaceful protestors. Technology and modern communication made it easier for large groups to organize and move quickly.
- Numerous participants appeared to feel justified in continuing to participate in the tactics of screening, protecting, or shielding rioters, believing that their actions lacked the necessary criminal component of being the ones to carry out the final act of directly assaulting officers. These participants fueled a false narrative that their actions did not warrant the use of force, causing them to believe that any response to resistance that unintentionally targeted them to be unjustified.
- There seemed to be overlapping and sometimes contradicting direction coming from both the CP and the DOC. A clear differentiation between the two needs to be made in order for the Department to effectively operate during large operations requiring both. This differentiation is already made in policy, but should be made known and followed by all those involved.
- COVID-19 was also a concern during the riots and protests. No clear direction was given to officers on the use of masks with helmets and face shields.
- Reporting changes caused delays in R2R and other investigations, which has already been documented in this report. Here are the RRRT recommendations for reporting:

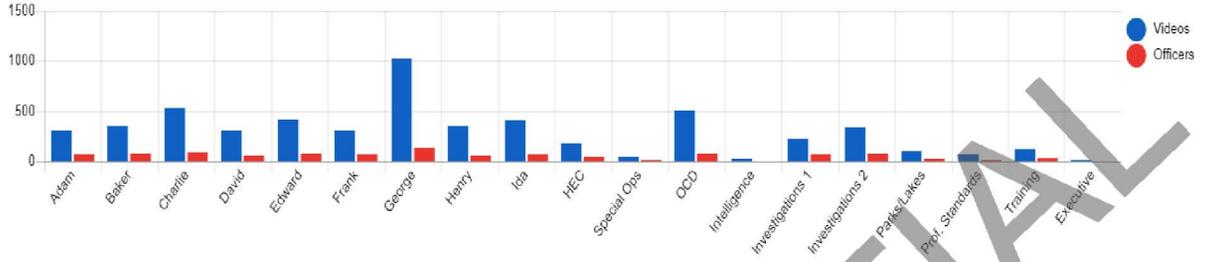
- Multiple case numbers need to be assigned for each day and main location of protest. For example May 30th could have had case numbers for the Main, IH-35, City Hall, Riverside, and the Capitol. This would allow reports and detail pages to be completed and checked more easily. It would also allow for easier interpretation of data and help determine where resources may need to be deployed in the future.
- Detail pages need to be completed for state use of force reporting requirements. This was mandated later but should not be abandoned in the future without a clear way to still have the required data documented.
- Officers should be encouraged to verbally document what they are doing throughout the day on their BWC recordings to help them later recall and document accurately their activities.
- The water barriers at the Main were effective and should be considered earlier in anticipation of similar events.

CONFIDENTIAL

Charts and Graphs:



Video Entries Vs. Officers with R2R



CONFIDENTIAL

Smartsheet:

The following reports were created by Detective Serrato for the RTF:

- *R2R Taskforce Database*
 - This was the main database that housed all of the RTF entries and reviews.
- *LT's Workspace*
 - Any entry that required review by an RTF lieutenant was automatically duplicated here. This made locating these reviews easy for the RTF lieutenants. Once a review was complete, the data entries made in the report would upload to the main database.
- *R2R Taskforce Database Dashboard*
 - Location of charts and graphs showing progress and completion
- *R2R Taskforce Reviewer Reports*
 - Individual reports for each RTF team member. Once a review was complete, the entries would upload to the main database.
- *Commander's Review*
 - A quick reference SmartSheet for each Commander to see the status of all reviews under his / her COC.
- *BWC Report Updates 1 and BWC Report Updates 2*
 - A tabulation of all BWC reviews under each day and case number that could be updated to show progress and completion.
- *R2R Taskforce Analytics*
 - Location of database statistics.
- *COC Review Progress Report*
 - Showed the COC reviews in progress and at what level of the COC they were.
 - This report allowed for an RTF member to send a SmartSheet review link directly to an officer's supervisor, rather than being forwarded through the Commander.
- *Final Disposition Report*
 - This report allowed for reviews sent out to the COCs to be marked as completed by an RTF Lieutenant. It also allowed for disposition notes if there was training, counseling, or other handling of an issue.

The SmartSheet review fields for the RTF members included:

- The documented fields for the reviewer(s) in the Excel spreadsheet and later the SmartSheet included the following:
 - *R2R Taskforce Reviewer / Date Submitted*
 - *Lieutenant Referral*

- *R2R Taskforce Approving Lieutenant*
- *Referred To* (with options of None, COC, IAD, SIU) / *Date Referred*
- *Subject Officer* (officer wearing the BWC)
- *Sector / Unit*
- *Level* (indicated the level of force by policy standards: 1,2,3,or 4)
- *BWC Captures Other R2R*
- *Other R2R Officer*
- *Incident #*
- *Date*
- *Time (24hr)*
- *Location*
- *Type of Force*
- *# Used*
- *# of R2R's*
- *Summary of R2R*
- *Lt.'s Review Summary*
- *Officer Assaulted*
- *Officer Injured*
- *Crowd Hostility Bookmarked*
- *BWC* (recording hyperlinked here)
- *Duration of BWC (Min)*
- *Report / Supplement* (yes, no, or incomplete dropdown box)
- *Details Page* (yes, no, or incomplete dropdown box)

The SmartSheet review fields for the individual COCs included:

- *Officer Supervisor*
- *Supervisor Review*
- *Officer's Role*
- *Tac/Train Issues*
- *Tactical / Training Notes*
- *Policy Violations*
- *Policy Notes*
- *Corrective Actions*
- *Lieutenant Review*
- *Commander Review*
- *Commander Conclusions*
- *2nd Commander Review*
- *Disposition* (Complete / Incomplete)

BWC Case Numbers Reviewed:

Friday 05/29/20 20-1501712 20-1501666

Saturday 05/30/20 20-1510503 20-1510875 20-1511113 20-1511325
 20-5022436 20-1510573 20-1510103

Sunday 05/31/20 20-1520375 20-1521602 20-1520382 20-1521199
 20-1521593 20-1520896 20-1520102 20-1521674
 20-5021502 20-5021405 20-1521200 20-1520634
 20-1520352 20-1520680 20-1521099 20-1521553
 20-1520377 20-1520503

Monday 06/01/20 20-1530551 20-1530057 20-1530141 20-1530060
 20-1531185 20-1531039 20-1530841

Tuesday 06/02/20 20-1540466 20-1541069 20-1540446 20-1540581
 20-1541134 20-1540043

Wednesday 06/03/20 20-1550375 20-1551460 20-1550095 20-1551061

Thursday 06/04/20 20-1560238 20-1560584

Friday 06/05/20 20-1570470 20-1570537

Saturday 06/06/20 20-1580521 20-1581103 20-1580251 20-1580617
 20-1581193

Sunday 06/07/20 20-1590406 20-1590020 20-1591175 20-1591077
 20-1590867

Monday 06/08/20 20-1600311

Tuesday 06/09/20 20-1610213 20-1611221 20-1610780

Wednesday 06/10/20 20-1620445 20-1620137

Thursday 06/11/20 20-1630220 20-1630038 20-1630221 20-1630318

**Case numbers highlighted in grey indicate recordings were found under them, but moved to the proper daily case number.*

Review Task Force Roster:

Commander Jason Bryant #3432

- Lieutenant Michael Chancellor #5329
- Sergeant John P Claunch #5896
- Sergeant Scott Donovan #6131
- Sergeant Patrick O'Farrell #5948
- Sergeant John Bryant #4287
- Sergeant Melanie Rodriguez #3452
- Detective Luke Serrato #6281
- Sergeant Jennifer Smith #4956
- Corporal Christopher Rivenbark #5365
- Corporal John O'Donnell #5947
- Detective Benjamin Hornbuckle #5136
- Corporal Ashley Edwards #6327
- Sergeant Albert Rodriguez #4265
- Lieutenant Richard Egal #3836 - LSU
- Lieutenant Christopher Davis #5335 Executive Staff
- Sergeant Charlie Rohre #3959 Promotion
- Sergeant Gary Shaw #3540 Patrol
- Sergeant Reggie Parker #3105 SIU
- Sergeant George Silvio #5370 IA
- Corporal Maris Heyward (added 6/29/2020) LSU

**Names highlighted in grey indicate members who transferred to another Department assignment during the course of this project.*

CONFIDENTIAL

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALYSSA SANDERS,

Plaintiff,

v.

CITY OF AUSTIN and ERIC HEIM,

Defendants.

§
§
§
§
§
§
§
§

CAUSE OF ACTION:
1:22-cv-314

**PLAINTIFF'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION FROM DEFENDANT CITY OF AUSTIN**

Exhibit 23

Eric Heim R2R Smartsheet 1 (COA-General Protest.011058)

FILED UNDER SEAL

R2R Taskforce Database

Row 2517

Status

R2R Taskforce Reviewer

Melanie Rodriguez

Date Submitted

08/21/20

Lieutenant Referral

Yes

R2R Taskforce Approving Lieutenant

Michael Chancellor

Referred To

CoC

Date Referred / Completed

08/21/20

Email Commander

Subject Officer

AP7995 Eric Heim

Sector/Unit

Charlie

Level

3

BWC Captures Other R2R

Yes

Other R2R Officer

Unidentified

Incident #

201520382

CONFIDENTIAL
COA-General Protest.011058

Date	05/31/20
Time (24 hr)	3:23
Location	SRT
Type of Force	L.L. Impact
# Used	1
# of R2R's	1
Summary of R2R	SRT on IH35 gas disbursed. Ofc. Heim appears to have deployed his LL at least twice unknown if effective. There is no supp or details page under this case number.
Lt.'s Review Summary	The R2R at the 3829 elapsed time marker needs reviewed by the COC. Ofc Heim also has a case being investigated by SIU. COC will need to verify this is not the level 1 case before proceeding with the review.
Officer Assaulted	No
Officer Injured	No
Crowd Hostility Bookmarked	Yes
BWC	Heim BWC (https://austintxpd.evidence.com/axon/evidence?evidence_id=23f0f88f260b4e74a245b232f63c04af&partner_id=eb72d0c383a14586a3a8a9793f97ae51)
Duration of BWC (M n)	55
Report / Supplement	Yes
Details Page	Yes
Officers Supervisor	AP5943 Jesse Midkiff
Supervisor	SRT launched several CS gas canisters toward a group protesters on IH-35. An unknown male subject

CONFIDENTIAL**COA-General Protest.011059**

Review	ran toward one of the canisters and attempted to pick it up. Officer Heim fired one less lethal round at this unknown male subject to keep him from picking up the CS gas canister. It is unknown if the unknown male subject was hit by the less lethal round. All force was with in law and policy, objectively reasonable, and necessary to keep the unknown male subject from picking up the CS gas canister. I am unable to confirm that Officer Heim fired 2 rounds. I can confirm that he fired 1 round which is consistent with his report.
Officer's Role	SRT
Tac/Train Issues	<input type="checkbox"/>
Tactical/Training Notes	
Policy Violations	<input type="checkbox"/>
Policy Notes	
Corrective Actions	N/A
Lieutenant Review	Michael Chancellor
Submit to Lieutenant	<input checked="" type="checkbox"/>
Lieutenant Conclusions	I have reviewed all the apparently relevant information related to this R2R and determined it to be objectively reasonable and within law and policy. As part of the protest review team, I have reviewed over a thousand BWC recordings, including several of this incident. Ofc Heim was acting at the direction of the SRT team and facing a violent and hostile crowd. He deployed a LL round against a subject attempting to take a canister of CS gas, which was being used to disperse the crowd and clear the highway.
Commander Review	Robert Richman
Submit to Commander	<input checked="" type="checkbox"/>
Commander Conclusions	R2R appeared within policy and law. It is unknown based on the chaotic situation, how many LL rounds were actually fired by Officer Heim other than the one as reported by the COC.

CONFIDENTIAL**COA-General Protest.011060**

2nd Commander Review	
Submit to 2nd Commander	<input type="checkbox"/>
2nd Commander Conclusions	
Disposition Notes	No issues.
Disposition	Complete

CONFIDENTIAL

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALYSSA SANDERS,

Plaintiff,

v.

CITY OF AUSTIN and ERIC HEIM,

Defendants.

§
§
§
§
§
§
§
§

CAUSE OF ACTION:
1:22-cv-314

**PLAINTIFF'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION FROM DEFENDANT CITY OF AUSTIN**

Exhibit 24

Eric Heim R2R Smartsheet 2 (COA-General Protest.011062)

FILED UNDER SEAL

R2R Taskforce Database

Row 3133

Status

R2R Taskforce Reviewer

Melanie Rodriguez

Date Submitted

08/21/20

Lieutenant Referral

Yes

R2R Taskforce Approving Lieutenant

Michael Chancellor

Referred To

CoC

Date Referred / Completed

08/21/20

Email Commander

Subject Officer

AP7995 Eric Heim

Sector/Unit

Charlie

Level

3

BWC Captures Other R2R

No

Other R2R Officer

N/A

Incident #

201520382

CONFIDENTIAL
COA-General Protest.011062

Date	05/31/20
Time (24 hr)	5:12
Location	SRT
Type of Force	L.L. Impact
# Used	1
# of R2R's	1
Summary of R2R	SRT at the main, clearing 6th st, LL deployed no supp no details page, unknown if effective.
Lt.'s Review Summary	The R2R at the 0924 elapsed time marker needs reviewed by the COC. Ofc Heim also has a case being investigated by SIU. COC will need to verify this is not the level 1 case before proceeding with the review.
Officer Assaulted	No
Officer Injured	No
Crowd Hostility Bookmarked	Yes
BWC	Heim BWC (https://austintxpd.evidence.com/axon/evidence?evidence_id=69bb3a357fed430f9ba1cf22aa743c04&partner_id=eb72d0c383a14586a3a8a9793f97ae51)
Duration of BWC (M n)	14
Report / Supplement	Yes
Details Page	Yes
Officers Supervisor	AP5943 Jesse Midkiff
Supervisor	Mounted patrol was being utilized to move a crowd back on 7th street just outside the gates of HQ. An

CONFIDENTIAL**COA-General Protest.011063**

Review	unknown subject slapped one of the APD horses on its hind quarter. That suspect started jumping up and down around the horse which caused a reaction from the horse which almost caused the mounted officer to lose control of the horse. Officer Heim fired one less lethal round at the unknown subject. The round missed the unknown subject and struck the ground. The unknown subject ran back into the crowd after having the less lethal round fired at him. All force was within policy and law, objectively reasonable, and necessary to protect the mounted officer.
Officer's Role	SRT
Tac/Train Issues	<input type="checkbox"/>
Tactical/Training Notes	
Policy Violations	<input type="checkbox"/>
Policy Notes	
Corrective Actions	N/A
Lieutenant Review	Michael Chancellor
Submit to Lieutenant	<input checked="" type="checkbox"/>
Lieutenant Conclusions	I have reviewed all the apparently relevant information related to this R2R and determined it to be objectively reasonable and within law and policy. Officer Heim fired one LL round towards a subject that was assaulting a police horse, a violation of TX PC 38.151. The subjects actions could have caused injuries to several others participating in the riot and / or the mounted officer and the immediate action by Officer Heim was necessary to protect those others.
Commander Review	Robert Richman
Submit to Commander	<input checked="" type="checkbox"/>
Commander Conclusions	R2R was within policy and law.

CONFIDENTIAL**COA-General Protest.011064**

2nd Commander Review	
Submit to 2nd Commander	<input type="checkbox"/>
2nd Commander Conclusions	
Disposition Notes	No issues.
Disposition	Complete

CONFIDENTIAL

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALYSSA SANDERS,

Plaintiff,

v.

CITY OF AUSTIN and ERIC HEIM,

Defendants.

§
§
§
§
§
§
§
§

CAUSE OF ACTION:
1:22-cv-314

**PLAINTIFF'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION FROM DEFENDANT CITY OF AUSTIN**

Exhibit 26

**IA Investigative Summary of Eric Heim (COA-General
Protest.014731)**

FILED UNDER SEAL

AUSTIN POLICE DEPARTMENT
INTERNAL AFFAIRS DIVISION
INVESTIGATIVE SUMMARY¹

To: Brian Manley #2184
Chief of Police

Via: Shauna Griffin #4670
Acting Commander, Professional Standards Division

Robert Miljenovich, #4812
Lieutenant, Internal Affairs

From: David Nordstrom #4058
Sergeant, Internal Affairs

Date: November 10, 2020

Subject: **IAD Case #2020-1094**
Officer Eric Heim #7995
(180-Day Deadline: 11/27/2020)

Background

Austin Police Department (APD) officers began working protest-related events on Friday, May 29, 2020. These protests stemmed from allegations of systemic racism and excessive use-of-force against people of color by police officers across the country. During the course of events that took place, primarily between May 29 and June 1, 2020, numerous APD officers were involved in multiple Response to Resistance (R2R) incidents. Each day, as events continued, officers adjusted tactics to allow for peaceful protests while attempting to manage and disperse violent crowds and riots.

Introduction

On May 31, 2020, APD Officer Eric Heim was on duty as a member of the APD Special Response Team (SRT) and deployed to the area near Austin City Hall, 300 block of West Cesar Chavez Street, in response to a protest related event. During this assignment, Officer Heim was equipped with a 40 millimeter (40 MM) less lethal weapon system.² At

¹ This summary should be used as a springboard and guide to the relevant documents located within the case file. It is not intended to replace a comprehensive review of each of those items. The inclusion or omission of a certain fact or detail within/from this summary should not be the prevailing consideration when determining its relevance or importance. ***Note: Minor edits and format changes were made to statement quotes throughout this document for the sake of clarity if/when necessary and appropriate ***

² A complete description of the 40 MM less lethal weapon system is located in TAB F - SRT Documentation

approximately 1:55 PM, some of the protestors began throwing objects at officers. In reponse, Officer Heim fired one round from his 40 MM less lethal weapon system and struck a protestor in the head. The protestor was later identified as Alyssa Sanders who suffered serious bodily injury.

Allegation and Associated Policies

On June 25, 2020, APD's Special Investigations Unit Sergeant Sheldon Askew submitted an internal memorandum to Assistant Chief Jennifer Stephenson. The memorandum stated Officer Heim fired a less lethal weapon towards protestors on May 31, 2020, which may have struck a female in the head causing injury. Sergeant Askew requested an internal investigation be conducted to determine if APD policies or procedures were violated by Officer Heim during this incident.

IA reviewed the following APD policies related to this investigation:

- 206.5 – Kinetic Energy Projectiles
- 200.2 – De-escalation of Potential Force Encounters
- 200.3.1 – Determining the Objectionable Reasonableness of Force

Evidence & Documentation

The following evidence and documentation are located in the IA digital case file:

- Officer Heim's IA history, training, and civil service records
- Versadex report #20-1520382
- (7) Body Worn Camera (BWC) video links
- Special Response Team (SRT) Impact Training Roster dated 9/25/2017
- SRT 40 MM Certification PowerPoint Training
- SIU digital case file 20-5023617

The IA digital case file contains statements, SIU email correspondence, and/or interviews from the following individuals:

- Officer Eric Heim #7995
- Sergeant Brian Molleur #4934
- Sergeant Billy Simoneaux #4983
- Detective Bridget Cummiskey #6964
- Officer Keston Campbell #7203
- Officer Brendan McMorrow #8569
- Officer Jared Ralston #7098
- Officer Christopher Salacki #7511
- Officer Patrick Walsh #7345

Investigation

Versadex Report³

On May 31, 2020, Officer Heim completed a supplemental report to APD Versadex incident 20-1520382 that included the following entry related to this investigation:

On 05/31/2020 I was working with the Special Response Team (SRT) squad under Sgt Molleur for a planned protest to take place in downtown Austin. SRT was briefed that the department was not going to allow protesters on the highway to stop traffic and cause disruption. I was issued a 40mm Less Lethal launcher with Foam Baton rounds. I have been trained and certified to use the 40mm Less Lethal Launcher

My SRT squad was instructed to block the intersection of W Cesar Chavez St and Guadalupe St. At this time SRT was able to secure the inte section. As we did the protesters were chanting "Hands Up, Don't Shoot".

As we held the intersection with the assistance of bike patrol (BPOT) I observed some of the officers on BPOT being attacked by some protesters to the left of me. At this time BPOT began pushing the crowd back using their bicycles. As this was taking place I observed a White male wearing a Black Bandanna throw a water bottle at officers. I pointed the 40 mm Less Lethal Launcher at the suspect and at approximately 04:45 on my BWC I fire one round at the suspect. Due to the amount of commotion and movement from the suspect I do not believe I struck the suspect. I did see the suspect run back into the crowd. At this time, I am still observing multiple bottles being th own at officers.

EMS Run Sheet⁴

Prior to the SIU and the IA investigation, APD conducted a review of the protest and riot related EMS calls in an attempt to locate subjects who stated they were injured due to police action. EMS incident number 20152-0235 was located originating on May 31, 2020 at 2:00 PM with a call to 911 at West Cesar Chavez and Colorado Street. The EMS run sheet listed Alyssa Sanders as the patient who was struck by a less lethal round ten minutes prior.

Attempted Contact with Alyssa Sanders⁵

On June 18, 2020, SIU detectives traveled to Ms. Sanders' residence in San Marcos, Texas to speak with her but were unsuccessful. Ms. Sanders' mother later contacted SIU and provided the following information:

- Alyssa Sanders was home when detectives attempted contact with her but their presence made her distraught and she did not want to speak to them

³ TAB F – Versadex Reports – Heim Supplement.pdf

⁴ TAB F – Medical Records – Alyssa Sanders – EMS Run Sheet.pdf

⁵ TAB E – Physical Evidence – Miscellaneous SIU Evidence – SIU PowerPoint – Slide 5-6

- Alyssa Sanders was transported to Dell Seton Medical Center where she was diagnosed with a fractured skull. No surgery would be required.
- Alyssa Sanders was carrying a sign and an orange water jug

This information assisted SIU detectives in identifying Alyssa Sanders (carrying a white sign and orange water jug) on Officer McMorrow's BWC approximately six minutes before she was struck by the 40 MM less lethal foam baton round.



Officer McMorrow's BWC – Still Shot #1

On August 20, 2020, Assistant District Attorney David Livingston sent an email to SIU Detective Steven McCormick which stated, in part, “No the victim [Alyssa Sanders] has not tried to contact us and mom still hasn't made any return phone calls to us.”⁶

Medical Records

SIU obtained the medical records for Alyssa Sanders who was admitted to Dell Seton Medical Center at The University of Texas, 1500 Red River Street, on May 31, 2020 and discharged on June 3, 2020. IA reviewed the medical records and noted the following entries⁷:

History of Present Illness

- 26 yo F w no prior PMH who presents s/p GSW to the R temple w a rubber bullet while at Austin protests

⁶ TAB F – SIU Emails

⁷ TAB F – Medical Records – Alyssa Sanders – page 6 of 419

Hospital Course

- States that the impact knocked her to the ground.
- PT was admitted after a GSW with rubber bullet to head
- She was managed non-operatively and neurosurgery was consulted
- She was neurologically stable during her hospitalization
- She was ambulating without difficulty and was discharged home

Ms. Sanders' discharge diagnosis was hematoma of face, skull fracture (non-depressed), and subdural hematoma.

40 MM Less Lethal Certification/Qualification⁸

SIU obtained SRT training records dated September 25, 2017. Officer Heim is listed on the roster as receiving four hours of training in *Crowd Management (Impact Training)*.

BWC Review⁹

SIU identified seven BWC videos that captured the immediate events surrounding Officer Heim's deployment of the 40 MM less lethal weapon system. IA reviewed these BWC videos and did not discover any discrepancies between Officer Heim's Versadex supplement or his interview with IA. The triggering event prior to Officer Heim's 40 MM less lethal deployment occurred when a Capital Metro bus moved through the BPOT/SRT line of officers. Numerous protestors are seen attempting to push through the line of officers behind the Capital Metro bus. As the BPOT officers struggled to maintain the line, oleoresin capsicum (OC) spray was deployed which caused the crowd to retreat. As the crowd dispersed, multiple persons began throwing objects towards officers.

Officer Ralston's BWC video captured a subject in all black throwing an object towards officers. Alyssa Sanders can be seen to this subject's right and slightly behind him/her. The following image was captured on Officer Ralston's BWC at 18:55:36 timestamp (1:55:46 PM actual time).



Officer Ralston's BWC - Still Shot #2

⁸ TAB F – SRT Documentation – SRT TCOLE Sign-In Roster September.docx

⁹ TAB E – BWC Links

Officer Heim fired one round from the 40 MM less lethal one second later at 18:55:37 timestamp on his BWC. Alyssa Sanders can be seen on Officer Ralston's BWC video falling to the ground. She was picked up by others quickly and disappeared into the crowd.

Overall Timeline of Events – May 31, 2020¹⁰

1:45 PM – 1:47 PM

BPOT officers arrive at Guadalupe and Cesar Chavez, creating a North-South line across Cesar Chavez. The protestors gathered in the street in front of City Hall and there were reports of people spray painting the building. They blocked eastbound and westbound traffic on Cesar Chavez, and southbound traffic on Guadalupe. SRT officers staged behind the BPOT officers.

1:48 PM – 1:50 PM

BPOT officers used their bikes to push the protestors east of the Cesar Chavez/Guadalupe intersection, yelling "*move back*" with each step and telling them to clear the roadway.

1:50 PM – 1:55 PM

Officers held the line until the Capital Metro bus arrived.

1:55:00 PM – 1:55:25 PM

Capital Metro Bus drove westbound on Cesar Chavez and needed to get through the line of BPOT and SRT officers. Officer created an opening in the line to allow the Capital Metro Bus to pass.

1:55:35 PM – 1:55:50 PM

As soon as the Capital Metro Bus was through, the protest crowd rushed toward the officers at the location of the opening in the line. BPOT officers used their bikes to push the line of protestors back; several officers deployed OC spray to disperse the crowd. Most of the crowd ran away from officers, though several individuals threw objects at officers.

1:55:46 PM

Officer Heim deployed his 40 MM less lethal weapon loaded with a foam baton toward a subject standing in the middle of Cesar Chavez, who was throwing an object at officers. The distance between Officer Heim and this subject was estimated by SIU as 60 feet. The deployment missed and hit Alyssa Sanders, who was standing slightly behind and next to the subject observed throwing the object.

Witness Officer Interviews

Between July 1, and August 20, 2020, SIU conducted phone interviews with eight officers who were in close proximity to Officer Heim at the time of the 40 MM deployment. According to SIU investigators, none of the eight potential witness officers observed Officer Heim fire a 40 MM less lethal weapon system or had information about any person

¹⁰ Timeline created by SIU and verified by IA

who may have been struck by less lethal projectiles. IA determined these eight officers were in the best position to provide additional information, if any, related to this investigation. Because they did not observe Officer Heim's relevant conduct, no additional interviews were conducted by IA. No other witness officers were identified by IA.

Subject Officer Interview

Officer Eric Heim

On October 5, 2020, Officer Heim was interviewed by IA. Officer Heim was asked to provide an opening statement about the events that led up to his deployment of the 40MM less lethal near City Hall.

HEIM: Okay. On that day I was working with SRT under Sergeant Molleur's squad. So it was a squad that with Officers that we haven't worked together before. It was kind of we need this group of guys to go here, this group of guys to go here. On that day we had gotten word that we needed to head over to City Hall on Cesar Chavez, that there was large, large crowds gathering. We were instructed at that time to go assist BPOT, which is our Bike Patrol Officers with SRT to go intercept that intersection to block the protestors off to keep them safe because they didn't - it was an open road. So it was very dangerous for traffic coming through and stuff like that. On that day we got on the bus. We drove and parked a couple blocks away, and at that time we walked down to that intersection to assess what was happening and what we needed to do. Once we got there, we ended up lining up behind our Bike Officers, and that's when chanting started and a lot of protesting going on at that time. And, um, from what I remember is there was a fight that broke out or something happened to the left of me where there was an altercation, and that's when it became a riot. We started taking rocks, we starting taking frozen water bottles, water bottles. We had Officers getting hit. We had civilians getting hit from behind that people were falling too short. And after that altercation took up and it turned into a riot, I observed a white male wearing a black bandana step out from the crowd. Had a - had a water bottle, what appeared to be a water bottle in his hand, and at that time he started to throw it. I was issued a 40 millimeter less than lethal at that time that I had been trained in. As the - as the male was throwing the water bottle, I took aim. I fired one shot. I don't believe I hit him, but I wasn't sure because it happened so quick that the round could've hit him because he disappeared into the crowd really quick, and that was the last thing I saw.¹¹

Later in the interview, Officer Heim described aiming at the suspect when he fired, "*And as he's throwing it, I see him, I take aim with my 40 millimeter. I fire one round. At this time I believe it was center mass and to his right side of his body...*"¹²

¹¹ TAB B2 – IA Interview – Officer Heim IA Statement – Lines 144-170

¹² TAB B2 – IA Interview – Officer Heim IA Statement – Lines 580-582

Officer Heim acknowledged that a 40 MM round can be seen when fired and was then asked where he believed the round went.

HEIM: To the right of him. To my left, to the right of him. I remember seeing it because it - it logs out, the front logs out, but I knew that it was to - between his like elbow and his side. I don't know if it hit him or not, but it was to this area because after he had thrown it, he had moved and it could've struck him.

NORDSTROM: And was - let me stop you there. At the time you fired, what was his position? What part of it - was he facing you, was he turned away from you, that's kind of...

HEIM: Okay. So he is facing me. He used his right hand to throw it. So as he's throwing it, he comes out and he starts to turn and run at the same time as I'm firing.

NORDSTROM: So and there's no video in here so I'm trying to describe your motion you just said.

HEIM: Right. So he's throwing it like a baseball almost with a step forward throwing it, and as he releases the bottle, he's turning his body.

NORDSTROM: Which part of his body is now closest to you?

HEIM: His left part of his body - no, right part of his body. So his right side of his body would be closest to me.

NORDSTROM: And so

HEIM: I'm sorry. I said left. I - I meant his right because he's facing me. So his right side of the body when I fired it, was to his right elbow, right there. He used his right arm to throw it, and as he comes down, he turns his right body towards me and that's when I was shooting here. He turned and I did not see the impact.

NORDSTROM: Okay.

HEIM: Which is why I did not say I really saw him get impact because I did not see the impact. There were multiple people around at that time, but I had a clear shot and I took that single target.¹³

IA played Officer Ralston's BWC during the interview with Officer Heim and asked him if he could identify the person he targeted with the 40 MM less lethal.

¹³ TAB B2 – IA Interview – Officer Heim IA Statement – Lines 626-662

NORDSTROM: Okay. Again, 8:54 mark. Do you agree he's dressed in all dark clothing, if not all black clothing?

HEIM: Yes.

NORDSTROM: Okay, thanks. So that person you just identified, is that the person you're describing and referring to in your supplement?

HEIM: I believe it is, that's what I remember.

NORDSTROM: And I mean, that person, it - it's clear in Officer Ralston's video that that person is throwing something. I guess, how confident are you that's the person you targeted?

HEIM: You can't tell on my body-worn camera, I'm not 100% confident. I recognize what happened. I don't know where I am at compared to this except for to his right a little bit. I know that that male matches the description of what I remember he was doing I remember seeing him step out from the crowd, like you see, throw a water bottle. I remember I shot my firearm or my, um, my 40 millimeter, and it matches with what I did with his actions.¹⁴

The person Officer Heim identified as the person he fired the 40 MM less lethal at was the same person standing next to Alyssa Sanders in "Still Shot #2" on page 5 of this summary.

Officer Heim estimated the distance between himself and the person he targeted was 20 to 30 feet. Related to APD Policy 200.2 De-escalation of Potential Force Encounters, Officer Heim did not believe tactical repositioning would have been an effective technique in this situation. Officer Heim also stated that verbal persuasion attempts with the protestors, "just wasn't working."¹⁵

IA asked Officer Heim if he believed the crowd outside City Hall was engaged in riotous behavior at the time he deployed the 40 MM less lethal. Officer Heim stated, "Yes, that was a riot."¹⁶

Officer Heim was also asked if the person he targeted posed an immediate threat to the safety of officers or others.

HEIM: Yes, he did. I had seen multiple frozen water bottles being used, which are just as hard as rocks. If that water bottle was frozen, which I saw that it appeared that he was throwing a water bottle, I do not know if it

¹⁴ TAB B2 – IA Interview – Officer Heim IA Statement – Lines 815-834

¹⁵ TAB B2 – IA Interview – Officer Heim IA Statement – Line 1056

¹⁶ TAB B2 – IA Interview – Officer Heim IA Statement – Line 1133

*was frozen or not, but that appeared to be serious enough where I needed to - to stop that action.*¹⁷

Officer Heim did not believe he violated APD Policy 200.2 De-escalation of Potential Force Encounters and explained.

*HEIM: Well, just based on the sheer fact of the verbal persuasion was not working, we were not able to tact- tactical reposition. It was far too loud, way too many people, completely outnumbered that we weren't able to de-escalate the situation.*¹⁸

Officer Heim did not believe he violated APD Policy 200.3.1 - Determining the Objectionable Reasonableness of Force and explained.

*HEIM: Based on the Officers' presence and the orders that were given to the protestors to leave the roadway, it being an active roadway, very dangerous to them. They were given multiple warnings to leave the roadway. And when they started throwing, when we started receiving objects, I believe that all reasonable force was used.*¹⁹

Officer Heim did not believe he violated APD Policy 206.5 Kinetic Energy Projectiles and explained.

*HEIM: Due to not being able to give the verbal warnings, due to the noise and crowd at a distance of the people that were giving, I am authorized under policy to have verbal threats, obviously he was actively throwing an object at Officers, during persons engaged in riotous behavior, and for the subject that I impacted, you know, capability to pose imminent threat to multiple other Officers, whoever that - that object would've hit so.*²⁰

Summary of Facts

- On May 31, 2020, Officer Heim was on-duty as an SRT member and deployed to the 300 block of East Cesar Chavez in response to a protest related event
- During this incident, Officer Heim was equipped with a 40 MM less lethal weapon system
- During this incident, multiple objects were thrown in the direction of officers by persons in the crowd

¹⁷ TAB B2 – IA Interview – Officer Heim IA Statement – Lines 1138-1142

¹⁸ TAB B2 – IA Interview – Officer Heim IA Statement – Lines 1195-1198

¹⁹ TAB B2 – IA Interview – Officer Heim IA Statement – Lines 1211-1215

²⁰ TAB B2 – IA Interview – Officer Heim IA Statement – Lines 1228-1233

- At 1:55:46 PM, Officer Heim fired one round from a 40 MM less lethal weapon system towards a person in the crowd throwing an object towards officers
- Alyssa Sanders was struck by the projectile fired by Officer Heim and suffered a skull fracture, subdural hematoma, and hematoma of face

David Nordstrom
 Digitally signed by David Nordstrom
 Date: 2020.11.11 09:45:17 -06'00'

Sergeant David Nordstrom #4058

11/11/2020
 Date

Robert Miljenovich
 Digitally signed by Robert Miljenovich
 Date: 2020.11.11 10:33:40 -06'00'

Lieutenant Robert Miljenovich #4812

11/11/2020
 Date

Shauna Griffin
 Digitally signed by Shauna Griffin
 Date: 2020.11.11 11 03:11 -06'00'

Acting Commander Shauna Griffin #4670

11/11/2020
 Date

ATTORNEYS EYES ONLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALYSSA SANDERS,

Plaintiff,

v.

CITY OF AUSTIN and ERIC HEIM,

Defendants.

§
§
§
§
§
§
§
§

CAUSE OF ACTION:
1:22-cv-314

**PLAINTIFF'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION FROM DEFENDANT CITY OF AUSTIN**

Exhibit 27

**Excerpt from Dell Seton Medical Records (Redacted) (COA-
Sanders 0057)**

FILED UNDER SEAL

48093689

THE STATE OF TEXAS

COUNTY OF TRAVIS

BUSINESS RECORD AFFIDAVIT

Before me, the undersigned authority, personally appeared Stephanie Max

who, being by me duly sworn, deposed as follows:

My name is Stephanie Max, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

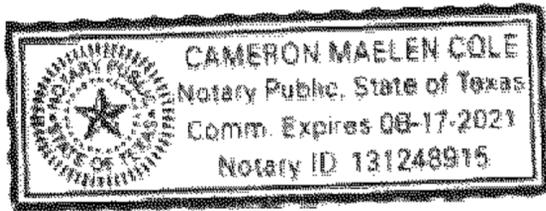
I am the administrator of the records for the **DELL SETON MEDICAL CENTER AT THE UNIVERSITY OF TEXAS**. Attached hereto are 418 pages of records from **DELL SETON MEDICAL CENTER AT THE UNIVERSITY OF TEXAS**. These said 418 pages of records are kept by **DELL SETON MEDICAL CENTER AT THE UNIVERSITY OF TEXAS** in the regular course of business of the **DELL SETON MEDICAL CENTER AT THE UNIVERSITY OF TEXAS**, and it was in the regular course of business for an employee or representative of **DELL SETON MEDICAL CENTER AT THE UNIVERISTY OF TEXAS** with knowledge of the act, event, condition, opinion, or diagnosis recorded to make the record or transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. Records pertaining to: Alyssa Sanders Date of Birth: [REDACTED] Dates of Service: 5/31/20 to 6/3/20

The records attached hereto are the original or exact duplicates of the original.

[Signature]

Affiant, an employee of R1 RCM, a contractor of Ascension Seton Family of Hospitals

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this, the 26th day of August 2020.



Notary Public In and for the

State of TEXAS

Cameron Cole

**Dell Seton Medical Center
at The University of Texas**
1500 Red River Street
Austin, TX 78701-1918

SANDERS, ALYSSA
FIN: 3113288328
Admit: 5/31/2020

MRN: 4123498
Discharge: 6/3/2020

Emergency Documentation

Electronically Signed By: Kitlowski, Andy D, MD, 01-Jun-2020 14:40 CDT

DOCUMENT NAME: Physician ED Documentation
SERVICE DATE/TIME: 5/31/2020 14:52 CDT
RESULT STATUS: Modified
SIGN INFORMATION: Kitlowski, Andy D MD (6/1/2020 14:17 CDT); Sanders, Leoa A RN FNP (5/31/2020 17:23 CDT)

Head injury *ED

Patient: **SANDERS, ALYSSA** MRN: **4123498** FIN: **3113288328**
Age: **26 years** Sex: **Female** DOB: XXXXXXXXXX
Associated Diagnoses: **Hematoma of face; Skull fracture, non depressed; Subdural hematoma**
Author: **Sanders, Leoa A RN FNP**

Basic Information

Time seen: Date & time 5/31/2020 14:53:00.

History source: Patient.

Arrival mode: Private vehicle.

History limitation: None.

Additional information: Chief Complaint from Nursing Triage Note: Pt reports being shot with a non lethal round (bean bag) to her right temple @1400. pt denies LOC. pt aaox4, cms intact, no neuro deficit noted. small non bleeding abrasion noted to right temple with swelling. redness noted to right ear canal.

I have seen and evaluated this patient with supervising physician (Dr. Kitlowski).

History of Present Illness

The patient presents with head injury. The onset was just prior to arrival. Type of injury: direct blow. The character of symptoms is pain, swelling and ecchymosis. Loss of consciousness none. Location: Right temporal. The course/duration of symptoms is constant. The location where the incident occurred was in the street. Risk factors consist of none. Prior episodes: none. Therapy today: none. Associated symptoms: headache and dizziness.

26-year-old otherwise healthy female with downtown Austin at the protest when she was shot 9 right temple with a rubber bullet. Large hematoma obvious. Patient denies loss of consciousness did say it knocked her to the ground. Denies any neck pain. Endorses pain opening mouth. Denies any other injuries at this point. Tearful. Did not take anything prior to arrival. Denies any distal numbness or tingling visual changes denies any nausea, vomiting. Significant other is at the bedside.

Review of Systems

Constitutional symptoms: No fever, no chills.

Skin symptoms: No rash, no pruritus.

Eye symptoms: Vision unchanged.

ENMT symptoms: Ear pain, no sore throat, no nasal congestion.

Respiratory symptoms: No cough,

Cardiovascular symptoms: No chest pain,

Genitourinary symptoms: No dysuria, no hematuria.

Musculoskeletal symptoms: No back pain, no Muscle pain, no Joint pain.

Neurologic symptoms: Headache, no dizziness, no altered level of consciousness, no numbness, no tingling.

Additional review of systems information: All other systems reviewed and otherwise negative.

Health Status

Printed By: Shoaf, Thomas W
Report ID: 77252323

Page 33 of 409

Printed: 8/25/2020 09:24 CDT

**Dell Seton Medical Center
at The University of Texas**
1500 Red River Street
Austin, TX 78701-1918

SANDERS, ALYSSA
FIN: 3113288328
Admit: 5/31/2020

MRN: 4123498
Discharge: 6/3/2020

Emergency Documentation

Allergies:

Allergic Reactions (Selected)

No Known Medication Allergies.

Past Medical/ Family/ Social History

Medical history

I have reviewed medical history with the patient, and the patient reports no significant medical history

Surgical history: Negative.

Family history: "I have reviewed the family history with the patient, and there are no inheritable conditions relevant to today's visit."

Social history: Alcohol use: Occasionally, Tobacco use: Denies, Drug use: Denies, Occupation: Employed, Family/social situation: Unmarried.

Problem list:

No qualifying data available

Physical Examination

Vital Signs

Vital Signs

5/31/2020 14:30 CDT

Temperature Oral (DegF)	98.3 DegF
Temperature Oral (DegC)	36.8 DegC
Peripheral Pulse Rate	73 bpm
Respiratory Rate	20 br/min
Systolic Blood Pressure	132 mmHg
Diastolic Blood Pressure	78 mmHg
Mean Arterial Pressure	96 mmHg

<u>Vital Signs (last 24 hrs)</u>	<u>Last Charted</u>	<u>Minimum</u>	<u>Maximum</u>
Temp Oral 14:30)	98.3 (MAY 31 14:30)	98.3 (MAY 31 14:30)	98.3 (MAY 31
Peripheral Pulse 14:30)	54 (MAY 31 15:38)	54 (MAY 31 15:38)	73 (MAY 31
Respiratory Rate 14:30)	18 (MAY 31 15:38)	18 (MAY 31 15:38)	20 (MAY 31
SBP 14:30)	117 (MAY 31 15:38)	117 (MAY 31 15:38)	132 (MAY 31
DBP 14:30)	67 (MAY 31 15:38)	67 (MAY 31 15:38)	78 (MAY 31
O2 Sat 14:30)	100 (MAY 31 15:38)	100 (MAY 31 14:30)	100 (MAY 31

Measurements

5/31/2020 14:41 CDT
5/31/2020 14:30 CDT

Dosing Weight (kg)	52.617 kg
Calculated Height (cm)	149.86 cm

Dell Seton Medical Center
at The University of Texas
1500 Red River Street
Austin, TX 78701-1918

SANDERS, ALYSSA
FIN: 3113288328
Admit: 5/31/2020

MRN: 4123498
Discharge: 6/3/2020

Emergency Documentation

Height Unit of Measure	Inches
Height (in)	59 inch
Weight Source	Stated
Estimated Weight Unit of Measure	Pounds
Estimated Weight (kg)	52.617 kg

Oxygen saturation.

General: Alert, no acute distress.

Glasgow coma scale: Eye response: 4 /4, verbal response: 5 /5, motor response: 6 /6, Total score: Total score: 15.

Neurological: Alert and oriented to person, place, time, and situation, No focal neurological deficit observed, CN II-XII intact, normal sensory observed, normal motor observed, normal speech observed, normal coordination observed.

Skin: Warm, dry, no rash, normal for ethnicity.

Head: Normocephalic, On exam: Severe, right, temporal, tenderness, swelling, ecchymosis.

Neck: Supple, trachea midline, no tenderness, no step-off.

Eye: Extraocular movements are intact, normal conjunctiva.

Ears, nose, mouth and throat: Oral mucosa moist, no pharyngeal erythema or exudate, right hemotympanium, Large hematoma to right temporal.

Cardiovascular: Regular rate and rhythm, Normal peripheral perfusion.

Respiratory: Lungs are clear to auscultation, respirations are non-labored.

Chest wall: No tenderness, No deformity.

Back: Nontender, Normal range of motion, Normal alignment.

Musculoskeletal: Normal ROM, normal strength.

Psychiatric: Cooperative, appropriate mood & affect.

Medical Decision Making

Differential Diagnosis: Head injury, concussion.

Rationale: I have considered the above as the potential causes's of patient condition. I have based my consideration on my patient encounter and physical exam. The considerations above may not be all-inclusive. The history, physical examination and/or diagnostic studies in combination with my medical judgment, will be used in determining the final diagnosis. 26-year-old female presents to ER with large hematoma to the right temple area after being shot face with a rubber bullet. Patient was found to have subdural hematoma on CT scan. Trauma evaluated her and admitted her.

Documents reviewed: Emergency department nurses' notes, emergency department records.

Orders Launch Orders

Radiology:

CT Maxillofacial w/o Contrast (Order): ASAP, Reason: shot with rubber bullet, No Sedation, Weight (kg): 52.617, Height (cm): 149.86, LMP: 5/30/2020.

Results review:

Labs (Last four charted values)

WBC	H 14.8	(MAY 31)
Hgb	13.1	(MAY 31)
Hct	39.0	(MAY 31)
Plt	358	(MAY 31)
Na	140	(MAY 31)
K	L 3.4	(MAY 31)
CO2	21	(MAY 31)
Cl	H 108	(MAY 31)

Dell Seton Medical Center
at The University of Texas
1500 Red River Street
Austin, TX 78701-1918

SANDERS, ALYSSA
FIN: 3113288328
Admit: 5/31/2020

MRN: 4123498
Discharge: 6/3/2020

Emergency Documentation

Cr	0.7	(MAY 31)
BUN	9	(MAY 31)
Glucose	105	(MAY 31)
Ca	9.2	(MAY 31)

Radiology results:

RADIOLOGY REPORTS

05/31 15:21 **CT Maxillofacial w/o Contrast - Auth (Verified)**

IMPRESSION: Head: 1. Acute right convexity subdural hematoma measuring 5 mm in maximum thickness. 2. Trace right-to-left midline shift. 3. Small-volume sulcal subarachnoid hemorrhage in the right frontal and temporal lobes. 4. Possible small right lateral temporal lobe hemorrhagic contusion. Face: 1. No acute facial fractures. Results discussed with ANDREW ANDY D KITLOWSKI on 5/31/2020 3:37 PM. Kellan Schallert, MD Electronically Signed: 5/31/2020 3:37 PM Finalized: 5/31/2020 3:37 PM DICOM format image data are available to non-affiliated external healthcare facilities or entities on a secure, media free, reciprocally searchable basis with patient authorization for at least a 12-month period after the study.

05/31 15:21 **CT Head w/o Contrast - Auth (Verified)**

IMPRESSION: Head: 1. Acute right convexity subdural hematoma measuring 5 mm in maximum thickness. 2. Trace right-to-left midline shift. 3. Small-volume sulcal subarachnoid hemorrhage in the right frontal and temporal lobes. 4. Possible small right lateral temporal lobe hemorrhagic contusion. Face: 1. No acute facial fractures. Results discussed with ANDREW ANDY D KITLOWSKI on 5/31/2020 3:37 PM. Kellan Schallert, MD Electronically Signed: 5/31/2020 3:37 PM Finalized: 5/31/2020 3:37 PM DICOM format image data are available to non-affiliated external healthcare facilities or entities on a secure, media free, reciprocally searchable basis with patient authorization for at least a 12-month period after the study.

05/31 15:21 **CT Spine Cervical w/o Contrast - Auth (Verified)**

IMPRESSION: No acute fracture. Results discussed with ANDREW ANDY D KITLOWSKI on 5/31/2020 3:37 PM. Kellan Schallert, MD Electronically Signed: 5/31/2020 3:37 PM Finalized: 5/31/2020 3:37 PM DICOM format image data are available to non-affiliated external healthcare facilities or entities on a secure, media free, reciprocally searchable basis with patient authorization for at least a 12-month period after the study.

05/31 15:05 **XR Shoulder Left 2V - Auth (Verified)**

IMPRESSION: Normal study. William Rodriguez Jr., MD Electronically Signed: 5/31/2020 3:14 PM Finalized: 5/31/2020 3:14 PM

05/31 15:05 **XR Chest 1 View - Auth (Verified)**

IMPRESSION: Normal chest. William Rodriguez Jr., MD Electronically Signed: 5/31/2020 3:14 PM Finalized: 5/31/2020 3:14 PM .

Notes: This note was created with the use of Dragon voice recognition software. All of the errors or misspellings may not have been caught during proof-reading. Please interpret accordingly..

Reexamination/ Reevaluation

Time: 5/31/2020 17:21:00 .

Course: progressing as expected.

Printed By: Shoaf ,Thomas W
Report ID: 77252323

Page 36 of 409

Printed: 8/25/2020 09:24 CDT

**Dell Seton Medical Center
at The University of Texas**
1500 Red River Street
Austin, TX 78701-1918

SANDERS, ALYSSA
FIN: 3113288328
Admit: 5/31/2020

MRN: 4123498
Discharge: 6/3/2020

Emergency Documentation

Pain status: decreased.
Assessment: exam unchanged.
Notes: Trauma evaluated pt and admitted.

Impression and Plan

Diagnosis

Hematoma of face
Skull fracture, non depressed
Subdural hematoma

Calls-Consults

- 5/31/2020 15:54:00 , Trauma, phone call, consult, recommends Will see in ED.

Plan

Condition: Guarded.

Disposition: Admit: Time 5/31/2020 17:21:00, to Inpatient Unit.

Counseled: Patient, Regarding diagnosis, Regarding diagnostic results, Regarding treatment plan, Patient indicated understanding of instructions.

Orders: Launch Orders

Patient Care:

ED Order to Admit (Order): Admission Type: Inpatient, Admission Location: ICU, Reason: Subdural hematoma,
Attending Physician: Fielder , W Drew MD, Hold in ED until: _____, Start Date/Time: 5/31/2020 17:22
CDT.

Electronically Signed By: Sanders, Leoa A, RN FNP, 31-May-2020 17:23 CDT

Addendum by Kitlowski , Andy D MD on June 01, 2020 14:17 CDT

I saw patient and examened them myself. I have reviewed the NP note and agree with the documentation.

Electronically Signed By: Kitlowski, Andy D, MD, 01-Jun-2020 14:17 CDT

DOCUMENT NAME: Triage ED Forms
SERVICE DATE/TIME: 5/31/2020 14:30 CDT
RESULT STATUS: Auth (Verified)
SIGN INFORMATION: Grado ,Olivia RN (5/31/2020 14:37 CDT)

**Triage Assessment Adult/Peds ED - DSM Entered On: 5/31/2020 14:41 CDT
Performed On: 5/31/2020 14:30 CDT by Grado , Olivia RN**

Triage

Mode of Arrival, ED : EMS Ground

Hx of Present Illness/Mech of Inj/Onset : Pt reports being shot with a non leathal round (bean bag) to her right temple @1400. pt denies LOC. pt aaox4, cms intact, no neuro deficit ntoed. small non bleeding abrasion noted to right temple with swelling. redness noted to right ear canal

Abuse/Neglect Screen : No

Grado , Olivia RN - 5/31/2020 14:37 CDT

DCP GENERIC CODE

Visit Reason : rubber bullet to head ems

Tracking Acuity : 4 - Semi-Urgent

Printed By: Shoaf ,Thomas W
Report ID: 77252323

Page 37 of 409

Printed: 8/25/2020 09:24 CDT

**Dell Seton Medical Center
at The University of Texas**
1500 Red River Street
Austin, TX 78701-1918

SANDERS, ALYSSA
FIN: 3113288328
Admit: 5/31/2020

MRN: 4123498
Discharge: 6/3/2020

Emergency Documentation

Tracking Group : DSM ED Track Group

Grado , Olivia RN - 5/31/2020 14:37 CDT

Treatments Prior to Arrival : None
Last Tetanus : Unknown
Last Menstrual Period Date : 5/30/2020 CDT
Pregnancy Status : Patient denies
Currently Breastfeeding a Child : No
Immunizations Current : N/A
Recent Travel History : No recent travel

Grado , Olivia RN - 5/31/2020 14:37 CDT

COVID-19 Screening

COVID-19 Assess : Able to Assess
COVID-19 Symptoms : No
COVID-19 Interpretation : No

Grado , Olivia RN - 5/31/2020 14:37 CDT

Suicide Risk Screener

Down, Depressed, Hopeless-Suicide : No
Suicide Ideation Past 2 Weeks : No
Attempted Suicide : No
Suicide Risk Above Age 6 : Yes

Grado , Olivia RN - 5/31/2020 14:37 CDT

Problems Module

(As Of: 5/31/2020 14:41:16 CDT)

Allergy

Allergy History : Reviewed/Updated this visit
Have you been told you have a latex allergy? : No

Grado , Olivia RN - 5/31/2020 14:37 CDT
(As Of: 5/31/2020 14:41:17 CDT)

Allergies (Active)

No Known Medication Allergies *Estimated Onset Date:* Unspecified ; *Created By:* Grado ,
Olivia RN; *Reaction Status:* Active ; *Category:* Drug ;
Substance: No Known Medication Allergies ; *Type:* Allergy ;
Updated By: Grado , Olivia RN; *Reviewed Date:* 5/31/2020
14:39 CDT

ED Medication History Status

Medication List

(As Of: 5/31/2020 14:41:17 CDT)

Vitals

Temperature Oral (DegF) : 98.3 DegF
Temperature Oral (DegC) : 36.8 DegC
Peripheral Pulse Rate : 73 bpm
Respiratory Rate : 20 br/min
Systolic Blood Pressure : 132 mmHg
Diastolic Blood Pressure : 78 mmHg
Mean Arterial Pressure : 96 mmHg
Oxygen Saturation : 100 %
Oxygen Delivery Method : Room air

Printed By: Shoaf , Thomas W
Report ID: 77252323

Page 38 of 409

Printed: 8/25/2020 09:24 CDT

**Dell Seton Medical Center
at The University of Texas**
1500 Red River Street
Austin, TX 78701-1918

SANDERS, ALYSSA
FIN: 3113288328
Admit: 5/31/2020

MRN: 4123498
Discharge: 6/3/2020

Emergency Documentation

Pain Assessment: Yes

Grado , Olivia RN - 5/31/2020 14:37 CDT

Weight/Height

Weight Source: Stated
Estimated Weight Unit of Measure: Pounds
Estimated Weight in Pounds: 116 lb(Converted to: 116 lb 0 oz, 52.617 kg)
Estimated Weight (kg): 52.617 kg
Height Unit of Measure: Inches
Height (in): 59 inch
Calculated Height (cm): 149.86 cm

Grado , Olivia RN - 5/31/2020 14:37 CDT

Assessment

Glasgow Coma Scale Assessment: Yes
Level of Consciousness: Alert
Respiratory Status: No distress
Mucous Membrane Color: Pink
Pedi Asthma Severity (PAS) Score: N/A
Orientation: Oriented x 4
Capillary Refill: Less than/equal to 2 seconds
Mucous Membrane Description: Moist

Grado , Olivia RN - 5/31/2020 14:37 CDT

Health History Combined

Significant Health History: Reviewed with patient/guardian
Patient Smoking Status: Never smoker

Grado , Olivia RN - 5/31/2020 14:37 CDT

Previous Illness/ Hospitalizations Grid

<i>Illness Description</i>	<i>Pt denies</i>
	Grado , Olivia RN - 5/31/2020 14:37 CDT

Pain Assessment ED

Is Patient Able to Self-Report Pain?: Yes

Grado , Olivia RN - 5/31/2020 14:37 CDT

Primary Pain

Location - Primary Pain: Head
Self Reported Pain Scale Tool: Numeric Intensity (8 yr & up)
Acceptable Intensity: 0
Intensity - Primary Pain: 8

Grado , Olivia RN - 5/31/2020 14:37 CDT

Glasgow Coma Scale

Eye Opening Response Glasgow: Spontaneously
Best Verbal Response Glasgow: Oriented
Best Motor Response Glasgow: Obeys simple commands
Glasgow Coma Score: 15

Grado , Olivia RN - 5/31/2020 14:37 CDT

**Dell Seton Medical Center
at The University of Texas**
1500 Red River Street
Austin, TX 78701-1918

SANDERS, ALYSSA
FIN: 3113288328
Admit: 5/31/2020

MRN: 4123498
Discharge: 6/3/2020

Emergency Department Specific Documentation

Legend: @ = Abnormal, ! = Critical, H = High, L = Low

Treatments

Recorded Date	5/31/2020
Time	14:30 CDT
By	Grado, Olivia RN
Item	
Treatments Prior to Arrival	None

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALYSSA SANDERS,

Plaintiff,

v.

CITY OF AUSTIN and ERIC HEIM,

Defendants.

§
§
§
§
§
§
§
§

CAUSE OF ACTION:
1:22-cv-314

**PLAINTIFF'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION FROM DEFENDANT CITY OF AUSTIN**

Exhibit 28

**Ralston Body Worn Camera Footage of Sanders Shooting
(COA-General Protest.015741)**

FILED TRADITIONALLY

FILED UNDER SEAL

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALYSSA SANDERS,

Plaintiff,

v.

CITY OF AUSTIN and ERIC HEIM,

Defendants.

§
§
§
§
§
§
§
§
§
§

CAUSE OF ACTION:
1:22-cv-314

**PLAINTIFF'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION FROM DEFENDANT CITY OF AUSTIN**

Exhibit 30

Eric Heim Supplemental Report (COA-General Protest.014744)

FILED UNDER SEAL



**AUSTIN POLICE DEPARTMENT
NARRATIVE TEXT HARDCOPY
(0903-3 ASSAULT ON PEACE OFFICER)
GO# 2020-1520382**

ATTORNEYS EYES ONLY

Table of Contents

Narrative Text	1
----------------------	---

ATTORNEYS EYES ONLY



NARRATIVE TEXT HARDCOPY
(0903-3 ASSAULT ON PEACE OFFICER)

Narrative Text

Type SUPPLEMENTS
Subject R2R
Author HEIM, ERIC
Related Date/Time MAY-31-2020 (SUN.) 1810

On 05/31/2020 I was working with the Special Response Team (SRT) squad under Sgt Molleur for a planned protest to take place in downtown Austin. SRT was briefed that the department was not going to allow protesters on the highway to stop traffic and cause disruption. I was issued a 40mm Less Lethal launcher with Foam Baton rounds. I have been trained and certified to use the 40mm Less Lethal Launcher

My SRT squad was instructed to block the intersection of W Cesar Chavez St and Guadalupe St. At this time SRT was able to secure the intersection. As we did the protesters were chanting "Hands Up, Don't Shoot".

*****R2R*****R2R*****R2R*****R2R*****R2R*****

As we held the intersection with the assistance of bike patrol (BPOT) I observed some of the officers on BPOT being attacked by some protesters to the left of me. At this time BPOT began pushing the crowd back using their bicycles. As this was taking place I observed a White male wearing a Black Bandanna throw a water bottle at officers. I pointed the 40 mm Less Lethal Launcher at the suspect and at approximately 04:45 on my BWC I fire one round at the susp ct. Due to the amount of commotion and movement from the suspect I do not believe I struck the suspect. I did see the suspect run back into the crowd. At this time, I am still observing multiple bottles being thrown at officers.

*****R2R*****R2R*****R2R*****R2R*****R2R*****

SRT was instructed to move back away from the protestors. Then SRT was instructed to move forward and push all protestors back. As myself and multiple officers were giving multiple clear, loud commands to move back, a unidentified subject standing with a bicycle was refusing to move after being told multiple times to do so, at this time, approximately 16:42 according to my BWC at I used the front of my 40 mm to push on the subjects chest. The subject still refused to move until a few of the protestors grabbed the subject back. After review of my BWC I was not able to clearly identify the unknown subject.

At this time he crowd is peaceful and at approximately 22:01, I hear and see a less lethal round be discharged from a less lethal shotgun from Officer Ash who is standing to the left of me. Officer Ash was then told to put his weapon and safe and to remove himself from the line.

My SRT squad was informed that a large group of protestors has now taken over North IH-35 SB and that SRT would be responding to begin moving the large crowd off the highway and to stop them from obstructing a highway for the safety of the Officers, drivers and the protestors. I was told that if the protestors did not comply with lawful orders given to remove themselves from the highway that SRT would be deploying CS gas or commonly referred to as tear gas. Upon arrival to the top of the highway, I heard over the radio that objects were actively being thrown at officers. At this time SRT Officers were instructed to put their gas masks on to prepare to for CS gas deployment. At this time I stood by with SRT, until we were instructed to make contact with approximately 300 protestors. As SRT was preparing their equipment, I

ATTORNEYS EYES ONLY

COA-General Protest.014746



NARRATIVE TEXT HARDCOPY
(0903-3 ASSAULT ON PEACE OFFICER)

observed multiple individuals on top of the 11th St Bridge, yelling at officers and I was told that they were throwing stuff on top of cars as well. At this time a request was made to have Officers remove them from the bridge so that SRT could walk under the bridge without being injured. Once the bridge was cleared, SRT began to advance on the crowd. Air 1 began to give warnings to the crowd. Once warnings were given.

*****R2R*****R2R*****R2R*****

At approximately 38:06 on my BWC a Smoke canister is deployed. At approximately 38:26 another canister is deployed and then at approximately 38:44 a CS canister is deployed. At this time an unidentified male runs to the CS gas canister and attempts to pick it up. At this time I shot a 40mm Foam Baton round at the subject. Due to all the thick smoke I believe the round struck the ground near the subject and did not make contact with the subject. After the crowd dispersed, SRT cleared the highway and was able to open the roads to traffic.

*****R2R*****R2R*****R2R*****

As SRT Officers moved down the entrance ramp to 7th street, we had to clear the South frontage rd. so that protesters were out of the street and not blocking the entrance ramp to I35. At this time all SRT officers went back to the APD Mains South entrance off of 7th St. At this time there were two APD transport vans left outside of the South gate as hundreds of protesters gathered around and chanting "No Justice, No Peace" and "I Can't Breath". A decision was made that the vehicles were needing to be moved behind the gate so that they do not get attacked and damaged. SRT began to move the crowd back from the vehicles.

*****R2R*****R2R*****R2R*****

Mounted patrol arrived on scene and began to assist Officers with crowd control. At this time I observed a White male in a black shirt and Black bandanna pushing on of the horses. I then seen that same suspect slap the horse on its hind quarters. That suspect then began jumping up and down around the horse and throwing his arms in front of the horses face which caused a reaction from the horse, almost making the rider/officer lose control, which is extremely dangerous for the officers and the public. At this time I pointed the 40mm Less Lethal Launcher at the subjects lower extremities and fired one round. The subject moved right before impact was made and the round struck the ground. The subject was not struck but it caused the subject to leave the area. SRT then carefully made their way back to the South gate of the APD main.

While at the Main, SRT was notified that protesters had gone on to North IH35 North bound. SRT was instructed to put their gas mask on as we arrived on scene. Once Officers arrived on scene most protesters complied and got off the highway. As SRT walked the highway so that traffic could be opened.

NOI
Officer Heim 7995



AUSTIN POLICE DEPARTMENT

GO# 2020-1520382

OPEN

**NARRATIVE TEXT HARDCOPY
(0903-3 ASSAULT ON PEACE OFFICER)**

ATTORNEYS EYES ONLY

***** END OF HARDCOPY *****

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALYSSA SANDERS,

Plaintiff,

v.

CITY OF AUSTIN and ERIC HEIM,

Defendants.

§
§
§
§
§
§
§
§
§

CAUSE OF ACTION:
1:22-cv-314

**PLAINTIFF'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION FROM DEFENDANT CITY OF AUSTIN**

Exhibit 31

**IA Investigative Summary of John Siegel (COA-General
Protest.015747)**

FILED UNDER SEAL

AUSTIN POLICE DEPARTMENT
CLASS A ADMINISTRATIVE INVESTIGATION
CASE SUMMARY¹

To Brian Manley #2184
Chief of Police

Via Jerry Bauzon #2557
Commander, Professional Standards

Robert Miljenovich #4812
Lieutenant, Internal Affairs

From Matthew Wright #4418
Lieutenant, Internal Affairs

Date 10/9/20

Subject **IA Case 2020-1100: Officer John Siegel #8142**
(180 Day Deadline 11/26/2020)

Introduction

On May 30, 2020, Officer John Siegel #8142, during his normal duty hours, responded to an Officer Needs Assistance (ONA) call regarding protest related events in the downtown area of Austin, TX. On that same date, Nicole Underwood was participating in protest related events in the downtown area of Austin, TX. During the events, Underwood was struck by a less-lethal bean bag round that was deployed by Officer Siegel. The round penetrated Miss Underwood's chest cavity and she was transported to Dell Seton Medical Center for treatment. On June 12, 2020, the Austin Police Department (APD) Special Investigations Unit (SIU) was notified of this incident and subsequently began an investigation into the incident. The SIU submitted an Internal Affairs Referral memorandum through the APD Investigations 1 chain-of-command, which was concurred and signed by Chief of Staff Troy Gay #2174.

¹ This summary is primarily intended to facilitate a convenient familiarization with, and overview of, the incident being investigated. This summary is not intended to replace a comprehensive review of all the relevant information contained in the case file. The inclusion or omission of a certain fact or detail from within this summary should not be the prevailing consideration when determining its relevance or importance. *Note: Minor edits and formatting changes were made to transcript quotes throughout this document for the sake of clarity if/when necessary & appropriate (e.g. superfluous "ums/uhs" omitted)*

PD 0093 Rev July 2012

Investigative Summary – IA Case 2020-1100 Officer John Siegel #8142

180 Deadline 11/26/2020

Allegation and Associated Policies

On June 25, 2020, Chief of Staff Troy Gay #2174 forwarded an Internal Affairs Referral memorandum² from the Investigations 1 chain-of-command to APD Internal Affairs (IA), requesting IA initiate an investigation into Officer Siegel's conduct in order to determine if the conduct complied with Department General Orders, Civil Service Rules, Municipal Service Rules, and State Law.

The General Orders associated with this investigation are:

- 200.2 De-escalation of Potential Force Encounters
- 200.3.1 Determining the Objective Reasonableness of Force
- 206.5 Kinetic Energy Projectiles

Investigative Actions

IA reviewed the following items related to this investigation:

- Officer Siegel's TCOLE History and APD Training Records
- Officer Siegel's IA History
- Body Worn Camera (BWC) for 20-1510503 and 20-5022592 (SIU case number)
- Versadex Report and Supplements for 20-1510503 and 20-5022592
- AIR 1 Video on May 30, 2020
- APD High Activity Location Observation (HALO) Video for May 30, 2020
- Video and Photos from GoFundMe Page for Nicole Underwood

In addition to reviewing the above listed items, IA interviewed:

- Corporal Javier Bustos #4030
- Officer John Siegel #8142

IA utilized the following interviews from the SIU case file and investigation:

- Officer Bryan McCulloch #8124
- Officer John Ricker #6773

Background

APD officers began working protest-related events on Friday, May 29, 2020. These protests stemmed from allegations of systemic racism and excessive use-of-force against people of color by police officers across the country. During the course of events that took place, primarily between May 29 and June 1, 2020, numerous APD officers were

² IA Case #2020-1100 Tab A-Complaint Information
PD 0093 Rev July 2012

involved in multiple R2R incidents. Each day, as events continued, officers adjusted tactics to allow peaceful protests to continue, while attempting to manage and disperse violent crowds and riots.

Texas Penal Code 42.02 defines a riot as:

- the assemblage of seven or more persons resulting in conduct which:
 - (1) creates an immediate danger of damage to property or injury to persons;
 - (2) substantially obstructs law enforcement or other governmental functions or services; or
 - (3) by force, threat of force, or physical action deprives any person of a legal right or disturbs any person in the enjoyment of a legal right.

SIU Investigation

Officer Siegel and Nicole Underwood both chose not to interview with APD SIU.

Police Witnesses

Officer Brian McCulloch #8124

SIU interviewed Officer McCulloch on June 18, 2020.

Officer McCulloch did not witness Officer Siegel's less-lethal deployment that struck Ms. Underwood. However, he was on the same line and standing next to Officer Siegel when the deployment occurred. Officer McCulloch could only speak to his own less-lethal deployments. He stated:

"I was dealing with, we were dealing with a lot of stuff in different, we were scanning different ways and, I think my attention was more to the south on one of the agitated suspects than on the person when the subject was in the video."

(...)

"...at that point, I was kind a going up and down the line I had a less lethal...shotgun so there were times where I could go up and down the line to get a shot without, because I was very selective on all my shots, I didn't want to shoot 'em through the crowd and hit anybody that didn't – didn't need to get hit...most people were focusing on were all the rock throwers, bottle throwers. Some people were throwing, smoke bombs and all kinda other projectiles at us. So as far as who I was online with, I was kind a up and down the entire line the whole time, so."³

³ IA Case #2020-1100 – Tab D-Police Witness – McCulloch SIU Interview – McCulloch SIU Interview-Transcript lines 181-202
PD 0093 Rev July 2012

Officer John Ricker #6773

SIU interviewed Officer Ricker on June 24, 2020.

Officer Ricker stated he was dispatched to downtown Austin on an ONA call, referencing officers being surrounded by protesters. Officer Ricker stated when he arrived on-scene he coordinated with a Motors officer and a George (DTAC) dayshift officer and was instructed to assist SRT officers on the bridge of N IH-35 in the 800 block. Officer Ricker recalled seeing water bottles, rocks, and other projectiles being thrown at officers by protesters. Officer Ricker stated at one point, while he was standing on the southbound proper of N IH-35, he expected protesters to try and breach the line of officers and try to get onto the main lanes of IH-35.

SIU Detective Shelly Holmstrom pointed out Ms. Underwood to Officer Ricker and asked what he remembered about her. Officer Ricker stated he remembered her being with a group of people, then he spoke about a possible tactic protesters would utilize:

“I remember, the way they would gain ground is that it seemed like one of them would come up and they – the one would get pepper sprayed. And then they would all, gather around that one individual. And, they would – one would start putting water on their head. But at the same time I also – and I – I can’t think back to where I – I’ve – I’ve heard this from but at the same time it seemed like, you know, when they get in a group like that you have to watch out for, you know, what are they planning to do? Like, are they going to pull out something to throw at you? You know, are they gonna, you know, you just don’t know. And I – from what I remember that’s when I remember seeing her coming into this, group...and being, like – there was, four or five of them, huddled around, one of the others that had gotten pepper sprayed.”⁴

Officer Ricker acknowledged he remembered seeing Ms. Underwood moving forward, but then he stepped back away from the line of officers near the IH-35 barrier because projectiles were being thrown at officers again. Officer Ricker recalled seeing the huddle of people, followed by less-lethal shotgun deployments toward the huddle while he had stepped back, then he stepped forward and was unable to see who was impacted by the less-lethal deployment. Officer Ricker did not recall any other behavior exhibited by Ms. Underwood other than walking up toward the huddle of people. He stated she was not someone that clearly stuck out in his mind.

SIU had the following exchange with Officer Ricker:

BRIEGEL: *So you mentioned that you saw the officer with the less lethal and he seemed to be aiming toward that group?*

RICKER: *Mm-hm.*

BRIEGEL: *...did you see any indication why he would be aiming that way or what – what – what’d you think that he was shooting in that direction?*

⁴ IA Case #2020-1100 – Tab D-Police Witness – Ricker SIU Interview – Ricker SIU Interview-Transcript lines 364-378
PD 0093 Rev July 2012

RICKER:

I felt like, I mean, I felt like the – I knew people were throwing stuff at us... You know, I knew we were getting hit with stuff. I could hear it. I could hear it hitting the cars. And, I guess my mindset was, you know, when I see the officers pointing, you know, their less lethals, you know, they – obviously, someone that's – they see someone who's a threat, that's throwing something... I felt like when that group was huddled like that that they wanted to disperse – they wanted to break – break them up... because of what, you know, what might've happened... so that was my immediate mindset when I saw them deploying, into that – into that huddle.⁵

Officer Ricker stated he believed the implied direction and goal for officers, while standing on IH-35, was to keep protesters off the highway. Officer Ricker stated he believed officers were outnumbered that day and were not prepared to handle the situation they faced. He stated in his 10 plus years with the department, this was the most chaotic event he's been involved in.

“...I trained, an officer. She works David nights and she told me that she had had a Molotov cocktail thrown at her... one of the night, like that first week of protests. And I just, you know, I told her – I said, you know, ‘You're experiencing something, you know, veteran officers in this department have never even seen.’ And I know that's – it's good to have that experience but at the same time, you know, I didn't tell her but it scared the hell out of me.⁶

IA Investigation

Timeline

After a review of the available video evidence, the following is a short timeline of the incident leading up to the time Ms. Underwood was struck and transported to the hospital.

- **16:30:08 (CST)** – Officer Siegel stepped back from the line of officers on the southbound lanes of IH-35 proper and reloaded his less-lethal shotgun. (Officer Siegel BWC elapsed time of 4:53)
- **16:30:18 (CST)** – A group of protesters approached a man that was pepper-sprayed, who sat on the embankment in front of officers on the southbound lanes of IH-35 proper, and gave him water to pour on his face. (AIR1 video elapsed time of 3:49)
- **16:30:28 (CST)** – Miss Underwood can be seen to the southwest of the group of huddled protesters, on the embankment, where she stood next an unknown male. (AIR1 Video elapsed time of 3:59)
- **16:30:34 (CST)** – The group of protesters huddled around the male pepper-

⁵ IA Case #2020-1100 – Tab D-Police Witness – Ricker SIU Interview – Ricker SIU Interview-Transcript lines 566-596

⁶ IA Case #2020-1100 – Tab D-Police Witness – Ricker SIU Interview – Ricker SIU Interview-Transcript lines 776-782

PD 0093 Rev July 2012

Investigative Summary – IA Case 2020-1100 Officer John Siegel #8142

180 Deadline 11/26/2020

- sprayed assisted him down the embankment toward the southbound frontage of IH-35. (Officer Rast BWC elapsed time of 39:13)
- **16:30:47 (CST)** – Officer Siegel walked back up to the line of officers and dry-fired his less-lethal shotgun. Officer Siegel racked the less-lethal shotgun. (Officer Siegel BWC elapsed time of 6:21)
 - **16:30:48 (CST)** – Miss Underwood can be seen on a line of protesters. She is the furthest south and stood to the west of a male with a dark shirt and blue jeans. (AIR1 video elapsed time of 4:16) Officer Siegel fired a less-lethal round, striking Miss Underwood in her torso. (Officer Siegel BWC elapsed time of 6:22)
 - **16:30:49 (CST)** – Miss Underwood fell to the ground. Officer Siegel racked his shotgun a second time, and deployed his shotgun a second time, striking the unknown male next to Miss Underwood. (Officer Siegel BWC elapsed time of 6:23-6:24)
 - **16:30:50 (CST)** – Miss Underwood slid down the embankment on her buttocks and feet, while a crowd gathered around to assist her. (AIR1 Video elapsed time of 4:39). She is no longer observed on video after this time.
 - **16:35:01** – Corporal Bustos spoke with Officer Siegel about his target selection for less-lethal deployments and “*weapons discipline*” (Officer Siegel BWC elapsed time of 10:35)
 - **16:37:28 (CST)** – Corporal Bustos sought clarification from Sergeant Eric Cleveland #5145 regarding rules of engagement for less-lethal shotgun deployment. Sergeant Cleveland told Corporal Bustos that less-lethal shotguns could be deployed against individuals throwing projectiles at officers. (Corporal Bustos BWC elapsed time of 9:29 and Sergeant Cleveland’s BWC elapsed time of 19:38)
 - **16:38:45 (CST)** – Austin Travis County Emergency Medical Services (ATCEMS) was contacted and responded to the scene to treat Ms. Underwood. She was picked up at the Shell Gas Station in the 800 block of E 7th St.⁷
 - **17:03:20 (CST)** – Miss Underwood was transported by ATCEMS to Dell Seton Medical Center where she was treated for her injury.⁸

*****Investigator’s Note***** *The timestamp for the BWC is five hours ahead of the actual time the incidents occurred. The AIR1 video timestamp is approximately one to two seconds ahead of the BWC timestamps.*

Police Witness

Corporal Javier Bustos #4030

IA interviewed Corporal Javier Bustos #4030 on September 22, 2020.

Corporal Bustos stated, on the date of this incident, he was the acting sergeant over his shift (B100s) when they were called to respond to an ONA at the 800 block of N IH-35

⁷ IA Case #2020-1100 Tab H-SIU Case File – 8-Evidence – EMS Incident Detail Report

⁸ IA Case #2020-1100 Tab H-SIU Case File – 8-Evidence – EMS Incident Detail Report

PD 0093 Rev July 2012

Investigative Summary – IA Case 2020-1100 Officer John Siegel #8142

180 Deadline 11/26/2020

Southbound proper. Upon arrival at the location, he coordinated with other APD officers and Texas Department of Public Safety (DPS) troopers. Corporal Bustos stated he was not the only supervisor on IH-35 at that time, but he could not recall who the other supervisors were nor their specific rank. At one point, Corporal Bustos stated he was unclear about the rules of engagement, specifically regarding less-lethal shotguns. IA had the following exchange with Corporal Bustos:

WRIGHT: ... but why were you trying to gain clarification?
BUSTOS: *Well when I saw the officers deploying their shotguns it wasn't something that I would normally think of deploying a shotgun in a patrol function. I - normally when we have less lethal shotguns out we're in a - most likely a crisis situation where we have somebody who's possibly armed with a knife and we're gonna deploy that less lethal for the safety of not only that person but for the officers...it was a chaotic situation and there was a lot of l- office s using their less lethal in the manner that - as I said before, I've never been involved in any kind of training whatsoever so it's, a moment in time for me where I'm trying to think okay, I know less lethal they use a certain way in a normal patrol function when we have incident. This is something that we've never encountered before. This is something different. Is this something that's part of - of - of SRT training that I know nothing about? So d I definitely wanted to make sure I had more knowledge because this was unfolding rapidly, it was live, and it's something that I've never encountered in 21 years of APD. I - I was a part of the riots when they happened for Mardi Gras in the early 2000s but even that was different. So this was something unique that I've never encountered in my career, and reminiscent of to when I was in the military, so.*

WRIGHT: Do you recall telling officers to hold their fire?
BUSTOS: *I re- recall telling, saying that. Yes, I do because there was so- instances later where I saw w- individuals were coming up the embankment towards I-35 that they weren't armed, they weren't posing a threat as f- as I perceived a threat, and I didn't think that deploying a less lethal would have been proper.*

WRIGHT: Is it possible that the officers perceived something different from what you saw?
BUSTOS: *Definitely, 'cause you talking about individual officers, individual human beings, individuals perceptions of what danger levels are to themselves as - as - compared to what my danger threshold is so that's always possible. Everybody's gonna see something and they're gonna take it for how they perceive it differently.⁹*

⁹ IA Case #2020-1100 Tab D-Witness Officers – Bustos IA Interview – IAD – Bustos IA Interview-Transcript lines 270-310
PD 0093 Rev July 2012

Corporal Bustos stated he asked Officer Siegel about the rules of engagement because he wanted to know who he (Officer Siegel) was targeting. Corporal Bustos did not specifically recall what he asked Officer Siegel, but he recalled not being comfortable with Officer Siegel's response. The following is the exchange between Corporal Bustos and Officer Siegel, as seen on Officer Siegel's BWC:

BUSTOS: *What targets are you identifying when you were deploying?*
SIEGEL: *What's that?*
BUSTOS: *What targets were you identifying when you were deploying the less-lethal?*
SIEGEL: *They've all, they run away when I shoot 'em.*
BUSTOS: *Okay.*
SIEGEL: *I don't see any right now.*
BUSTOS: *Okay. Just remember. Just, we – weapons discipline. Okay?*
SIEGEL: *Yes, sir.¹⁰*

Corporal Bustos stated he clarified with a sergeant on IH-35 at the time, whom IA identified through BWC as Sergeant Eric Cleveland #5145, what the rules of engagement were for officers deploying less-lethal shotguns. Sergeant Cleveland clarified with Corporal Bustos that officers could target and deploy less-lethal munitions at individuals observed throwing objects at officers.¹¹ Corporal Bustos stated he re-affirmed this with Officer Siegel to ensure he (Officer Siegel) was clear on what the rules of engagement were, per the sergeant's direction.¹² IA had the following exchange with Corporal Bustos:

WRIGHT: *... there was a reason that you asked Officer Siegel about the rules of engagement. What was that reason?*
BUSTOS: *Basically the reason was I wanted to make sure he was not using the less lethal in an improper fashion.*
WRIGHT: *Did you witness anything that he did that you may have felt was improper?*
BUSTOS: *What I saw was initially, I heard the less lethal shotgun go off. When I turned and saw I saw him impact I believe it was a White male. I didn't see what the White male was doing afterwards but I did see him get impacted and I was trying to understand why he got impacted. Now I don't know what he saw prior to that and I obviously didn't see it...but when I saw it happen it just didn't look like it cou- was possibly proper to me so that's why I was concerned. I was concerned for the fact that, I didn't want anybody using excessive force and I also wanted to make sure that an officer wasn't*

¹⁰ Officer Siegel's BWC recorded on May 30, 2020 4:24PM, elapsed time 10:32-10:49 (transcribed by IA) approximately 4:35pm

¹¹ Corporal Bustos' BWC recorded on May 30, 2020 4:28PM, elapsed time 9:30-9:43 approximately 4:37pm

¹² Officer Siegel's BWC recorded on May 30, 2020 4:24PM, elapsed time 13:23-13:27 and Corporal Bustos' BWC recorded on May 30, 2020 4:28PM, elapsed time 9:51-9:55 approximately 4:37pm

*gonna make a mistake that would - could affect their career.*¹³

Corporal Bustos stated, at the time he witnessed the impact on the white male, he was unsure if the deployment was within the Special Response Team (SRT) Standard Operating Procedures (SOPs), which is the reason he sought clarification from Sergeant Cleveland. Corporal Bustos stated he and officers encountered aggressive resistance from the individuals participating in the protests. He stated that the less-lethal shotgun was an appropriate response to the level of resistance they encountered.

****Investigator's Note*** Throughout the interview, Corporal Bustos referred to Officer Siegel, and Sergeant Cleveland as members of SRT deployed at his location. Neither Officer Siegel nor Sergeant Cleveland were working in an SRT capacity on this date.*

Subject Officer Interview

Officer John Siegel #8142

IA interviewed Officer Siegel on September 29, 2020. Officer Siegel has been an officer with APD for approximately four years. Prior to joining the department, Officer Siegel was in the United States Marine Corps for approximately six and a half years and was deployed to Afghanistan in 2010/2011 where he experienced combat.

Officer Siegel stated that, on the date of this incident, he showed up for his normal patrol shift which began at 1:00pm. He stated he arrived at the APD North Substation (NSUB) at approximately 12:30pm and remembered hearing the NSUB Property Control Office (PCO) employee on the phone discussing resupplying officers that were downtown working protest events with less-lethal shotguns and less-lethal rounds. Officer Siegel then stated he went into the locker room where another officer was changing clothes and preparing to go downtown for an ONA call on IH-35 downtown. Officer Siegel recalled hearing the ONA come out over the officer's radio. Officer Siegel stated, "...I left the north sub a little earlier than I normally would have for patrol duties. And I went straight down to the officer needs assistance on the highway."¹⁴

Officer Siegel stated there was no guidance given for how to get downtown nor on where responding officers were to meet. He stated he located the officers that needed assistance on the bridge of N IH-35 in front of the APD Main Headquarters. Once downtown, he joined officers on the southbound proper of N IH-35, where they had just cleared the highway of protesters. Officer Siegel was told protesters were trying to get back on the proper and was instructed to assist officers at this location to prevent this from reoccurring. Officer Siegel stated:

¹³ IA Case #2020-1100 Tab D-Witness Officers – Bustos IA Interview – IAD – Bustos IA Interview-Transcript lines 503-523

¹⁴ IA Case #2020-1100 Tab B2 Accused Employee Information – IA Interview – Siegel IA Interview-Transcript lines 378-380
PD 0093 Rev July 2012

“...we were instructed multiple times over the air and in person by supervisors. I won't be able - I - I can't name them...most of the- most of 'em, because I - I don't recognize them or I just don't recall...but we were given instructions, like the things like to push 'em back off the highway and clear the highway...we were also given a lot of instructions for those of us who had the less lethal shotguns to deploy the rounds at people throwing objects at us. And we were given that instruction several times.”¹⁵

Officer Siegel stated he did not receive different guidance regarding less-lethal deployment on this day. He stated he recalled from his academy training that the effective ranges of the less-lethal shotgun were a minimum effective range of 20 feet, and a maximum effective range between 60 and 70 feet. Officer Siegel stated he recalled being trained that if he was going to utilize the less-lethal shotgun within 20 feet to use caution. He stated he did qualify with the less-lethal shotgun in early 2020.

When asked about his deployment that struck Miss Underwood, Officer Siegel stated he did not recall that specific deployment. He stated he recalled firing the less-lethal shotgun that day, but did not recall the specific deployment that struck Miss Underwood. IA had the following exchange with Officer Siegel:

SIEGEL: *...well, I was informed that I possibly, deployed a less lethal shotgun round at a female. It was, it was pointed out to me who the female was that we're speaking about. So in the video, having my eye on her, watching her, it a- it appears that I fire a less lethal shotgun. And it appears that she is struck by something. And then, kind of like bent over, crumples over, but...*

WRIGHT: *You...*

SIEGEL: *...it's hard to tell.*

WRIGHT: *...you say it appears that you fired the less lethal shotgun. Did you fire the shotgun?*

SIEGEL: *That's what, from the video, it appears that way. I don't recall though.*

WRIGHT: *So you don't recall firing the shotgun at all?*

SIEGEL: *Yes, that day, I do recall firing the shotgun.*

WRIGHT: *But not this specific deployment?*

SIEGEL: *Correct.*

WRIGHT: *Okay...and you said, it appears that she's struck by something.*

SIEGEL: *Right.*

WRIGHT: *What does that mean?*

SIEGEL: *...just the way she reacted, the way she kinda like held her chest and then crumpled over, it looks like she got hit by something.*

WRIGHT: *Okay. What do you think she was hit by?*

¹⁵ IA Case #2020-1100 Tab B2 Accused Employee Information – IA Interview – Siegel IA Interview-Transcript lines 636-642
PD 0093 Rev July 2012

SIEGEL: ...from what I was told, she was hit by a less lethal round.¹⁶

At this point in the interview, IA showed Officer Siegel his BWC for this incident.¹⁷ After watching his BWC, Officer Siegel agreed that it appeared Miss Underwood was struck by his less-lethal deployment. When asked who he had been targeting during that deployment, Officer Siegel responded:

*"I was - that day, I was engaging, deploying less lethal rounds at those who were throwing objects, and that only. So whoever I was targeting would have been someone who was throwing objects."*¹⁸

Officer Siegel stated that there were multiple people on whom he deployed his less lethal at that day, and that they were different people each time.

At this point in the interview, IA showed Officer Siegel the AIR1 video of the incident. Officer Siegel pointed out a subject wearing a white shirt and red head-wrap that threw a projectile in their direction. Officer Siegel also identified this same individual to IA while viewing Officer Ricker's BWC, at the approximate time of his deployment. IA had the following exchange with Officer Siegel

WRIGHT: *Okay. So at the time you deployed, you believed you were targeting the subject with the red scarf? Or the... red - the red headband or whatever he had in his hand.*

SIEGEL: *Only because of what the video shows...it's not from recollection.*

WRIGHT: *Okay. All right...and the video showed him throwing an item.*

SIEGEL: *That's what appears, sir, yeah.*

WRIGHT: *Okay. Did you self-identify him or did - did someone point him out to you?*

SIEGEL: *I don't recall.*

WRIGHT: *So if you were, deploying or - so let me - let me ask you this question. Were you deploying on the guy with the red head scarf?*

SIEGEL: *I don't recall.*¹⁹

IA pointed out to Officer Siegel that, according to the timestamp of the AIR1 video provided, the subject he identified throwing an object in their direction (red head-wrap) threw the projectile at approximately 16:30:43 (CST).²⁰ Officer Siegel agreed that his deployment occurred at approximately 16:30:50 (CST), approximately 7 seconds after the subject he identified threw the projectile in their direction.²¹ IA also pointed out to Officer Siegel, that on his BWC, approximately 7 seconds prior his deployment, he appears to be turned slightly away from the crowd, receiving additional less-lethal rounds

¹⁶ IA Case #2020-1100 Tab B2 Accused Employee Information – IA Interview – Siegel IA Interview-Transcript lines 941-976

¹⁷ IA Case #2020-1100 Tab B2 Accused Employee Information – IA Interview – Siegel IA Interview-Transcript lines 978-982

¹⁸ IA Case #2020-1100 Tab B2 Accused Employee Information – IA Interview – Siegel IA Interview-Transcript lines 1062-1068

¹⁹ IA Case #2020-1100 Tab B2 Accused Employee Information – IA Interview – Siegel IA Interview-Transcript lines 1364-1384

²⁰ IA Case #2020-1100 Tab E Physical Evidence – AIR1 Video (IA Case #2020-1100) elapsed time of 4:12

²¹ IA Case #2020-1100 Tab E Physical Evidence – AIR1 Video (IA Case #2020-1100) elapsed time of 4:19

from another unidentified officer.^{22 23} IA had the following exchange with Officer Siegel:

WRIGHT: ... it's possible that you saw the guy throwing but you're kinda turning away when that guy's throwing that water bottle. So is it possible that maybe you didn't even see that water bottle being thrown also?

SIEGEL: ***I wouldn't engage something that I didn't see.***

WRIGHT: Okay.

SIEGEL: ***I - I only engaged, what I personally witnessed myself.***

WRIGHT: All right.

SIEGEL: ***And even if I was reaching for ammo I was most likely still - I always had my eye on the crowd even if I looked a-, ya know, to see the box I was - coulda still been looking out at the crowd.***²⁴

Officer Siegel stated it appeared another officer was responding to what he saw as well.

*****Investigator's Note***** *The officer identified by Officer Siegel was Officer McCulloch, who was in front of Officer Siegel just prior to his deployment. Officer McCulloch was telling the crowd of people in front of him to "Move, get out of the way." This was the same crowd of people Miss Underwood was standing within.*

IA had the following exchanges with Officer Siegel:

WRIGHT: Okay. Right. So you're deploying - it would appear that you're deploying at him through a crowd of people.

SIEGEL: ***That's possible. I - again, I don't even know if that's who I'm engaging at this point.***

WRIGHT: Okay. So you - i- you might have been engaging Miss Underwood.

SIEGEL: ***I don't know who I'm aiming at, sir.***

WRIGHT: Right and that's what's I'm saying is that if you can't tell me who you're engaging - like, you're saying, "I don't even know if I was aiming at the red scarf guy..."

SIEGEL: ***Correct.***

WRIGHT: ...it's possible you could have been aiming at the female that you struck.

SIEGEL: ***If I saw her throw an item then that would be - that's possible.***

WRIGHT: Okay. Do you recall if you saw her throw anything?

SIEGEL: ***I don't recall.***²⁵

(...)

WRIGHT: So we're gonna ask you about, determining whether or not your deployment would have been reasonable under the circumstances,

²² Officer Siegel's BWC recorded on May 30, 2020 at 4:24pm, elapsed time of 6:16

²³ Sergeant Cleveland's BWC recorded on May 30, 2020 at 4:17pm, elapsed time of 12:51

²⁴ IA Case #2020-1100 Tab B2 Accused Employee Information - IA Interview - Siegel IA Interview-Transcript lines 1989-2004

²⁵ IA Case #2020-1100 Tab B2 Accused Employee Information - IA Interview - Siegel IA Interview-Transcript lines 2049-2071

PD 0093 Rev July 2012

Investigative Summary - IA Case 2020-1100 Officer John Siegel #8142

180 Deadline 11/26/2020

right?...so it's gonna be kinda difficult if you can't recall, what happened...because, then at that point you're really saying that you - you can't tell us whether it - it might have been reasonable, within policy, and so forth. So, do you think that, I mean do you - do you - do you think your deployment at that time, fell within policy?

SIEGEL: ***I only deployed less lethal rounds in response to someone throwing a object at me so, yes, that would be within policy.***

WRIGHT: *Okay. This specific incident? Is that what you're talking about?*

SIEGEL: ***I - no, I don't recall this incident so i- I - I fired the less lethal shotgun so it was - it woulda been in response to someone throwing an item m- at me or us, so that still would be within policy***

WRIGHT: *But do ya hear where I'm coming at? I mean when you're saying that you can't recall it's - you - can you really then say tha it was reasonable and within policy if you can't really r call?*

SIEGEL: ***Well I recall that I only fired my (leth) l- (lis) lethal shotgun in response to someone throwing an item, so then I can tell you that me firing the less lethal shotgun in response to someone throwing an item that, yes, that is within policy.***²⁶

Officer Siegel stated he did not recall any of the events regarding the incident in question. He stated he could only speak as to what he saw on the videos provided by IA. IA asked Officer Siegel if he believed he violated APD General Orders:

- 200.2 De-Escalation of Potential Force Encounters
- 200.3.1 Determining the Objective Reasonableness of Force
- 206.5 Kinetic Energy Projectil s

Officer Siegel stated he believed he did not violate any of the above APD General Orders.

Summary of Facts

- On May 30, 2020, Officer John Siegel #8142 responded to an Officer Needs Assistance call in the downtown area of Austin, TX, at the 800 block of N IH-35 Southbound proper.
- On May 30, 2020, Miss Nicole Underwood was participating in protest related events in the downtown area of Austin, TX.
- At approximately 4:30pm (CST) Officer Siegel deployed two less-lethal rounds from his location on the Southbound proper on N IH-35, in the direction and area Miss Underwood was standing, on the concrete embankment separating Southbound IH-35 proper from the Southbound IH-35 service road. Miss Underwood was struck by a less-lethal round that penetrated her chest cavity and

²⁶ IA Case #2020-1100 Tab B2 Accused Employee Information – IA Interview – Siegel IA Interview-Transcript lines 2322-2350 PD 0093 Rev July 2012

- caused her significant injury.
- Miss Underwood was transported and treated at Dell Seton Medical Center for her injury.

Digitally signed by Matthew Wright
Date: 2020.10.15 12:40 51
-05'00'

Matthew Wright
Lieutenant Matthew Wright #4418

10/15/2020
Date

Digitally signed by Robert Miljenovich
Date: 2020.10.16 12:50 01
-05'00'

Robert Miljenovich
Lieutenant Robert Miljenovich #4812

10/16/2020
Date

Digitally signed by Jerry Bauzon
Date: 2020.10.16 16 33:54
-05'00'

Jerry Bauzon
Commander Jerry Bauzon #2557

10/16/2020
Date

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALYSSA SANDERS,

Plaintiff,

v.

CITY OF AUSTIN and ERIC HEIM,

Defendants.

§
§
§
§
§
§
§
§

CAUSE OF ACTION:
1:22-cv-314

**PLAINTIFF'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION FROM DEFENDANT CITY OF AUSTIN**

Exhibit 32

**IA Investigative Summary of Todd Gilbertson and Michael
Crossen (COA-General Protest.025792)**

FILED UNDER SEAL

AUSTIN POLICE DEPARTMENT
CLASS A ADMINISTRATIVE INVESTIGATION
CASE SUMMARY¹

To Brian Manley #2184
Chief of Police

Via Jerry Bauzon #2557
Commander, Professional Standards

Shauna Griffin # 4670
Lieutenant, Internal Affairs

From Patrick Eastlick #4401
Sergeant, Internal Affairs

Date November 21, 2020

Subject **IAD Case #2020-1649**
Officer Todd Gilbertson #7066
Officer Michael Crossen #6767
(180-Day Deadline: 11/27/2020)

Background

Austin Police Department (APD) officers began working protest-related events on Friday, May 29, 2020. These protests stemmed from allegations of systemic racism and excessive use-of-force against people of color by police officers across the country. During the course of events that took place primarily between May 29 and June 1, 2020, numerous APD officers were involved in multiple Response to Resistance (R2R) incidents. Each day, as events continued, officers adjusted tactics to allow for peaceful protests while attempting to manage and disperse violent crowds and riots.

Introduction

On May 31, 2020, APD Officers Todd Gilbertson and Michael Crossen were on duty as members of the Mobile Field Force (MFF) and deployed to the area of the 900 block N IH 35 proper, in regards to an 18 wheeler being surrounded during a protest related event.

¹ This summary is primarily intended to facilitate a convenient familiarization with, and overview of, the incident being investigated. This summary is not intended to replace a comprehensive review of all the relevant information contained in the case file. The inclusion or omission of a certain fact or detail from within this summary should not be the prevailing consideration when determining its relevance or importance. **Note: Minor edits and formatting changes were made to transcript quotes throughout this document for the sake of clarity if/when necessary & appropriate (e.g. superfluous "ums/uhs" omitted)**

PD 0093 Rev July 2012

Investigative Summary – IA Case 2020-1649 Officer T. Gilbertson #7066 & M. Crossen #6767
180 Deadline 11/27/2020

During this assignment, Officer Gilbertson and Officer Crossen were each equipped with a 12 gauge less lethal weapon system. While officers were on I-35 proper some of the protestors began throwing objects at officers. In response, Officer Gilbertson and Officer Crossen deployed their less lethal munitions and struck a protestor, later identified as Taylor Ellis.

Allegation and Associated Policies

On November 1, 2020, APD Internal Affairs (IA) received a Notice of Formal Complaint² from the Office of the Police Oversight (OPO) requesting that Internal Affairs (IA) initiate an administrative investigation to determine if any violation of Department Policy, Civil Service rules, or State Law had been committed by Officer Gilbertson and/or Officer Crossen. The complaint read:

Complainant, Mr. Ellis, filed a complaint with the OPO on 10/26/2020 alleging he was involved with protest activity on either 05/30 or 05/31 and while protesting with both of his hands in the air he was shot by APD with rubber bullets. Complainant reports he still has injury visible to his body.³

IA reviewed the following APD General Orders⁴ in relation to these allegations:

- APD Policy 200.2 De-Escalation of Potential Force Encounters
- APD Policy 200.2.1 Assessment and De-Escalation
- APD Policy 200.3 Response to Resistance
- APD Policy 200.3.1 Determining the Objective Reasonableness of Force
- APD Policy 206.5.5 Shot Placement and Deployment

Evidence and Documentation:

The following evidence and documentation were reviewed by IA and is located in the IA digital case file:

- Officer Gilbertson's and Crossen's IA History, Texas Commission on Law Enforcement (TCOLE) training records, 2020 Annual TCOLE Qualification/Certification Course Commendations, and 2019 Evaluations
- SRT Roster
- Three (3) Body Worn Camera (BWC) footage related to the incident for APD Incident number 20-1520382
- APD Incident report 20-1520382
- Complaint intake phone call between the Officer of the Police Oversight and Taylor Ellis
- Facebook KUT Austin video

APD Directives regarding incident documentation

² Tab A – NFC 2020-1649

³ Tab A – NFC 2020-1649

⁴ TAB A2 – Applicable Policies
PD 0093 Rev July 2012

Investigative Summary – IA Case 2020-1649 Officer T. Gilbertson #7066 & M. Crossen #6767
180 Deadline 11/27/2020

During the protest assignments, officers were initially instructed to change the manner in which R2R incidents would be documented from what policy dictated (see emails⁵). On Saturday, May 30, 2020, all officers were directed to write a supplement to document the R2R but not complete a details page, deviating from policy requirements to do so. The specific guidance all officers received was:

“If you use force during the response to the protests, you must write a supplement to the best of your knowledge detailing the type of force used, number of times different force was used, and reasons why but you do not need to complete a details page. This is in effect for all uses of force related to the protest except for level 1 force incidents.

Authority APD DOC.”

On June 11, 2020, the following updated guidance was given to all APD Commanders, Lieutenants, and Sergeants:

“Effective immediately, all incidents of response to resistance are to be reported and investigated per *GO 211 Response to Resistance Inquiry, Reporting, and Review*.

Authority APD DOC”

On June 23rd, Assistant Chief Robin Henderson sent an email to all APD officers to clarify R2R reporting requirements. The email began:

“I know a lot of different information has come out on force related supplements and documentation related to the recent 2020 protests. This email is to provide clear instruction and clarity on the matter.”

Assistant Chief Henderson’s email defined the expectations for all officers involved in an R2R. Those expectations included, but were not limited to, writing an additional supplement to include pertinent details and completing a details page for all R2R’s no later than July 1, 2020.

IA Interviewed

- Mr. Taylor Ellis
- Officer Todd Gilbertson
- Officer Michael Crossen
- Officer Matt Jones

Complainant Interview

⁵ Tab G – R2R emails

PD 0093 Rev July 2012

Investigative Summary – IA Case 2020-1649 Officer T. Gilbertson #7066 & M. Crossen #6767

180 Deadline 11/27/2020

Taylor Ellis

IA conducted a phone interview with Mr. Ellis on November 10, 2020. During the interview, Mr. Ellis advised he was observing the demonstration and saw individuals going onto I-35. Mr. Ellis further explained:

I observed at one junction on the highway, um, group of officers clustered together, um, backs kind of to each other in a bit of a circle. They had the pump shotguns with rubber bullets it seemed for the most part and face shields, sort of riot gear, um, you know, being rather close and in the midst of folks, uh, both on the hill and on the highway. Um, it's from my vantage point that I saw the police units start to step backwards and retreat to go off the highway itself, down the hill back towards APD Headquarters. And it was as they were starting this process that folks to the right of me on the northbound lanes of I-35, um, continued to yell at them. And then I believe I saw a couple water bottles being thrown at them.⁶

Mr. Ellis further explained the officers were on the southbound proper of I-35 in the outside lane, shoulder, and in the median on the other side of the railing. The protesters were located to the south of the officers standing on the north and south bound proper of I-35. Mr. Ellis advised when he observed the bottles being thrown at the officers, he began to walk north in the inside lane of I-35 southbound proper with his hands up and screaming, "No, no, no, no."⁷ Mr. Ellis explained he was attempting to quell any reaction from the officers and the protestors. Mr. Ellis described the officers were to his left and north of him.

Mr. Ellis described as he was walking:

I looked over to my right, could see apartment buildings there along the hill there on the east side of 35 roughly as well as, um, the protestors that were on that side. And then my body quickly twisted to the left, felt no control over that, and then, um, saw police officers, hat unit that I had just seen, um, a bit of a cloudy-ish puff of smoke, nothing too large like a fog but a bit emanating from that direction. And then after getting spun immediately hit the deck of the highway, um, and was looking up at the - the sky.⁸

Mr. Ellis described being struck by two less lethal rounds, which stuck him within a second or two of each other. Mr. Ellis later explained the munition were, "shot succinctly, bang,

⁶ Tab C – Taylor Ellis Interview Transcription lines 67-76

⁷ Tab C – Taylor Ellis Interview Transcription lines 103-104

⁸ Tab C – Taylor Ellis Interview Transcription lines 111-117

bang...”⁹ Once Mr. Ellis fell to the ground a group of people surrounded him and began to see if he was injured.

Mr. Ellis described being first struck in the lower left hip and then being struck in the front left shoulder. Mr. Ellis was asked by IA to describe the injuries he sustained from being struck by the less lethal munitions. Mr. Ellis stated, *“it was a lot of yellowish red pus. Um, so I had two clear circles, um, one on the oblique and one on the front left shoulder. You could clearly see a ring, you know, uh, that being the head of the bullet, um, that made a pretty decent sized indent. And then the skin around that was also pretty red, yellowish, like, inflamed right away there.”*¹⁰

After being struck Mr. Ellis described being assisted by an unknown woman to his feet and off the road. He further described being treated by individuals wearing construction vests, who he believed were field medics. Mr. Ellis advised he did not speak with officers about being struck by less lethal munitions.

Mr. Ellis was asked by IA if he was able to describe the officer or officers with less lethal shotguns. He stated, *“All that I can really recall is that I think one or two of them looked to be of average to above average height and maybe, uh, Hispanic origin.”*¹¹

Mr. Ellis was asked by IA if he heard any commands being given by officers before he was struck and he advised he did not. He went on to explain earlier in the day he heard commands of, *“Back up. Move,”*¹² being given by bicycle officers.

IA asked Mr. Ellis if the first time he observed water bottles being thrown was when he was on IH-35. He replied no, and further explained, *“I would say that was the first time in the day I had observed projectiles of some sort being thrown at a time in which the police officers were in retreat.”*¹³

IA asked Mr. Ellis what he was wearing on May 31, 2020. Mr. Ellis advised he was wearing a long sleeve green t-shirt with, *“You are loved,”* printed on the front; basketball shorts, and an unknown color hat.

Mr. Ellis was able to provide a Facebook video link from KUT Austin related to the incident. Mr. Ellis advised the video showed at approximately the 10:52 marker him being struck by the less lethal munition. Mr. Ellis also advised at approximately the 52:16 marker he is seen again with a sling around his left arm, and a bandage. He is walking through the crowd shirtless, wearing a black face mask, and long dark hair. He is also seen with an orange backpack.

⁹ Tab C – Taylor Ellis Interview Transcript line 711

¹⁰ Tab C – Taylor Ellis Interview Transcript lines 819-823

¹¹ Tab C – Taylor Ellis Interview Transcript lines 449-500

¹² Tab C – Taylor Ellis Interview Transcript line 550

¹³ Tab C – Taylor Ellis Interview Transcript lines 579-580

IA requested Mr. Ellis to provide photographs of his injuries at the time of the incident and medical records, which as of this date he has not provided. However, on November 19, 2020, Mr. Ellis came to the IA office to review his transcript and voluntarily allowed IA to photograph his injuries. The injury to his upper left hip area appeared to be a circular bruise. The injury on the front of his left shoulder appeared to be circular, slightly raised, and mildly discolored.¹⁴

Investigation

Facebook KUT Austin

IA reviewed the Facebook KUT Austin video link provided by Mr. Ellis. IA found the incident described by Mr. Ellis began at the 10:16 marker to 11:06 marker. IA also observed Mr. Ellis at the 52:16 marker walking on East 8th Street as he described.

Timeline of Events from KUT Austin video on May 31, 2020:

- 10:16** – APD Officers seen moving from N-IH 35 southbound proper
- 10:17** - Less lethal munition deployed by unknown officer
- 10:19** – Less lethal munition deployed by unknown officer
- 10:20** – Unknown officer deploys OC spray to crowd on N IH 35 southbound proper
- 10:27** – Bottles are being thrown at officers
- 10:32** – Less lethal munition deployed by unknown officer
- 10:38** – APD Officers continuing to back up off of N-IH 35 southbound proper
- 10:46** – Officer Crossen deploys less lethal munition while on the grass median
- 10:52** – Less lethal munition deployed by unknown officer
- 10:53** – Less lethal munition deployed by unknown officer
- 10:55** – Less lethal munition deployed by unknown officer
- 10:56** – Officer Gilbertson seen backing up over the railing and onto the grass median
- 10:59** – Camera pans to subject laying on the ground wearing something orange
- 11:06** – Camera pans back to officer proceeding down the grass median towards the frontage road
- 52:16 - 52:53** - Mr. Ellis seen walking on 8th street with a sling on left arm, bandage on left hip. He has a green shirt over his left shoulder along with an orange backpack. He is wearing dark athletic shorts and a tan baseball cap.

BWC Review

IA identified three (3) BWC videos, belonging to Officer Crossen, Officer Gilbertson, and Officer Jones, that captured the immediate events surrounding Mr. Ellis being struck by the less lethal munitions.

¹⁴ Tab E – Photo of Injuries

PD 0093 Rev July 2012

Investigative Summary – IA Case 2020-1649 Officer T. Gilbertson #7066 & M. Crossen #6767

180 Deadline 11/27/2020

Officer Gilbertson's and Officer Jones's BWC video captured Mr. Ellis standing on N-IH 35 southbound proper with his hands extended upwards. He is wearing a green long sleeve t-shirt, with white writing on the front, dark colored athletic shorts, a tan baseball cap, and an orange backpack.



Officer Gilbertson's BWC – Still Shot¹⁵

Overall Timeline of Events – May 31, 2020

- 3:20:58PM-3:21:50PM** – Officer Crossen BWC - APD Officers move from East 9th Street, up the grass median onto N-IH 35 southbound proper. Objects are being thrown at APD Officers as they move up the median.
- 3:28:50PM** – Officer Crossen BWC - APD Officers begin to back off N-IH 35 southbound proper onto the grass median.
- 3:28:56PM** – Officer Crossen BWC - Objects begin being thrown at APD Officers as they are backing up.
- 3:29:12PM** – Officer Crossen BWC - Officer Crossen crosses railing from N-IH 35 proper to the grass median.
- 3:29:20PM** – Officer Gilbertson BWC - Mr. Ellis observed in the inside lane with hands

¹⁵ Tab E – Photo of Taylor Ellis

PD 0093 Rev July 2012

Investigative Summary – IA Case 2020-1649 Officer T. Gilbertson #7066 & M. Crossen #6767

180 Deadline 11/27/2020

raised.

- 3:29:27PM** – Officer Crossen BWC - Officer Crossen deploys less lethal munition. Officer Jones BWC - Subject in orange shorts observed in a throwing motion closest to the concrete median divider. Mr. Ellis observed in front of crowd with his hands raised.
- 3:29:29PM - 3:29:33PM** – Officer Crossen BWC - Officer Crossen gives the description, *“That fucking guy right there, laying down with the orange shorts right there. Watch him.”*¹⁶
- 3:29:30PM** – Officer Gilbertson BWC - Subject in orange shorts squatting down behind group of people by concrete median
- 3:29:32PM** – Officer Gilbertson BWC - Mr. Ellis observed beginning to walk north on N-IH 35 proper in between the middle and inside lane with hands raised.
- 3:29:33PM** – Officer Crossen BWC - Officer Crossen deploys less lethal munition
- 3:29:34PM** – Officer Crossen BWC – Officer Gilbertson looking towards the north away from Mr. Ellis.
- 3:29:35PM** – Officer Crossen BWC - Officer Crossen deploys less lethal munition.
- 3:29:36PM** – Officer Gilbertson BWC - Mr. Ellis walking north standing in front of subject in orange shorts when impacted by a less lethal munition in left hip. Subject in orange shorts is moving to the south. Officer Gilbertson begins to raise less lethal shotgun.
- 3:29:37PM** – Officer Gilbertson BWC - Officer Gilbertson deploys less lethal munition striking Mr. Ellis as he is falling to the ground in front left shoulder.
- 3:29:28PM** – Officer Gilbertson BWC - Mr. Ellis observed laying on the ground.
- 3:29:39PM** – Officer Gilbertson BWC - Protestors begin to surround Mr. Ellis.
- 3:29:40PM** – Officers retreated off N-IH 35 proper. Bottles and objects continually being thrown at officers as they retreat.

¹⁶ Evidence.com Officer Crossen BWC marker 12:18
PD 0093 Rev July 2012



Officer Gilbertson's BWC of moment Mr. Ellis is impacted by 1st less lethal munition¹⁷

Versadex Report

IA reviewed Versadex report 2020-1520382 and found one (1) supplement completed by Officer Gilbertson and two (2) supplements completed by Officer Crossen. Officer Crossen also had four (4) details pages documenting his less lethal deployments.

Officer Gilbertson completed a supplement on June 2, 2020. The supplement documented the following events on May 31, 2020:

"On 5/31/2020 I, Officer Gilbertson was on duty as an Austin police officer working down town for the emergency call back (Alpha). I was assigned a less lethal shotgun. On this day, subjects gathered on IH35. Officers were directed to clear the highway. on two occasions officers made our way up onto the highway to open the the flow of traffic. During both attempts, hostile crowds began throwing rocks, bottles and other objects at officers. At one point a large rock struck me in my foot causing pain and injury. I deployed several less lethal rounds (approximately 15), targeting only subjects who were throwing objects,

¹⁷ Tab E – 1st Impact.png

PD 0093 Rev July 2012

Investigative Summary – IA Case 2020-1649 Officer T. Gilbertson #7066 & M. Crossen #6767

180 Deadline 11/27/2020

and at one point, a subject attempting to pick up a canister of CS gas that officers had deployed to clear the highway. My bodycam was on and it has been uploaded under this case number.”¹⁸

Officer Crossen completed a supplement on June 2, 2020. The supplement documented the events and his actions on May 31, 2020. Officer Crossen stated in his supplement as officers approached N-IH 35 proper, *“We began walking up the hill when I observed multiple rocks, and bottles flying down the hill at us, some striking officers beside me. One struck me in the shin. I did not sustain any injury. It was apparent to me that some of the subjects were attempting to cause harm to officers.”¹⁹* Officer Crossen explained as officers were moving back, *“More bottles and rocks were being thrown from all different directions. Again, I observed a light skinned Hispanic male with a light colored shirt that was throwing multiple items in my direction. I targeted the subject and attempted to impact the male. The male was moving across the crowd throwing items. My first shot hit the center median and a second shot hit the ground by his foot. The male went into the crowd and I was not able remain focused on him.”²⁰*

Officer Crossen completed a second summary on June 26, 2020. The supplement details Officer Crossen being instructed to complete a details page. Officer Crossen completed a details page on June 26, 2020 documenting Impact Munition/Beanbag deployment in 700 N-IH 35 southbound. Officer Crossen documented five (5) shots being fired at four (4) unidentified subjects demonstrating aggressive resistance. Officer Crossen also documented he notified Sgt. R. Herring of the deployments.

Subject Officers Interviews

Officer Todd Gilbertson

On November 17, 2020, Officer Gilbertson was interviewed by IA. Officer Gilbertson has been employed with the Austin Police Department since February of 2011, and is currently assigned to the Property Crime Task Force (PCTF). Officer Gilbertson has been a member of the Austin Police Department Special Response Team (SRT) since October of 2012.

On May 31, 2020, Officer Gilbertson was assigned to the Mobile Field Force and equipped with a 12 gauge less lethal weapon system along with another officer (Officer Crossen) which he advised he did not know. Officer Gilbertson advised the 12 gauge less lethal weapon system he was using was issued to PCTF.

Officer Gilbertson explained on May 31, 2020 officers were called to N-IH 35 because an, *“...18-wheeler was getting overtaken by the crowd and we were responding to protect the*

¹⁸ Versadex report 20-1520382

¹⁹ Versadex report 2020-1520382

²⁰ Versadex report 2020-1520382

PD 0093 Rev July 2012

Investigative Summary – IA Case 2020-1649 Officer T. Gilbertson #7066 & M. Crossen #6767

180 Deadline 11/27/2020

citizens that were stuck on the highway because of the rioters were shutting it down.”²¹ Officer Gilbertson described, “Once we got up on the highway or before we even got up there, as we approached the highway, we were met with bottles, rocks, other items thrown at us. Paint, liquids, all kinds of stuff that was, the crowd was throwing at us.”²²

IA asked Officer Gilbertson if he was clear what the objective was concerning the 18-wheeler. Officer Gilbertson advised it was. He expanded on his answer and stated, “*I mean, I wasn’t up there, so I didn’t know what it was like or I’ve never experienced anything like this before. So I knew what the objective was, I just didn’t know what to expect.*”²³ IA asked Officer Gilbertson to further explain his statement and he stated, “*Well, I’ve never experienced anything to the magnitude of something that I would call a riot until this. I’ve experienced protests before and I’ve experienced crowd gatherings, I’ve been on SRT for almost the full time I’ve been here, and never have I ever experienced anything to this magnitude as far as the violence that was I guess acted towards us.*”²⁴ Officer Gilbertson explained when referring to the violence, “*they were throwing giant rocks at us that were, that could’ve done some significant damage. Several officers were hit by these rocks, including myself. I only got hit in the foot with a rock and possibly in the head with a rock. I don’t know what it was that hit me in the head. I had a helmet on, so it didn’t inflict any injury, but on my foot, it did. They were throwing paint and other liquids and I don’t even know what was in the bottles, but - that were breaking, but, um, yeah. It was pretty, uh, chaotic.*”²⁵

IA asked Officer Gilbertson if he was given any parameters or rules of engagement when using the less lethal. Officer Gilbertson replied he did not recall. He further explained, “*I do remember people talking about it and I do - I don’t recall who gave the orders or who gave the, I guess, rules of engagement but I was just targeting people that were throwing items at us.*”²⁶

IA asked Officer Gilbertson how he assessed who to deploy less lethal munitions on and he replied, “*...folks that were throwing items at us.*”²⁷ Officer Gilbertson was asked by IA if there were any considerations he took into account when making the decision to deploy less lethal munitions. Officer Gilbertson replied what the subject was doing and who was around them.

IA asked Officer Gilbertson if there were situations when he intended on deploying less lethal munitions against an individual but did not. Officer Gilbertson replied there were and explained, “*...either somebody had walked in front of them, or the person that had just thrown something had gone behind a crowd of people, where I didn’t have a clear shot. I*

²¹ Tab B2 – Officer Gilbertson Interview Transcript lines 184-186

²² Tab B2 – Officer Gilbertson Interview Transcript lines 186-190

²³ Tab B2 – Officer Gilbertson Interview Transcript lines 306-308

²⁴ Tab B2 – Officer Gilbertson Interview Transcript lines 325-330

²⁵ Tab B2 – Officer Gilbertson Interview Transcript lines 335-342

²⁶ Tab B2 – Officer Gilbertson Interview Transcript lines 459-462

²⁷ Tab B2 – Officer Gilbertson Interview Transcript line 471

wasn't out there tryin' to shoot, or deploy less lethal and - and hit people that didn't need to get hit. So there was multiple, probably more times than I had actually deployed it, saw where I needed to deploy it, but couldn't take a shot because of those circumstances.”²⁸

Officer Gilbertson explained to IA, as a member of SRT he has worked protests in the past which he described as peaceful. When asked how the protest on May 31, 2020, compared to the previous protests Officer Gilbertson has worked, he stated, “...*just the excessive violence against us as far as, you know, items thrown at us. There were people prepared for it. It seemed organized, people were dressed up with shields and helmets and masks and they had, you know, rocks and bottles and items already pre-made to throw at us. Never have I ever experienced anything like that before.*”²⁹ IA asked Officer Gilbertson what resistance he encountered and he stated, “*I would describe it as aggressive Active aggression, passive by some.*”³⁰ Officer Gilbertson further explained the passive resistance were individuals just standing and refusing to move, while the active resistance were from individuals throwing rocks.

IA asked Officer Gilbertson to describe the circumstances that led him to deploy his less lethal before officers began walking down from N-IH 35 proper. Officer Gilbertson stated he targeted people throwing objects at officers and believed the only people he targeted were people throwing items at officers.

IA asked Officer Gilbertson if he recalled anyone around him pointing out individuals who could be considered a threat. Officer Gilbertson replied he did not recall. Officer Gilbertson further explained people were identifying objects being thrown at officers but could not remember specifically what was said.

IA asked Officer Gilbertson if he deployed the less lethal on any individual that might have been pointed out to him. Officer Gilbertson replied he could not recall.

IA asked Officer Gilbertson if he could describe any individual he impacted with the less lethal munitions while on N-IH 35. Officer Gilbertson replied he could not recall. Officer Gilbertson was asked if there was any person that caught his attention while on N-IH 35 that resulted in him deploying the less lethal. Officer Gilbertson stated, “*I do recall deploying my less lethal against the person that I'm here for today.*”³¹ Officer Gilbertson further explained, “*I cannot remember exactly why I decided or why I intended to deploy my less lethal on that specific person, but I do remember that I was targeting that person and that person was the person I was trying to target. I just can't reme- I, ah - ah, like I said before, I was only shooting people that were throwing things, so I can't say for sure why I shot him, but I would say he probably, you know, threw something.*”³²

²⁸ Tab B2 – Officer Gilbertson Interview Transcript lines 493-500

²⁹ Tab B2 – Officer Gilbertson Interview Transcript lines 553-557

³⁰ Tab B2 – Officer Gilbertson Interview Transcript line 580

³¹ Tab B2 – Officer Gilbertson Interview Transcript lines 728-729

³² Tab B2 – Officer Gilbertson Interview Transcript lines 733-739

IA asked Officer Gilbertson if he observed the person throwing anything and he responded he could not recall. IA asked Officer Gilbertson why he made the decision to deploy the less lethal on this individual and he replied, *"I don't remember why."*³³ When asked by IA how many less lethal rounds he deployed on the individual he replied he believed one. Officer Gilbertson advised he could not remember where his less lethal munition struck the individual.

IA asked Officer Gilbertson what happened to the person that was impacted by the less lethal munition. Officer Gilbertson stated, *"Well, from what I remember as soon as I made the decision to engage that person, I remember that he was struck, or another officer, I think we both targeted him at the same time and both impacted him, essentially at the same, exact time, and then he fell to the ground."*³⁴

Officer Gilbertson advised IA he did not know the other officer that deployed the less lethal munition, but that he and the other officer were the only two with a less lethal weapon system.

IA showed Officer Gilbertson his BWC of the incident. Officer Gilbertson was able to point out and identify the individual (Mr. Ellis) he impacted with the less lethal munition. After reviewing his BWC along with Officer Crossen's and Officer Jones's BWC, Officer Gilbertson could not recall what it was the individual did that resulted in him deploying his less lethal munition.

IA asked Officer Gilbertson if he was able to reasonably perceive the conduct of the individual that he deployed the less lethal munition against. Officer Gilbertson replied, *"I can't answer that because I just don't remember."*³⁵

IA asked Officer Gilbertson if he believes he violated APD Policy 200.2 De-escalation of Potential Force Encounters and he replied he did not. Officer Gilbertson further explained, *"Because, given the circumstances of the chaos happening there was no reasonable way for me to deescalate or give any opportunity. There was no opportunity for me to engage in de-escalation because of the scenario we were faced with."*³⁶

IA asked Officer Gilbertson if he believed he violated APD Policy 200.2.1 Assessment and De-escalation and he replied he did not. Officer Gilbertson explained, *"I was acting within policy here, with using the less lethal. I believe that there was really no other force option that was - would've been reasonable in this situation. Like I said, I acted within policy, good faith and judgment on the day or during this incident."*³⁷

³³ Tab B2 – Officer Gilbertson Interview Transcript line 750

³⁴ Tab B2 – Officer Gilbertson Interview Transcript lines 779-782

³⁵ Tab B2 – Officer Gilbertson Interview Transcript line 1210

³⁶ Tab B2 – Officer Gilbertson Interview Transcript lines 1457-1460

³⁷ Tab B2 – Officer Gilbertson Interview Transcript lines 1482-1486

IA asked Officer Gilbertson if he believed he violated APD Policy 200.3 Response to Resistance and he replied he did not. Officer Gilbertson explained, “*I believe all my actions were objectively reasonable during the day. I felt that I was acting in within the law, within the policies and was doing my duty as a police officer.*”³⁸

IA asked Officer Gilbertson if he believed he violated APD Policy 200.3.1 Determining the Objective Reasonableness of Force and he replied he did not. Officer Gilbertson explained, “*I believe that the potential injury to citizens or officers or subjects was a potential threat and I was reacting to the subjects who were throwing objects and attempting to gain compliance through pain so they would stop throwing rocks.*”³⁹

IA asked Officer Gilbertson if he believed he violated APD Policy 206.5 Kinetic Energy Projectiles and he replied he did not. Officer Gilbertson explained, “*I believe all the placements of the shots I engaged in were within policy.*”⁴⁰

Officer Michael Crossen Interview

On November 18, 2020, Officer Crossen was interviewed by IA. Officer Crossen has been employed with the Austin Police Department for approximately ten and a half (10.5) years, and is currently assigned to the Frank 200’s.

On May 31, 2020, Officer Crossen was assigned to the Mobile Field Force (MFF) and equipped with a 12 gauge less lethal weapon system along with another officer (Officer Gilbertson) which he advised he did not know. Officer Crossen advised the 12 gauge less lethal weapon system he was utilizing was from the East Substation.

IA asked Officer Crossen to explain what he experienced during his assignment. He replied, “*It was stressful to say the least.*”⁴¹ Officer Crossen further explained, “*This is not something I don’t think I could’ve prepared for. I knew that it was gonna be difficult but it was very overwhelming, lots of, you know, just a lotta people, a lotta yelling a lotta negativity.*”⁴²

IA asked Officer Crossen what was the direction or parameters given for deploying less lethal munition. Officer Crossen stated, “*I don’t necessarily know there was necessari- . I mean, if we were being placed in danger or others around us were being placed in danger and there were no other options, basically.*”⁴³ Officer Crossen further explained he was not given direction or parameters by anyone specific, and utilized his training and experience.

³⁸ Tab B2 – Officer Gilbertson Interview Transcript lines 1499-1501

³⁹ Tab B2 – Officer Gilbertson Interview Transcript lines 1514-1517

⁴⁰ Tab B2 – Officer Gilbertson Interview Transcript lines 1530-1531

⁴¹ Tab B2 – Officer Crossen Interview Transcript line 186

⁴² Tab B2 – Officer Crossen Interview Transcript lines 194-196

⁴³ Tab B2 – Officer Crossen Interview Transcript lines 354-356

IA asked Officer Crossen how he assessed whom to deploy less lethal munitions. He explained, *“People who were targeting or were throwing objects in our direction.”*⁴⁴ Officer Crossen described large rocks, glass and plastic bottles, and fireworks being thrown at officers.

IA asked Officer Crossen if there were any considerations he took into account when deploying less lethal munitions and he stated, *“Basically, yeah. I took into consideration the crowd, where the location in which I was trying to impact them, basically.”*⁴⁵

Officer Crossen explained to IA that he, along with other MFF officers, was deployed downtown to keep the peace and make sure that people were protected from rioting and criminal mischief. While downtown, they proceeded to N-IH 35 proper to assist with an 18-wheeler that was being surrounded by protestors. Officer Crossen explained they were attempting to assist the 18-wheeler driver and disperse the crowd from the freeway so traffic could flow.

IA asked Officer Crossen to describe the encounter between officers and those participating in the protests on and around N-IH 35. Officer Crossen stated, *“There was a lot of yelling at us. There wasn’t really any conversation. It was basically just yelling various things. It was too far away.”*⁴⁶ IA asked Officer Crossen what kind of resistance he encountered while on N-IH 35. He stated, *“Verbal and throwing objects.”*⁴⁷ Officer Crossen further explained when the crowd began to get closer to officers it was preparatory resistance, and it was aggressive resistance when objects were being thrown at officers. IA asked Officer Crossen what types of objects were being thrown and he replied, *“I saw rocks, glass bottles, water bottles, they were one instance of fireworks and some type of gas or something that choked - you know, choked us, or me.”*⁴⁸

IA asked Officer Crossen about the male subject he described in his supplement. Officer Crossen explained, *“He was just someone who was throwin’ items at me.”*⁴⁹ IA asked Officer Crossen if this is the same subject he described on his BWC, the male with orange shorts and he advised he was not sure.

IA asked Officer Crossen about the male he describes on this BWC and the purpose of calling the subject out. Officer Crossen advised the male had rocks in his hands and was letting officers know to be aware if rocks were thrown.

IA showed Officer Crossen Officer Gilbertson’s BWC from May 31, 2020. Officer Crossen was able to identify the subject with the orange shorts in the video as the subject he was speaking about on his BWC. Officer Crossen explained after reviewing his BWC

⁴⁴ Tab B2 – Officer Crossen Interview Transcript line 374

⁴⁵ Tab B2 – Officer Crossen Interview Transcript lines 412-413

⁴⁶ Tab B2 – Officer Crossen Interview Transcript lines 467-469

⁴⁷ Tab B2 – Officer Crossen Interview Transcript line 483

⁴⁸ Tab B2 – Officer Crossen Interview Transcript lines 511-513

⁴⁹ Tab B2 – Officer Crossen Interview Transcript lines 713-714

and Officer Gilbertson's BWC he believed the male he described in his supplement was the same male he described in his BWC.

IA asked Officer Crossen, after reviewing his BWC of him giving the description of the male and then deploying two less lethal munitions, who was he attempting to impact with the two less lethal munitions and he advised it was the subject in the orange shorts.

IA asked Officer Crossen where the two less lethal munitions he fired impacted and he advised one hit the middle of the wall by the male in the orange short's leg and the other munition was between the same male's feet.

IA asked Officer Crossen if he recalled seeing anyone in front of the male he was targeting or in close proximity. Officer Crossen stated, *"Yeah. I mean, there were people all around him, from what I remember that day. Or he was, um, there were people he had beside him, I guess."*⁵⁰

IA asked Officer Crossen if it was possible that he could have struck another individual while deploying the less lethal munition on the male subject. Officer Crossen stated, *"I know for a fact I hit the wall. What - where the round went after that, I'm not sure. And I know the second one hit the ground. Whether it ricocheted or something, it very possibly could have, but I didn't - I have no idea where that round went."*⁵¹

IA asked Officer Crossen where he was standing when he deployed his less lethal munition. Officer Crossen advised, after reviewing his BWC, he was behind the guard rail on the grassy area of the median slightly below the roadway.

IA asked Officer Crossen what the Department and he did to gain voluntary compliance from the protestors. He advised there was a helicopter announcing to protestors to leave the freeway and he used police presence.

IA asked Officer Crossen if he was able to reasonably perceive the conduct of the individuals he targeted and impacted with less lethal munition. Officer Crossen replied he was. IA asked Officer Crossen if the male he was attempting to impact posed an immediate threat to the safety of officers or others. Officer Crossen replied the male did. Officer Crossen explained, *"He was gathering items that were being thrown off the ground and throwing them at officers, or in our direction. There were also people around us."*⁵²

IA asked Officer Crossen if he believed he violated APD Policy 200.2 De-escalation of Potential Force Encounters and he replied he did not. Officer Crossen explained, *"you know, the options that were presented to me, or you know, what I used, I stayed within policy. I, you know, there were - other than the less lethal, there weren't really many other*

⁵⁰ Tab B2 – Officer Crossen Interview Transcript lines 911-912

⁵¹ Tab B2 – Officer Crossen Interview Transcript lines 959-962

⁵² Tab B2 – Officer Crossen Interview Transcript line 1273-1275

options to cease the activity that was goin' on. You know, there were - the, you know, calling in other officers, more officers to help, to assist wasn't really possible because there were things going around - on throughout the city...."⁵³

IA asked Officer Crossen if he believed he violated APD Policy 200.2.1 Assessment and De-escalation and he replied he did not. Officer Crossen explained, *"There wasn't an opportunity for de-escalation, due to the, you know, how loud the crowd was, the distance away from us, there - yeah, there wasn't really an opportunity to do that."*⁵⁴

IA asked Officer Crossen if he believed he violated APD Policy 200.3 Response to Resistance and he replied he did not. Officer Crossen explained, *"I feel that the - the, um, force that I used was, you know, objective - objectively reasonable to, um, uh, based on the circumstances."*⁵⁵

IA asked Officer Crossen if he believed he violated APD Policy 200.3.1 Determining the Objective Reasonableness of Force and he replied he did not. Officer Crossen explained, *"There wasn't really an opportunity for us to deescalate. We we e, you know, didn't really have much time, because we were outnumbered and the crowd was slowly moving in on us. We were on a major freeway, there were vehicles on the, you know, that were tryin' to go on their - on their business. It's a high-speed roadway."*⁵⁶

IA asked Officer Crossen if he believed he violated APD Policy 206.5 Kinetic Energy Projectiles and he replied he did not. Officer Crossen explained, *"I didn't use it in a reckless manner. I, you know, never used it towards someone who wasn't doin' anything, and, you know, I targeted appropriate areas, basically."*⁵⁷ IA asked Officer Crossen to elaborate on what caused him to deploy the less lethal munition on a subject and he explained, *"They were throwing objects at us. I wasn't targeting people who had their hands up or were just standing her yelling. It was people - just - who were throwing - throwing things at us."*⁵⁸

Summary of Facts

⁵³ Tab B2 – Officer Crossen Interview Transcript lines 1318-1324

⁵⁴ Tab B2 – Officer Crossen Interview Transcript lines 1337-1340

⁵⁵ Tab B2 – Officer Crossen Interview Transcript lines 1353-1354

⁵⁶ Tab B2 – Officer Crossen Interview Transcript lines 1366-1371

⁵⁷ Tab B2 – Officer Crossen Interview Transcript lines 1384-1386

⁵⁸ Tab B2 – Officer Crossen Interview Transcript lines 1400-1402

- On May 31, 2020 Officer Gilbertson and Officer Crossen were on-duty, assigned to Mobile Field Force, and deployed to the 800 block N-IH35 in response to a protest related event.
- During this incident, Officer Gilbertson and Officer Crossen were the only officers equipped with a 12 gauge less lethal weapon system.
- During the incident, multiple objects were thrown in the direction of officers by individuals in the crowd.
- At 3:29:36PM Taylor Ellis was struck by a less lethal munition in the left hip
- At 3:29:37PM, Officer Gilbertson fired one round from a 12 gauge less lethal weapon system and struck Taylor Ellis in the front left shoulder.

Patrick Eastlick #4401
Sergeant Patrick Eastlick #4401

11/21/2020
Date

Shauna Griffin #4670
Lieutenant Shauna Griffin #4670

11/21/2020
Date

Jerry Bauzon #2557
Commander Jerry Bauzon #2557

11/21/2020
Date

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALYSSA SANDERS,

Plaintiff,

v.

CITY OF AUSTIN and ERIC HEIM,

Defendants.

§
§
§
§
§
§
§
§

CAUSE OF ACTION:
1:22-cv-314

**PLAINTIFF'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION FROM DEFENDANT CITY OF AUSTIN**

Exhibit 33

Felton Interview Transcript (COA-Evans.000963)

FILED UNDER SEAL

.....
State of Texas

AFFIDAVIT

County of Travis
.....

IAD CONTROL #

On September 2, 2020 in the offices of the Internal Affairs Division, I was ordered to submit this memo by Lieutenant Manuel Jimenez 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.

1 JIMENEZ: Today is September 2, 2020. The time is 11:00 am. We are located at 1520
2 Rutherford Lane. This interview is with Officer Kyle Felton. This interview is
3 regarding Internal Affairs case number 2020-1052. Will everyone please state
4 and spell their full name for the record starting with you, Officer Felton.
5

6 FELTON: Officer Kyle Felton -- K-Y-L-E, F-E-L-T-O-N.
7

8 VILLARREAL: Thomas Villarreal -- T-H-O-M-A-S, V-I-L-L-A-R-R-E-A-L -- APA Vice
9 President.
10

11 URBAN: Alyssa Urban -- A-L-Y-S-S-A, U-R-B-A-N -- CLEAT staff attorney.
12

13 DEMERS: Mia Demers -- M-I-A, D-E-M-E-R-S -- The Office of Police Oversight.
14

15 KIRBY: Keith Kirby -- K-E-I-T-H, K-I-R-B-Y -- Sergeant, Internal Affairs.
16

17 JIMENEZ: Manuel Jimenez -- M-A-N-U-E-L, J-I-M-E-N-E-Z -- Lieutenant, Internal
18 Affairs. Officer Felton, were you informed and are you aware that this
19 interview is being recorded and the room is subject to monitoring?
20

21 FELTON: Yes, sir.

22
23 JIMENEZ: The only recording is audio right here -- we're gonna use it for transcription
24 purposes -- and the people monitoring are doing it via the Teams app so the
25 room itself is not being recorded.
26
27 FELTON: Yes, sir.
28
29 JIMENEZ: The (profess) - the process for this interview is established by the Meet and
30 Confer Contract. The Office of Police Oversight -- OPO -- is allowed to have
31 a representative present for the interview. The Meet and Confer Contract also
32 allows for the representative of the OPO to ask questions of the subject
33 officer, uh, during the inc- investigation at the end of the interview before it is
34 concluded. However, because you're the subject officer of this investigation
35 you must first agree to allow the representative of the OPO to ask questions
36 directly of you. This is your choice and it is voluntary. Neither the course of
37 the investigation nor this interview will change based on your decision. If you
38 do not agree then the representative of the OPO may not ask questions directly
39 of you. If the representative of the OPO has any questions we will pause the
40 recording, take a break, and I will confer with the OPO. I will determine if the
41 questions are pertinent to this investigation. If so, then we will come back on
42 the record and continue the - the interview. Before we continue I'm asking
43 you, Officer Felton, if you're willing to allow the representative of the Office
44 of Police Oversight to directly ask you questions at the end of the interview.
45
46 FELTON: I respectfully decline.
47
48 JIMENEZ: I understand that you are not agreeing to allow the representative of the OPO
49 to ask questions directly of you. Is that correct?
50
51 FELTON: Yes, sir.
52
53 JIMENEZ: Were you informed that this interview would cover the incidents discussed in
54 your Notice of Allegations?
55
56 FELTON: Yes, sir.
57
58 JIMENEZ: Have you had sufficient time to reflect on the incident in question and prepare
59 for this interview?
60
61 FELTON: Yes, sir.
62
63 JIMENEZ: Did you receive your Notice of Allegations, Administrative Warnings, uh, and
64 a copy of the complaint on August 24?
65
66 FELTON: Yes, sir.
67

68 JIMENEZ: Now remember when we met and I issued the NOA I explained that there's a
69 page 4 that we would go over on the record and that's what we're gonna cover
70 now. Uh, prior to the beginning of the interview were - were you given a
71 reasonable opportunity to review the items listed on page 4 of the Notice of
72 Allegations?
73

74 FELTON: Yes, sir.
75

76 JIMENEZ: Mm-kay. And I listed, uh, the case numbers that we located, uh, the Details
77 pages, a HALO video from 8th and, uh, frontage, and body cam -- excuse me
78 -- body cam videos, uh, for the following four officers. If you did review, uh,
79 these items are these all the items that I provided you?
80

81 FELTON: Uh, yes, sir.
82

83 JIMENEZ: And the policies?
84

85 FELTON: Yes, sir.
86

87 JIMENEZ: Mm-kay. So check the box that applies and I need you to sign and then I'll
88 sign and you'll get a copy of this before we leave. Officer Felton, do you have
89 any questions about the paperwork?
90

91 FELTON: No, sir.
92

93 JIMENEZ: Are you under the influence of any kinda medication or substances that will
94 inhibit your ability to understand and answer my questions?
95

96 FELTON: No, sir.
97

98 JIMENEZ: If you hear a question you do not understand please, uh, during the interview
99 please say so and I will re-phrase it. We're here today to discuss an incident
100 hat you were involved in that occurred on May 31, 2020. Do you recall the
101 incident that I'm speaking about?
102

103 FELTON: Uh, yes, sir.
104

105 JIMENEZ: How long have you been with APD?
106

107 FELTON: Uh, about a year and a half.
108

109 JIMENEZ: What's your current duty assignment?
110

111 FELTON: Ida-600s evening patrol.
112

113 JIMENEZ: Is that the same duty assignment you had on the day of the incident?

114
115 FELTON: Yes, sir.
116
117 JIMENEZ: Mm-kay. What did you do prior to joining APD?
118
119 FELTON: I was a college student, sir.
120
121 JIMENEZ: Where'd you go to college?
122
123 FELTON: University of California.
124
125 JIMENEZ: Mm-kay. What brought you to Austin?
126
127 FELTON: Uh, the job and my wife got into grad school at UT.
128
129 JIMENEZ: Mm-kay. So thinking about May 31, 2020, tell me in as much detail as you
130 can what your day was like that day.
131
132 FELTON: Uh, so I believe show-up was at 6:00 pm at, uh I can't remember if that day
133 we were at the academy or at the East Sub. I think it was the academy that
134 day. Either way, we got bussed in, um, probably an hour and a half after. Uh, I
135 was on, uh, 35 for, uh, a brief perio- or a couple of hours. Um, we got sent
136 back to the Main a- to take a break. Uh, all of a sudden while we were at the
137 Main my sergeant got, um, called that we, uh, I don't know who told him to --
138 a lieutenant I assume - uh, told him that he needed our sh- whole shift up on
139 the 35 proper, um, for overwatch of the Main. Um, uh, throughout the whole
140 day it was, uh, just a - an all-out riot. Um, there was just, um, officers getting
141 assaulted to the left and right. Uh, there was just the most profane things ever
142 - I've ever heard in my life be told to me. Um, it was a crazy situation all the
143 way around I don't think anyone was prepared for that no matter how much
144 experience they had, uh, but, um -- sorry -- the question was just how the day
145 was?
146
147 JIMENEZ: Yeah. Just - in as much detail as possible.
148
149 FELTON: Okay. Leading up to the incident? Is that...
150
151 JIMENEZ: Or just...
152
153 FELTON: ...correct?
154
155 JIMENEZ: ...your whole day.
156
157 FELTON: Okay.
158
159 JIMENEZ: Your whole day.

160
161 FELTON: Okay. Uh, so we get called out, um, for overwatch. Um, at the direction of my
162 sergeant we - we quickly gather our things up, um, from where we were
163 sitting, rush out, head through to 250. Uh, my sergeant tells me to, uh, try to
164 find a less lethal 'cause no one on our shift had one. He commands me to find
165 one, uh, from an officer at 250 who wasn't using it. I find an officer. He gives
166 me a bunch of loose less lethal ammo and, uh, a less lethal s- and then we
167 instantly head up to, uh, 35. Uh, I had the less lethal for probably about an
168 hour and a half. Uh, I recall, um, looking back now, uh, ya know, it's
169 obviously easier to recollect and put together the pieces of - of this specific
170 incident, um, but after it happened it was just a whirlwind 'cause, you know,
171 we were - I was either help- I helped people target. Uh, so, like, w- even when
172 I didn't have a less lethal - ya know, I'd see people engaged in riotous
173 behavior, uh, and, ya know, I'd help other officers - point out, "Hey, this
174 description, this individual," ya know, and they were all very similar things.
175 So it - it kind of blended together, uh, until this was pointed out as a incident.
176 Uh, and then obviously watching the video, ya know, helps you recollect a lot
177 better but it was a - a full-blown riot the entire time I was there. Um, earlier in
178 the day it might have been different but the entire - what I witnessed, it was a
179 full-blown riot of just every - ya know, several times per minute officers
180 getting assaulted, uh, people coming up and yelling the most violent things in
181 our faces. Um, just - just constant threats left and right. People walking around
182 with assault rifles in a crowd. Uh, it - it was just utter chaos. Uh, there was not
183 much direction. Um, there was not much direction. There was no briefing
184 prior to going there, um, so we were - we were just kinda thrown into there.
185 There was no specific, um, instructions on, uh, on, uh, when to handle, ya
186 know, certain things certain ways or h- how to handle certain things. Uh, so it
187 - it - for the most part from leadership on - ya know, on down e- it was new to
188 everyone. No one had experienced that situation so on both their part and our
189 part there was just a lot of chaos. No - no clear instruction on, ya know, any
190 tactical positioning or any - ya know, other than just basic, uh, Mobile Field
191 Force applications.

192
193 JIMENEZ: Mm kay. So you were assigned as a Mobile Field Force officer or were you
194 an, uh, Special Response Team -- SRT -- officer?

195
196 FELTON: A Mobile Field Force.

197
198 JIMENEZ: Mm-kay. And you said you - you had show-up around, uh, 6:00 pm?

199
200 FELTON: About that time.

201
202 JIMENEZ: And that was your 41? The time you arrived to work?

203
204 FELTON: If I remember correctly. Yes, sir.

205

206 JIMENEZ: Do you recall how many hours you worked that night?
207
208 FELTON: If I recall correctly they were 12-hour shifts so 6:00 to 6:00.
209
210 JIMENEZ: Mm-kay. Did you work the night before?
211
212 FELTON: Yes, sir.
213
214 JIMENEZ: What time did you get off the night before?
215
216 FELTON: If I recall correctly it was about 6:00 am.
217
218 JIMENEZ: 6:00...
219
220 FELTON: Maybe...
221
222 JIMENEZ: ...am?
223
224 A Maybe a little bit before but, yes, sir, about - about 6:00 am.
225
226 JIMENEZ: Mm-kay. Um, and you kinda mentioned this but I just wanna clarify it. When
227 you went to the academy or the East Sub -- uh, 'cause I - I know there's
228 confusion. We - we met at different locations...
229
230 FELTON: Yes, sir.
231
232 JIMENEZ: ...uh, throughout the - these events -- uh, do you recall who held the briefing?
233
234 FELTON: I - I don't believe there was a briefing. Or there may have been a supervisor
235 one but I was not briefed on anything except, "Get on this bus and we're
236 going here"
237
238 JIMENEZ: Mm-kay. Were you given any special instruction on - on what your job task
239 would have been when...
240
241 FELTON: No...
242
243 JIMENEZ: ...you...
244
245 FELTON: ...sir.
246
247 JIMENEZ: ...arrived? Do you recall anything like that?
248
249 FELTON: No, sir.
250
251 JIMENEZ: Throughout your assignment, uh, on that day from 6:00p to 6:00a -

252 approximately 6:00a did you get any other direction on things that we're
253 gonna be doing differently at this point on or any other kinda instruction? Uh,
254 did you receive anything like that?
255
256 FELTON: Not other than minor tactical movements that I recall.
257
258 JIMENEZ: So were you clear on the objective for the day?
259
260 FELTON: Yes, sir. Not - not clear, but obviously the - the theme of, uh, obviously the
261 reason we were there is - was to, ya know, create a safe space for people to
262 peacefully protest, um, and to minimize the violence and the risk to officers.
263 That was about all I had. I didn't really have any specific instructions on
264 anything else.
265
266 JIMENEZ: And you said a- that at times you carried a less lethal and a times you did
267 not?
268
269 FELTON: That's correct.
270
271 JIMENEZ: Um, can you talk about your roles throughout that day? Uh, I know you
272 carried it at one point and you didn't, uh, and you kinda alluded to this but can
273 you go into more detail about, uh, what you were doing while carrying and not
274 carrying...
275
276 FELTON: Uh...
277
278 JIMENEZ: ...the...
279
280 A Whe...
281
282 JIMENEZ: ...less lethal?
283
284 FELTON: When I was not carrying, um, I wa- at one point I was assigned to an arrest
285 team on 35 when we had to disperse, uh, the p- the riot on 35. Uh, so I - I
286 followed SRT at a distance -- I didn't have a gas mask when they deployed
287 the gas -- um, and I was told I was gonna be on arrest team if we had to make
288 an arrest, uh, but there was - there was no arrest that needed to be made, so
289 just assisting SRT on 35 at one point. Uh, at - at an- another point just holding
290 a line, uh, to, uh, to support other officers in - in various roles, uh, and mainly
291 just have a - have a presence.
292
293 JIMENEZ: Mm-kay. When you arrived to work that day was it daylight?
294
295 FELTON: Uh, yes, sir.
296
297 JIMENEZ: Mm-kay. The reason I ask is 'cause, uh, I d- I don't know if you're very sure

298 about your 41 time, uh, because I think the s- the CS gas was deployed earlier,
299 uh, a little bit earlier than 6:00.
300
301 FELTON: I - I - I don't recall if it was deployed or not but they told me to back up, uh,
302 SRT when, uh, 'cause there was a possibility that it could be deployed.
303
304 JIMENEZ: Okay.
305
306 FELTON: Yes, sir. Yes, sir, to clarify, I don't - I don't recall for sure if the gas was
307 deployed. I just remember being assigned to an arrest team when I didn't have
308 the less lethal, uh, on I-35 proper, uh, to help, uh, to assist SRT
309
310 JIMENEZ: And you alluded earlier about having a responsibility while some body else is
311 carrying the less lethal and helping them. Can you explain that?
312
313 FELTON: Yes, sir. So, uh, because there was so many different - so many - so many
314 people there and also so many different people engaged in this riotous
315 behavior, um, it - it was helpful and many people were - many officers were,
316 uh, assisting other officers who had a less lethal 'cause there's a - a limited
317 amount. So I would assist in, uh, pointing out - ya know, yell out a description
318 to someone who had a - an officer who has a less (lesal). Ya know, "Oh, this
319 male with the white shirt over here. Ya know, keep an eye on him. He just
320 threw something," or, uh, just to assist them and - because - just 'cause there
321 were so many people.
322
323 JIMENEZ: Is - is - would you consider that like a spotter for someone?
324
325 FELTON: Um...
326
327 JIMENEZ: Is that kinda ..
328
329 FELTON: In in..
330
331 JIMENEZ: ...what...
332
333 FELTON: ...a s...
334
335 JIMENEZ: ...you're...
336
337 FELTON: In a...
338
339 JIMENEZ: ...describing?
340
341 FELTON: ...sense - in a sense. Yes, sir.
342
343 JIMENEZ: Mm-kay. And when you were carrying a less lethal did you have somebody

344 like that? Like a spotter?
345
346 FELTON: Uh, there was people coming in and out next to me, um, and I think a few
347 people would yell out at times descriptions to me to help - to help me realize
348 where the violence was coming from.
349
350 JIMENEZ: 'Kay. Uh...
351
352 FELTON: If I recall correctly.
353
354 JIMENEZ: And we're gonna talk about now, uh, in the evening hours -- right? -- between
355 10:00 and midnight.
356
357 FELTON: Yes, sir.
358
359 JIMENEZ: Uh, where were you stationed? Do you recall where you were stationed at that
360 point?
361
362 FELTON: Uh, yes, sir. Um, for about 20 minutes I was on - or so if I recall correctly I
363 was up on, uh, I-35 - the southbound proper, um, to overlook the, uh, to help
364 with overlook of the riot that was forming in front of, uh, the Main and then
365 shortly af- or about 20 to 30 minutes after, uh, the, uh, riot went to the
366 northbound service roadside so I transitioned over there.
367
368 JIMENEZ: Mm-kay.
369
370 FELTON: And tho- those were the two main locations where I was at.
371
372 JIMENEZ: Mm-kay. You mentioned you were assigned as overwatch. What did that
373 mean to you?
374
375 FELTON: Uh, that ...
376
377 JIMENEZ: Or overlook w- you've...
378
379 FELTON: Right.
380
381 JIMENEZ: ...used both terms so far so what does that mean to you?
382
383 FELTON: Um, so I - if I recall I r- interpreted as, uh, um, ya know, monitoring any
384 violent individuals that were in front of the Main. Um, obviously I was told to
385 obtain a less lethal, to use it in that situation to impact individuals, and help,
386 uh, mitigate the violence, uh, from the riot below.
387
388 JIMENEZ: Mm-kay, so who gave you the direction to impact individuals that were
389 engaged in what - what you're saying?

390
391 FELTON: Uh, no one directly told me to impact individuals but that was the implied,
392 um, directive as to obtain a less lethal, um, from - so we would have it up on
393 35 when we were performing that action.
394
395 JIMENEZ: So since we're talking about impacting individuals, what's your understanding
396 of the rules of engagement when using a less lethal shotgun?
397
398 FELTON: Um, the, uh, for this specific, uh, incident, uh, the policy is, uh, anyone
399 engaged in riotous behavior or is throwing rocks, bottles, or dangerous items
400 that could create injuries to officers or anyone else, uh, and - and that was the
401 main, uh, reason why the less lethal was - was used.
402
403 JIMENEZ: When did you last receive certification to carry a less lethal?
404
405 FELTON: I believe in January.
406
407 JIMENEZ: Of what year?
408
409 FELTON: Uh, 2020, sir.
410
411 JIMENEZ: You s- picked up the less lethal at 250 and the loose ammo. Did you ever get,
412 uh, more ammo from somebody else?
413
414 FELTON: Yes, sir. At, uh, while I was up on 35, uh, an unknown officer -- I don't know
415 who it was -- I was -- as I was watching he came up. He said, "Hey. Ya know,
416 I have a bunch of extra less lethal rounds," 'cause u- at that point we were - ya
417 know, the department was running low. I said, "Okay," um, and he shoved
418 'em in my pocket so there were more loose rounds. And then when I was on
419 the northbound side, uh, similar things - officers come with a handful of less
420 lethal and "Hey, man. You have a - ya know, a less lethal. Here's - here's
421 some more rounds."
422
423 JIMENEZ: Do you recall what other officers were standing with you, uh, on the proper
424 providing that overwatch like you talked about?
425
426 FELTON: Uh, my entire shift was up there, uh, and Offic-, uh, Sergeant Follette, my
427 sergeant. Since I was the only one with a less lethal he was right over my
428 shoulder almost the entire time.
429
430 JIMENEZ: You don't recall seeing anybody else with another less lethal?
431
432 FELTON: Um, there was a - who - at the time I didn't know who it was but now I know
433 it was Officer Teng was next to me. Uh, I don't - I couldn't tell you the names
434 of anyone else with a less lethal though.
435

436 JIMENEZ: So - and you say now you realize it was O- Officer Teng. How do you realize
437 that now?
438
439 FELTON: Uh, through watching the videos and the...
440
441 JIMENEZ: Watching the body cam?
442
443 FELTON: Yes, sir.
444
445 JIMENEZ: 'Kay. But at that day - at that night you don't remember anybody else
446 standing up there with you with another less lethal?
447
448 FELTON: I - I know there was at least, ya know - I - I don't have an exact number but I
449 know there was 5 to 15 more officers up there with less lethals. Yes, sir.
450
451 JIMENEZ: Mm-kay.
452
453 FELTON: But...
454
455 JIMENEZ: But you don't know...
456
457 FELTON: ...I do...
458
459 JIMENEZ: ...who they...
460
461 FELTON: ...I don't know who they are. Yes, sir.
462
463 JIMENEZ: Mm-kay. Can you talk about the training you have received from the
464 department to help you handle protests?
465
466 FELTON: Um, in the academy we were trained on, uh, basic mobile field force. I think it
467 was, uh like an 8-hour course on mobile field force tactics and considerations.
468
469 JIMENEZ: Have you worked other protests before?
470
471 FELTON: No, sir.
472
473 JIMENEZ: There's nothing like that happening in Ida sector?
474
475 FELTON: No, sir.
476
477 JIMENEZ: Mm-kay. Have you experienced, uh, something like this before?
478
479 FELTON: No...
480
481 JIMENEZ: This...

482
483 FELTON: ...sir.
484
485 JIMENEZ: ...specific protest? You...
486
487 FELTON: No...
488
489 JIMENEZ: You...
490
491 FELTON: ...sir.
492
493 JIMENEZ: ...talked about it earlier that it was something very unusual...
494
495 FELTON: Yes, sir.
496
497 JIMENEZ: ...uh, but that - this is the first time you experienced this.
498
499 FELTON: Yes, sir.
500
501 JIMENEZ: You talked about, "riotous behavior," and you kinda defined it I - as policy
502 says, uh, but I would like to hear more specific on objects that you saw being
503 thrown, uh, from the crowd towards officers.
504
505 FELTON: Yes, sir. Uh, I saw anything from, uh, backpacks to - frozen water bottles
506 were thrown. Uh, large rocks were thrown. I got hit with - I personally got hit
507 with water bottles, rocks, uh, ya know, s- i- softball-size rocks. Uh, there was
508 also, uh, not-frozen water bottles. Uh, basically anything people could find to
509 just throw people were throwing it.
510
511 JIMENEZ: And you mentioned earlier about, uh, officers being injured. Uh, d- how do
512 you have that personal knowledge of officers being injured?
513
514 FELTON: Uh, to my - I - I was injured myself. Um, to my left and my right every time -
515 ya know, I was constantly on either side of several different officers and you'd
516 see something thrown and you'd watch it and you'd see it impact an officer.
517 Uh, you'd, uh, you would also hear (counts), ya know, you go back to the
518 Main to take a break. You would come back and you'd see, ya know - talk to
519 an officer. Ya know he has a bloody arm. "Oh, yeah. Someone hit me with a
520 rock," or - things like that and also my - my personal, uh, observance of the
521 officers to my left and right and myself.
522
523 JIMENEZ: Did you see any civilians bein' injured by objects that were being thrown?
524
525 FELTON: Yes, sir.
526
527 JIMENEZ: Can you talk about that?

528
529 FELTON: Yes, sir. Uh, so from I-35, uh, you had a pretty good, uh, overview of, ya
530 know, what was happening down before and it was very often that someone
531 would throw, uh, the objects I discussed and, uh, hit someone in the crowd,
532 um, would hit, uh, someone else besides an officer - someone towards the
533 front or just, uh, just any random person.
534
535 JIMENEZ: I- can you describe why that object might have hit someone other than a
536 police officer?
537
538 FELTON: I - I can't speculate as to why. It was just 'cause the - the violence that
539 someone chose to...
540
541 JIMENEZ: Well I'm saying why - why do you think the object that was being thrown did
542 not reach its target? Intended target - meaning an officer.
543
544 FELTON: Oh, be- it - I mean some of the things were huge. They were throwing big ol'
545 backpacks and they're so heavy they couldn't throw them hard enough to get
546 up to the officers, um, but, um, oth- just not I guess throwing hard enough or
547 maybe tha- their intent wasn't to hit the officers.
548
549 JIMENEZ: Specifically to the time you were on the proper overlooking the Main did you
550 target any protestors, uh...
551
552 FELTON: Yes.
553
554 JIMENEZ: ...with your less lethal?
555
556 FELTON: Yes, sir.
557
558 JIMENEZ: Why did you target protestors? Now I'm just talking about targeting. Not...
559
560 FELTON: Not...
561
562 JIMENEZ: ...d- not deploying.
563
564 FELTON: Oh...
565
566 JIMENEZ: Targeting.
567
568 FELTON: ...okay. Uh, for...
569
570 JIMENEZ: Why would you target a protestor?
571
572 FELTON: Any time I targeted a protestor it was due to their riotous behavior, um, uh,
573 such as the things I described before. They were, uh, creating some sort of risk

574 to injury to officers or others.
575
576 JIMENEZ: Do you recall how far they were from you when you were targeting them?
577
578 FELTON: Uh, varying distances. I think, uh, ya know, that bridge is probably 20 - about
579 20 foot so some were directly below, some were further out so varying
580 distances.
581
582 JIMENEZ: And what level of resistance did you observe that made you target them?
583
584 FELTON: Um, at the very least preparatory but m-, uh, more often than not it was, uh,
585 aggressive.
586
587 JIMENEZ: And you targeted individuals. Did you deploy a less lethal shotgun at the
588 person you were targeting?
589
590 FELTON: Yes, sir.
591
592 JIMENEZ: And did you target individuals that you did not deploy, uh, decide to deploy?
593
594 FELTON: Yes, sir.
595
596 JIMENEZ: Why would you deciding - why did you decide not to deploy at somebody that
597 wa- you targeted?
598
599 FELTON: Um, for vari- various reasons. Um, sometimes it was they were in a dense,
600 crowded area and I didn t have a clear shot so the - it wasn't, uh, justifiable
601 risk to deploy at that time. Um, other times, uh, it looked like they had just
602 thrown something. Uh, maybe they threw a water bottle, it didn't hit anybody,
603 and it looked like they weren't doing anything now, uh, so I targeted 'em
604 'cause I saw them create a action but they, ya know, ceased that action so, uh,
605 I didn t deploy for that reason.
606
607 JIMENEZ: So when you did deploy, uh, a round, uh, did you see the round impact the
608 individual?
609
610 FELTON: Uh, sometimes.
611
612 JIMENEZ: Can you explain, "sometimes?"
613
614 FELTON: Uh, I - I don't recall exactly. Uh, I know when I deployed a less lethal I like to
615 watch the rounds, ya know, to see - for - to see - to be accountable where
616 they're going but I d- I don't recall on this day exactly the specifics of, uh,
617 every time I, uh, whether every time I saw exactly where it went or not.
618
619 JIMENEZ: What area of the body do you target or did you target that evening when you

620 deployed a less lethal?
621
622 FELTON: Uh, mainly large muscle groups. I don't - again, I don't recall in every
623 specific situation. I never targeted the head or the vital areas of any individual,
624 uh, at any point during that night. Uh, but on, uh, just as a, uh, when I did
625 deploy the less lethal it was toward, uh, I always try to target the large muscle
626 groups.
627
628 JIMENEZ: N- are there any areas that you're aware that you should avoid?
629
630 FELTON: Uh, the head and neck. Yes, sir.
631
632 JIMENEZ: And just looking at your video, um, why did you not provide a verbal warning
633 that you were about to deploy a less lethal round?
634
635 FELTON: Uh, I - I deemed it to not be, uh, reasonable to do that because there was
636 screaming crowds. Uh, we could barely hear each other talk back and forth to
637 each other. You couldn't even hear what the guy next to you was saying
638 'cause it was just so loud out there and also due to the suspects that I was
639 targeting were, uh, far from me. There was no way they would have ever
640 heard me.
641
642 JIMENEZ: Do you recall how many times you deployed a less lethal round...
643
644 FELTON: I...
645
646 JIMENEZ: ...while you were up there specifically to, uh, that overwatch spot that you told
647 me about?
648
649 FELTON: I don't recall.
650
651 JIMENEZ: Why do you have two Supplements for this incident?
652
653 FELTON: Uh, the first one I typed the day after this incident happened and the second
654 one, um, I incurred with my sergeant to see if - 'cause I couldn't find the
655 Supplement 'cause I was told to re-review, uh, the incidents for any, uh, Use
656 of Force, uh, and to further clarify Uses of Force, uh, that may have occurred,
657 uh, because I think the - the na- the directive came out, um, talking about that.
658 Uh...
659
660 JIMENEZ: Talking about what?
661
662 FELTON: Talking about, uh, that officers need to go at - that they knew that we were
663 informed to just give, uh, a broad Supplement and not do Details pages but
664 they wanted us to go back and review everything and do Details pages for any
665 Uses of Force we had. Uh, so my sergeant told me to come and do that. I tried

666 to review my Supplement to see - 'cause it - at that point it had been, uh, there
667 was kind of a mix-up too because, um, I was informed of an SIU investigation
668 and then, uh, I was told by my sarge, "Hey. Ya know, don't worry about doi-
669 ,," when that stuff first came out, "Hey, don't worry about doing a, uh, um, any
670 further Details pages or any further Supplements for anything until your SIU
671 thing gets cleared." Uh, so - and we emailed back and forth doing that and -
672 but then he checked with his chain of command - the comma- my commander
673 and my commander said that, um, I should come in and do it so it was about a
674 couple months later. And then I had to get the videos unlocked and try to get
675 my Supplement unlocked, um, so I tried to get that, um, so I could review it so
676 I could accurately write - or do a Details page, ya know, based on what I
677 wrote the day after but I couldn't find my Supplement anywhere. Um, I told
678 my sarge, "Hey, I can't find it. I don't know what happened, um, to it," and he
679 couldn't find it. He's actually the one that said, "Hey it's not in my, uh,
680 transcription queue so I don't know what happened to it so you'll just have to
681 write another one." So I wrote a second one, uh, probably, uh, I think it was
682 two months later if I recall, um, and, uh, and that - that's the reason for two
683 Supplements.
684

685 JIMENEZ: Mm-kay. Let's talk about, uh, the Details pages. How come you didn't do
686 Details pages on that first uh, time that you were - wrote Supplement?
687

688 FELTON: I was form- informed not to.
689

690 JIMENEZ: Mm-kay, by who?
691

692 FELTON: Um, I believe it was, uh, the DOC commander sent out an email on the 30th.
693

694 JIMENEZ: And so that was for everyone...
695

696 FELTON: Yes, sir.
697

698 JIMENEZ: ..that was involved in a Use of Force or a Response to Resistance not to
699 complete a Details page.
700

701 FELTON: Yes, sir.
702

703 JIMENEZ: Okay. And then when - who gave you the direction to go back and complete a
704 Details page for something that had occurred on May 31?
705

706 FELTON: Uh, the email came out for everyone by Chief Henderson, uh, and then I
707 inquired with my sergeant because I learned of, uh, possible Level 1s that had
708 occurred and I didn't know, ya know, what I should do in that situation
709 because any more information I added, uh, or if I should do that and he just -
710 and he informed me to hold off for a while and then my, uh, commander told
711 him that they would unlock all the videos and - so I could review and do the

712 appropriate Details pages.
713
714 JIMENEZ: 'Kay. While deploying the less lethal did you encounter any issues with the -
715 with the weapons system?
716
717 FELTON: Um, I d- I did notice they were sometimes inconsistent. Sometimes you would
718 shoot one and t- have a - like a big arch and - and shoot but sometimes, ya
719 know, it'd be a little bit low even though you're kinda aiming in the right - in
720 the same position.
721
722 JIMENEZ: You're talking about the rounds?
723
724 FELTON: Yes, sir.
725
726 JIMENEZ: The deployed less lethal rounds.
727
728 FELTON: Yes, sir.
729
730 JIMENEZ: Mm-kay. Uh, explain that a little bit further. Uh, how often did you see this
731 pattern?
732
733 FELTON: Um, it - it was relatively un- infrequently but it - it did occur. I - I can't tell
734 you exactly. I just remember like oh why - why was that one - ya know, I was
735 aiming in the right - the same position. Why was that one, um, a little low or
736 something like that, ya know.
737
738 JIMENEZ: Based on your training what is the effective range, uh, when deploying a less
739 lethal shotgun?
740
741 FELTON: Uh, over 20 feet if - unless it's a lethal force situation.
742
743 JIMENEZ: What kinda gear did you have that day?
744
745 FELTON: Um, I had just had a helmet and face mask and my regular patrol gear.
746
747 JIMENEZ: Anything else on your belt? Your duty...
748
749 FELTON: Uh...
750
751 JIMENEZ: ...belt?
752
753 FELTON: I - an impact baton.
754
755 JIMENEZ: 'Kay. Did you encounter any issues, uh, while deploying a less lethal shotgun
756 and wearing a helmet and face shield?
757

758 FELTON: I - I had to keep the face shield up at all times, uh, 'cause you c- you - you
759 couldn't see the sights if you had it down. Uh, but other than that...
760
761 JIMENEZ: So was that an issue that you, uh, determined that it was gonna be ineffective
762 or - and then you...
763
764 FELTON: It - it was a little cumbersome but it was just something to - to get used to and
765 overcome if that makes sense.
766
767 JIMENEZ: Describe the individuals that you may have impacted with a less lethal
768
769 FELTON: Um, I - I don't recall from memory the, uh, most of the exact descriptions of
770 the individual just because of the vast number of individuals that I help- I
771 spotted for some people and I, uh, ya know, targeted myself and were engaged
772 in (somewhere) behavior. Um, but after watching the video, uh, I d- I do recall
773 and put together the, uh, the individual I th- I believe is a white male with the
774 tha- with the backpack.
775
776 JIMENEZ: In front of the Main?
777
778 FELTON: Yes, sir.
779
780 JIMENEZ: 'Kay. So since we're here now I'm gonna pull up the video.
781
782 FELTON: Yes, sir.
783
784 JIMENEZ: Uh, and for the record, it's the video, uh, the HALO video. Uh, I believe it's at
785 the - 8th Street and the west frontage. Now I'm just gonna hit play here and
786 I'm - I'm gonna talk to you about, like you said, this individual - white t-shirt
787 or white over - it looks like a white shirt over dark pants. I...
788
789 FELTON: Yes, sir.
790
791 JIMENEZ: ...can't tell if it's black or blue but...
792
793 FELTON: Mm-hm.
794
795 JIMENEZ: ...that's kinda the description. Do you see the individual I'm talking about?
796
797 FELTON: Yes, sir.
798
799 JIMENEZ: Did ya see what he just did?
800
801 FELTON: Yes, sir.
802
803 JIMENEZ: What did he do?

804
805 FELTON: He threw a water bottle.
806
807 JIMENEZ: Do you have independent recollection of that incident?
808
809 FELTON: Yes, sir.
810
811 JIMENEZ: Him - him throwing the water - or I think it was the container but you have
812 independent recollection? And...
813
814 FELTON: Yes, sir.
815
816 JIMENEZ: And then when you saw it on the video did it bring it back
817
818 FELTON: Yes, sir.
819
820 JIMENEZ: Did you target that individual?
821
822 FELTON: Yes, sir.
823
824 JIMENEZ: Did you deploy at this point?
825
826 FELTON: At that point?
827
828 JIMENEZ: Yes.
829
830 FELTON: No, sir. Or not - not that I can recall.
831
832 JIMENEZ: I hit play again. Now the - the - the scene is still active. Can you describe what
833 the individual's doing?
834
835 FELTON: Uh, he set a backpack down and he's raising his hands.
836
837 JIMENEZ: Do you have independent recollection of what you just said, uh, from that
838 evening or just from watching the video?
839
840 FELTON: I - I have independent recollection of his behavior.
841
842 JIMENEZ: Can you talk about what you just saw?
843
844 FELTON: Yes, sir. Um, so when he threw the water bottle I observed that. Uh, uh, that's
845 what made him catch my eye and it looked like it - it hi- or, ya know,
846 container -- whatever it was -- uh, it looked like it - it made direct impact with
847 the officers in the - on the front steps. Uh, if I recall correctly I believe I - I did
848 not fire at that time on him because I didn't have a clear shot. Uh, there - there
849 was still a few people, uh, right behind him and right around him, uh, but then

850 once he took off what seemed to me like a perfectly good backpack he had, ya
851 know, been lugging around all day, ya know, at the protests, uh, and it - he
852 started swinging it as if it was so heavy that he had to swing it, uh, it - it - I r- I
853 recall triggering, uh, the intel that we got the day before that there had been
854 there had been - they had found IEDs, uh, at bombs at protests at different
855 cities, uh, and I thought, like, why would he be swinging a perfectly good
856 backpack that he had, ya know, uh, and that he's not gonna get back full of
857 something heavy at officers. Uh, so when he began to swing that backpack,
858 uh, I recall that I - I felt it was imperative to, uh, impact him.
859
860 JIMENEZ: Mm-kay. And - and I'm gonna play the video here in a second but, just for the
861 record, uh, there's a separate IA investigation pertaining to case number 2020-
862 0697, uh, where a second individual is impacted. Uh, I am not asking you
863 questions about that second individual. I'm only asking you questions about,
864 uh, the - the individual that I'm looking at, uh, which is Anthony Evans...
865
866 FELTON: Yes, sir.
867
868 JIMENEZ: ...okay? And just to be clear, you just saw him, uh, like you mentioned, swing
869 that backpack and throw it. Do you recall if you impacted him or did you
870 deploy, uh, a less lethal round?
871
872 FELTON: I - I deployed a round. Yes, sir.
873
874 JIMENEZ: Do you recall if it impacted him?
875
876 FELTON: I - I don't recall
877
878 JIMENEZ: So I just hit play Uh, this - this gentleman right here, this is Anthony Evans.
879
880 FELTON: Okay.
881
882 JIMENEZ: And you said you do recall discharging your less lethal or you don't?
883
884 FELTON: I do recall your char- discharging the less lethal round at the - the male that
885 threw his backpack. Yes, sir.
886
887 JIMENEZ: Do you - and i- to clarify, do you recall i- hitting the male that you targeted?
888
889 FELTON: I don't recall if it hit or not.
890
891 JIMENEZ: Mm-kay. What would cause a round - if you target and made a decision to
892 deploy a less lethal round what would cause that round not to strike the target?
893
894 FELTON: Um, if - if - if it missed in any - in any sense or something obstructed it.
895

896 JIMENEZ: Can you elaborate on that, "if it missed in any sense?"
897
898 FELTON: If it hit low, went over his head, went to the left, went to the right of him. If it
899 did not strike him.
900
901 JIMENEZ: The gentleman that I'm looking at, Anthony Evans...
902
903 FELTON: Yes, sir.
904
905 JIMENEZ: ...uh, it appears that he was struck.
906
907 FELTON: Mm-hm.
908
909 JIMENEZ: Uh, did ya see him being struck?
910
911 FELTON: No, sir.
912
913 JIMENEZ: In your first Supplement, uh, you mentioned that you estimated you deployed
914 about 20 - 20 rounds. D- that Supplement you also mentioned that, uh, you
915 might have hit between 5 and 10 folks that were, uh, in the protest.
916
917 FELTON: Mm-hm.
918
919 JIMENEZ: What would cause, uh, that disparity? If you deployed 20 rounds and you
920 might have hit 5 to 10 why do you think that's the case?
921
922 FELTON: If you hit the same people multiple times is a - is a reason or if you did not hit
923 the intended target.
924
925 JIMENEZ: What kinda injuries are you aware of that might have been sustained by a
926 protestor that you impacted?
927
928 FELTON: That I impacted? I'm not aware of any injuries, sir.
929
930 JIMENEZ: Are you aware of any injuries sustained by, uh, people out there, uh, engaged
931 in the protest, uh, that might have been sustained by somebody else's
932 impacting? Another police officer's impacting?
933
934 FELTON: Not specifically to an officer. I've heard of injuries just on the news, uh, and,
935 (gee), I basically just o- what the news has said about people being impacted
936 with, uh, with rounds.
937
938 JIMENEZ: Which supervisor did you report your deployments to?
939
940 FELTON: Uh, Sergeant Follette was right over my shoulder observing my deployments
941 each time I took them.

942
943 JIMENEZ: He was with you the whole time?
944
945 FELTON: Yes, sir.
946
947 JIMENEZ: Did you see any other, uh, who else was up there that - with rank?
948
949 FELTON: I don't know by name. I saw a lot of stripes up there, uh, but everyone, ya
950 know, had the face shields on and I didn't - I didn't recognize anyone or - I
951 don't recall.
952
953 JIMENEZ: Now I- looking at the video -- your body cam -- why didn't you announce
954 over the radio to Dispatch that you had deployed a less lethal round?
955
956 FELTON: Uh, just 'cause of the - the mass amounts of everyone deploying a less lethal it
957 would have clogged up the radio traffic, which every time someone fired a
958 less lethal they announced on the radio.
959
960 JIMENEZ: Are you aware how a less lethal round that has been deployed, how it's linked
961 to a specific shotgun that deployed it?
962
963 FELTON: I'm not aware.
964
965 JIMENEZ: Are you aware if that's possible or no?
966
967 FELTON: I'm not aware.
968
969 JIMENEZ: Okay. Sergeant Kirby?
970
971 KIRBY: Nothing for me, sir.
972
973 JIMENEZ: Do you recall how the department as a whole was atte- attempting to gain
974 voluntary compliance from the crowd?
975
976 FELTON: Do I remember, "the department as a whole ?" Is that...
977
978 JIMENEZ: Mm-hm.
979
980 FELTON: O- I - I don't recall that that was a directive or anything that they told us
981 directly. No, sir.
982
983 JIMENEZ: Well do you recall the department doing anything to try to gain voluntary
984 compliance from the protestors?
985
986 FELTON: Um, in which sense? In what...
987

988 JIMENEZ: Well l...

989

990 FELTON: ...situation?

991

992 JIMENEZ: The - ya know, sometimes the departments might issue dispersal orders, uh,
993 ya know, uh, to that effect, right?

994

995 FELTON: Uh...

996

997 JIMENEZ: Uh, I know talking about a different incident on the highway...

998

999 FELTON: Mm-hm.

1000

1001 JIMENEZ: ...ya know, uh, they were using the - the loudspeaker to give orders to get...

1002

1003 FELTON: Right.

1004

1005 JIMENEZ: ...off the highway. Anything like that? Do you recall anything like that?

1006

1007 FELTON: I don't recall.

1008

1009 JIMENEZ: How were you trying to attempt to gain voluntary compliance from the
1010 protestors?

1011

1012 FELTON: Um, there was - from my positioning where I was told to be there was no way
1013 to, uh, try to talk to the individuals or, ya know, talk down or get someone to -
1014 to voluntary comply. There - there - it was not feasible from my positioning
1015 that I was put in

1016

1017 JIMENEZ: Mm-kay when you're talking about your position, uh, you're talking about
1018 being on the proper?

1019

1020 FELTON: Yes, s r.

1021

1022 JIMENEZ: Uh, policy n- on de-escalation talks about, uh, tactical repositioning. How did
1023 you use tactical repositioning as a de-escalation technique?

1024

1025 FELTON: Um, I - I was unable to based on my orders to be up on the highway.

1026

1027 JIMENEZ: Were you able to use or how did you use verbal persuasion as a de-escalation
1028 technique?

1029

1030 FELTON: I was unable to use verbal persuasion due to the screaming crowds and the -
1031 and the, uh, distance from the suspects that I was targeting.

1032

1033 JIMENEZ: While assessing the risk and benefits during de-escalation what resources

1034 were available to officers working the protest?
1035
1036 FELTON: Uh, the less lethals were available, um, and basically whatever gear we had on
1037 us. Uh, not many other resources to effectively de-escalate a riot.
1038
1039 JIMENEZ: Can you talk about specifically to that evening, um, your recollection as it
1040 pertains to the number of protestors versus the number of sworn officers that
1041 were deployed?
1042
1043 FELTON: Uh, from - as - from my recollection the- we were vastly outnumbered from
1044 the officers that were actually on the street. Um, probably 10 to 100 to 1 if -
1045 for - just off the top of my head.
1046
1047 JIMENEZ: And when you targeted an individual were you able to reasonably perceive the
1048 conduct of the individual that you were targeting?
1049
1050 FELTON: Uh, yes, sir.
1051
1052 JIMENEZ: And when you decided to deploy a less lethal round did you reasonably
1053 perceive the conduct of the individual that you were targeting or deploying?
1054
1055 FELTON: Yes, sir.
1056
1057 JIMENEZ: Several times you s- talked about, "riotous behavior." Um, from just your
1058 recollection, not - not talking about policy, uh, can you talk a little bit about
1059 what was occurring that day, that night when you were on the proper that you
1060 would describe as, "riotous behavior?"
1061
1062 FELTON: Uh, that day I observed everything from people lighting homeless peoples'
1063 stuff on fire to, uh, throwing commercial grade fireworks at officers, uh, to,
1064 uh, throwing backpacks, throwing frozen water bottles, uh, things - things of
1065 that nature.
1066
1067 JIMENEZ: How were the protestors that you impacted acting that caused you to take
1068 those actions to impact them?
1069
1070 FELTON: Uh, the per- from what I recall the protestors were, uh, specifically i- in this
1071 situation were either -- like this gentleman was -- throwing so- doing some
1072 kind of behavior that could cause injury to someone or, uh, preparing to, uh,
1073 cause injury to someone.
1074
1075 JIMENEZ: Were the people you targeted and impacted - did they pose an immediate
1076 threat to the safety of officers?
1077
1078 FELTON: Yes, sir.
1079

1080 JIMENEZ: What other force options could you have utilized against the protestors that,
1081 uh, that you impacted?
1082
1083 FELTON: Uh, there was none available to me from my position.
1084
1085 JIMENEZ: Were you given an opportunity to review Policy 200.2...
1086
1087 FELTON: Yes, sir.
1088
1089 JIMENEZ: ...De-Escalation of Potential Force Encounters, prior to your interview?
1090
1091 FELTON: Yes, sir.
1092
1093 JIMENEZ: After having reviewed Policy 200.2 and after, uh, having reflected on this
1094 incident do you believe you violated this policy?
1095
1096 FELTON: No, sir.
1097
1098 JIMENEZ: Were you given an opportunity to review Policy 200.3.1, Determining the
1099 Objective Reasonableness of Force, prior to the interview?
1100
1101 FELTON: Yes, sir.
1102
1103 JIMENEZ: After having reviewed Policy 200.3.1 and having reflected on the incident do
1104 you believe you violated this policy?
1105
1106 FELTON: No, sir.
1107
1108 JIMENEZ: Were you given an opportunity to review Policy 200.6.5, Kinetic Energy
1109 Projectiles, prior to your interview?
1110
1111 FELTON: Yes, sir.
1112
1113 JIMENEZ: After having reviewed Policy 200.6.5 and having reflected on this incident do
1114 you believe you violated this policy?
1115
1116 FELTON: No, sir.
1117
1118 JIMENEZ: Sergeant Kirby, do you have any...
1119
1120 KIRBY: No, sir.
1121
1122 JIMENEZ: 'Kay, we're gonna pause the recording so I can confer with the OPO.
1123
1124 FELTON: Yes, sir.
1125

1126 JIMENEZ: Uh, if you guys wouldn't mind stepping out of the room for a second. Okay,
1127 we're back on the record. It's 11:56. We paused at 11:50. Officer, would you
1128 agree that the same people in the room, uh, are in the - the same people in the
1129 room are the same people that were here before the break?
1130
1131 FELTON: Yes, sir.
1132
1133 JIMENEZ: Mm-kay. I just have a few follow-up questions. You mentioned earlier about
1134 the rounds - the performance of the round.
1135
1136 FELTON: Yes, sir.
1137
1138 JIMENEZ: Uh, can you talk a little bit l- about that? About what you saw?
1139
1140 FELTON: Uh, it - it was just occasionally, um, and intermittent y, not consistently. Um,
1141 every once in a while, uh, you would get a round that, uh, would perform
1142 differently than the last one.
1143
1144 JIMENEZ: In what regard?
1145
1146 FELTON: Uh, in that it would have less power to it or more or...
1147
1148 JIMENEZ: Did you notify a supervisor about this?
1149
1150 FELTON: No, sir. I w- and I wasn't, uh, ya know, certain on it. You're just kinda in the
1151 moment and you're s well, that - that one was kind of off, but.
1152
1153 JIMENEZ: And you talked about the people that you impacted, how they posed an
1154 immediate threat to the safety of officers.
1155
1156 FELTON: Yes, sir.
1157
1158 JIMENEZ: Can you describe that? Why that - that's the case?
1159
1160 FELTON: Uh, due to their actions being violent and, uh, ya know, throwing a backpack
1161 full of heavy objects at an officer - gonna cause injury. Ya know, just like I
1162 got hit with rocks that caused pain, that's an injury.
1163
1164 JIMENEZ: And did you seek medical, uh, care for your injury?
1165
1166 FELTON: No, sir.
1167
1168 JIMENEZ: Earlier in the interview you talked about officers being, "assaulted left and
1169 right."
1170
1171 FELTON: Yes, sir.

1172
1173 JIMENEZ: Can you talk about that?
1174
1175 FELTON: Yes, sir. Uh, so literally to my left and my right you would, uh, intermittently
1176 see, uh, an - a flying object come or you would feel - get hit with something.
1177 You'd look over and, uh, you would - you would see your - your partner got
1178 hit or, uh, from looking down from 35 you would, uh, very frequently see
1179 objects thrown from the riot impact officers on the front steps. Um, so it was
1180 a, uh, an extremely common event that happened.
1181
1182 JIMENEZ: So this is personal knowledge...
1183
1184 FELTON: Yes...
1185
1186 JIMENEZ: ...recollection of it.
1187
1188 FELTON: Yes, sir.
1189
1190 JIMENEZ: Not you hearing it from other people talking about being impacted...
1191
1192 FELTON: That's correct, sir.
1193
1194 JIMENEZ: ...or being injured. I'm gonna go over the - the policy questions again.
1195
1196 FELTON: Yes, sir.
1197
1198 JIMENEZ: Uh, Policy 200 2, De-Escalation of Potential Force Encounters - and you
1199 mentioned that you don't feel you violated this policy. I'm gonna pull it up
1200 and I want you to explain how come you feel that way. Just for the record, I'm
1201 pulling up, uh, General Order Policy 200.2, De-Escalation of Potential Force
1202 Encounters Why do you feel you didn't violate this policy?
1203
1204 FELTON: Uh, mainly because of the first line, "when safe and reasonable under the
1205 totality of the cir- circumstances." Uh, it - it was not safe and reasonable to
1206 attempt to, uh, de-escalate someone who was actively throwing - ya know, in
1207 the motion of throwing something at - to assault others. Especially from my
1208 position, obviously.
1209
1210 JIMENEZ: Mm-kay. Uh, let's talk about Policy 200.3.1, Determining the Objective
1211 Reasonableness of Force. Can you tell us why you don't think you violated
1212 this policy?
1213
1214 FELTON: Yes, sir. Because, uh, my force was reasonable due to the fact that it was in an
1215 attempt to cease, uh, behavior that could cause injury to others.
1216
1217 JIMENEZ: Going to the next one. (Unintelligible). And the last one is, uh, Policy 206.5,

1218 Kinetic Energy Projectiles. You mentioned you don't feel you violated this
1219 policy. Can you clarify that and explain why you don't feel that way? Or why
1220 you feel that way?
1221
1222 FELTON: Uh, yes, sir. Uh, so using the policy language, um, I deployed that less lethal,
1223 uh, for, uh, to reduce, uh, the potential e-, uh, potential violent encounters.
1224
1225 JIMENEZ: Mm-kay. I'm gonna pause the recording again, uh...
1226
1227 FELTON: Yes, sir.
1228
1229 JIMENEZ: ...and confer with the OPO.
1230
1231 FELTON: Yes, sir.
1232
1233 JIMENEZ: If you guys would not mind stepping out for a second. Kay, Officer, we're
1234 back on the record. It is 12:05. Uh, would you agree that the same people are
1235 in the room that were in the room before pausing the recording?
1236
1237 FELTON: Yes, sir.
1238
1239 JIMENEZ: And that it looks like, uh, the representative of the OPO is no longer in the
1240 call, uh, but we're just gonna conclude. Is there anything else I haven't asked
1241 about that you would like to comment on?
1242
1243 FELTON: No, sir.
1244
1245 JIMENEZ: Is there anything I've asked you about that you would like to further explain
1246 or clarify?
1247
1248 FELTON: No, sir.
1249
1250 JIMENEZ: s there any other information you have related to this investigation that may
1251 or may not be important?
1252
1253 FELTON: No, sir.
1254
1255 JIMENEZ: This recording will be transcribed and you will be asked to review the
1256 transcription. When you do so you will e- be expected to read it thoroughly.
1257 After you sign it the document will become your formal statement in this
1258 investigation and you will be held accountable for its truthfulness and
1259 accuracy. If you have any additional information to add to your statement at
1260 that time we will record the additions or clarifications. We're now ending the
1261 interview. It is 12:06.
1262
1263

OFFICER KYLE FELTON

SUBSCRIBED AND SWORN TO BEFORE ME THE UNDERSIGNED AUTHORITY ON
THIS THE _____ DAY OF _____, 2020.

PEACE OFFICER.

ATTORNEYS EYES ONLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALYSSA SANDERS,

Plaintiff,

v.

CITY OF AUSTIN and ERIC HEIM,

Defendants.

§
§
§
§
§
§
§
§

CAUSE OF ACTION:
1:22-cv-314

**PLAINTIFF'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION FROM DEFENDANT CITY OF AUSTIN**

Exhibit 34

**SRT Event Action Plan (May 30, 2020) (COA-General
Protest.010660)**

FILED UNDER SEAL

SRT EVENT ACTION PLAN (EAP)



From Austin to
Minneapolis Protest
5-30-2020

Incident/Event Name: From Austin to Minneapolis Justice for George Floyd & Mike Ramos

Operational period: May 30th, 2020, 11am-4pm

Show Up Briefing: Police Headquarters on May 30th at **11 am** (ground floor of parking garage in the area inside of the 8th Street pedestrian gate). Officers may park their POV's in the "250" Garage or the Police Headquarters parking garage. Do not park on E. 8th Street.

Event Information: From Austin to Minneapolis Protest

Event: From Austin to Minneapolis Justice for George Floyd & Mike Ramos

Numbers: 1,000 "Going" and 2,500 "Interested" (as of 5/29 at 4pm)

Event URL: <https://www.facebook.com/events/383012155988660/>

When: Saturday May 30th beginning at 12pm

Where: APD Headquarters, 715 E 8th St., Austin TX 78701

AOR: APD-DTAC Sector

Hosted By: Mike Ramos Brigade

Synopsis: A recently formed event, hosted by the Mike Ramos Brigade, intends to host a demonstrations regarding the deaths of Michael Ramos and George Floyd. The group intends to join in solidarity with Minneapolis and demand justice.

Specific, Measurable, Action-Oriented, Realistic and Time-sensitive (SMART) objectives for the current/next operational period:

- Deploy SRT Officers to the protest location on the operational date.
- SRT will provide a safe and secure environment for the citizens of Austin.
- SRT will provide a strong officer presence at impromptu sites in which large crowds form that exceeds the capability of on-duty patrol personnel.
- SRT will be prepared to deploy officers with specialized training and equipment capable of dealing with large crowds should the need arise.
- Deploy SRT for crowd control and street clearing procedures should the need arise to protect the safety and well-being of the public and other officers involved in the effort.
- SRT will ensure that citizen's first amendment rights are upheld and protected.

Tactical Plan for the current period:

APD SRT and BPOT will deploy for a planned protest at APD Police Headquarters that is scheduled to begin at 12pm on Saturday May 30th. Based on past protests at the Main, it is anticipated that protestors will gather on and around the front steps of Headquarters. The deployment will ensure the safety of protest participants and will maintain the integrity of APD Headquarters and prevent any damage to APD, city, or private property.

There is no known plan to march but it is likely that protestors will attempt to block roadways downtown and/or IH-35. At the Commander's direction, should the participants attempt to engage in unlawful traffic obstruction, dispersal orders will be given in order to provide an opportunity for

voluntarily compliance to cease any unlawful obstruction. Should participants not comply with dispersal orders, SRT and BPOT tactics will be utilized to either to prevent obstruction or to re-open streets that have been already been obstructed by the participants, and may be utilized for arrests.

If protestors block IH-35, marked APD patrol units that will be driven by MFF officers will deploy from staging areas just north or just south of APD Headquarters will block all southbound and/or northbound vehicle traffic on the proper. Once traffic is halted, APD BPOT/SRT will deploy to the highway to effect arrests and remove protestors. The PTV's may respond to the highway for loading of arrestees.

At the direction of the Assistant Chief/SRT Commander, SRT and BPOT squads will be deployed from the ground floor of the parking garage to the protest area as a Platoon or in squads. Motors Units and/or DPS Troopers will man barricades that will be placed on downtown streets and the west frontage to create a traffic free pedestrian area on E 8th Street and on the West Frontage of IH-35 adjacent to Police Headquarters for protestors to congregate. Refer to **Diagram 1**.

Resources (Staging)

SRT- 1 Platoon (4 Squads) has been activated for this event. Each squad is assigned an SRT Sergeant who will act as its squad leader. One squad will be assigned prisoner control and processing duties (*will stage on the ground floor of the APD parking garage and on the ground floor of Police Headquarters*).

BPOT-1 Lieutenant, 2 Sergeants, 2 Corporals, and 21 officers (*will stage and deploy from the ground floor of APD Headquarters parking garage*)

Marked Patrol Cars/DPS – Two marked patrol cars driven by Mobile Field Force officers or DPS Troopers will be assigned to the transport vans for the duration of the deployment. They will escort the vans to deployment locations and remain with them for security (*ground floor of APD parking garage*). Six marked patrol cars driven by MFF officers or DPS Troopers will stage near to the IH-35 entrance ramps that are just to the north and to the south of APD Headquarters (3 north & 3 south) ready to stop all southbound and/or northbound traffic on the proper.

Air Support – Air Unit crew and helicopter will be on standby and ready to deploy upon order of the Incident Commander for the duration of event, absent exigent circumstances or the need to re-fuel.

Drones-AFD drone will be utilized for the deployment by an operator at the EMS/AFD Unified Command Post. The drone(s) will be grounded if Air1 is deployed.

Prisoner Transport Vehicles- (3) PTV's with drivers (*7th Street entrance to APD parking garage, or E 8th Street, or surface parking lot north of 250 garage*).

OCD – will provide 4 vans for SRT personnel and drivers for each. No UC's will be utilized for this deployment (*ground floor of APD parking garage*).

SRT Quartermaster –Sgt. Tableriou will be present to distribute SRT equipment.

Tac Medics - Tactical Medics will be attached to SWAT.

SWAT- (2) Sniper teams for over watch and (1) rescue team with armored vehicle (*surface area parking lot north of 250 parking garage. May adjust at direction of Sgt. Driscoll*).

CAST- (1) CAST Sergeant, (8) CAST Officers comprising 2 QRF's (4 officers/2 per slicktop) & 1 RTF (4 officers/2 per AFD Polaris) *staging (at the discretion of the CAST sergeant. Units will be mobile).*

APD Metro Tac (South)-will guard Target store at 901 E 5th Street Suite 140 (*stage at store*).

Mounted- 1 sergeant & 6 officers (*trailer will be parked at Sobering Center when not loading; staging during event will be determined by Mounted's sergeant*).

ARIC-Detective providing Intel prior to and during the deployment.

AFD – Fire Branch Director at DPS EOC (1500 N. Congress Ave.) and Fire Battalion Chief in the AFD SpecOps trailer “breadbox.”

DPS Troopers – are available to assist with the deployment, involvement TBD (*Capitol Visitors Parking Garage at E12th St. and Trinity*).

TCSO Jail - notified of possible mass arrest by email on 5/28 2020 by Lt. Bigongiari to TCSO Lt. Dail.

APD Chain of Command

Chief Chacon Commander Staniszewski

Lt. Leleux (SRT) – Lt. Nisula (BPOT/Mounted) - Sergeants Crumrine/Blake/McCarter/Kunkel (SRT)
- Sergeants Juusola & Simonaux (BPOT) – Sgt. Payne (Mounted) – Sgt. Duran (Motors) – Sgt. Drisco (SWAT) Sgt. Burnsed (CAST) –Sgt. Dubois (MetroTac)

Commander's Intent

- An operational briefing will be conducted at 11:00 am at Police Headquarters on the ground floor of the parking garage. Officers can park their POV's in the 250 parking garage or in the Police Headquarters parking garage. **DO NOT** park on 8th Street between the frontage road and Red River.
- SRT/BPOT will be deployed following the conclusion of the operations briefing to the staging area. SRT will be available to respond as needed to protect life, property and ensure that 1st Amendment rights are protected.
- BPOT will be the primary units assigned to escort any marches that may occur. SRT will respond to true civil unrest/disobedience.

- BPOT and marked units will be utilized for traffic control and crowd containment should crowds/protesters attempt un-permitted marches or static obstruction of streets.
- Motors Units will be placed at pre deployed barricades and utilized for street closures.

Administration and Logistics

- **Food:** SRT members should bring food and snacks for the event. Water will be provided. Getting food and drinks from places close to our staging area will likely be very limited due to Covid-19 closures.
- **Uniform and Equipment:** Uniform will be the class C long sleeve uniform with non-bloused pants and duty belts (including PR-24). All remaining SRT “heavy” gear will be kept at the ready. All APD personnel are expected to wear face masks when possible.
- **Prisoner Transport:** All prisoners to include juveniles will be handled by SRT members and will be transported in the DTAC prisoner transport van. The van will be equipped with a Mass Arrest Kit. One of the four squads will be at the briefing given the responsibility of maintaining prisoner custody, assisting with prisoner processing and booking.
- **Passenger Vans:** OCD will provide three (4) raid vans with drivers to transport the squads. The OCD drivers will remain with their assigned van.

Communications

SRT Primary Radio Channel: E1 R PS 14

Dispatcher:

Incident Radio Communications Plan:

Channel Name	Assignment
E1 R PS 8	UAV Operations
E1 R PS 9	AFD primary
E1 R PS 10	ATCEMS Secondary
E1 R PS 11	ATCEMS Primary
E1 R PS 12	Spare/Breakout
E1 R PS 13	SRT Secondary
E1 R PS 14	SRT Primary
E1 R PS 15	Command
8TAC95D	Direct- Backup Channel

Officers will use Text to Log-in and email to apdtexttologon@austintexas.gov the following information:

- **Name & employee #**
- **Call Sign**

- **Radio ID**
- **42 Time**
- **Exact Location of Assignment**
- **Name of the Special Event or Assignment**

At the end of the officer's assignment, the officer will email the following to the same email account: **Name & employee #, Call Sign, and 10-42**

Communications will respond to the officer's text with the word "Received".

Finance

Any overtime associated with protests will be tracked by using task order # 87200 0000 Unit# 7945

CONFIDENTIAL